

AN OUTSIDE CHANCE

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

Marie Wernham





*We find out too soon that one shouldn't mess
with the law. We find out too soon that
unlike other systems in the government,
this one is swift and unforgiving – especially
when you are poor and powerless.
Especially when you are a street child.*

FILIPINO STREET CHILD¹



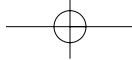
*Come close to me, hear our cries
You come from far away just to criticise
Locked up at eight, what am I gonna do?
The ones who escape are only a few
Nothing but beatings for us who remain
I swear I don't get this place, this pain
Many have a skill, a future to fulfil
With hope for a career
We wouldn't be in here
This dark place where there is no play
My soul smiles only at the break of day
Justice refuses to hear my voice
I'm just locked up, I have no choice*

RAP PERFORMED BY BOYS AT A JUVENILE DETENTION CENTRE IN SÃO PAULO, BRAZIL²



¹ Quoted in UP CIDS PST, Painted Gray Faces, Behind Bars and in the Streets: Street Children and Juvenile Justice System in the Philippines, Quezon City, UP CIDS PST and CSC, 2003, p.46.

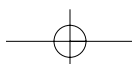
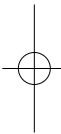
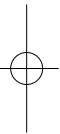
² Footage from Blewett, K. and Woods, B., Kids Behind Bars [film], True Vision productions, 2001.

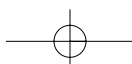
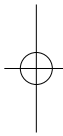
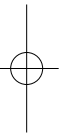


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About the artist: 16-year-old Joseph Betarmos, from Mindanao in the Philippines, is one of the young people who took part in the Philippine National Consultation Workshop on Street Children and the Juvenile Justice System in August 2001 as part of the international project on which this publication is based. He is an active member of a community theatre based in Davao City. Toots, as he is more popularly known, believes that art is a great tool in educating people. An advocate for children's issues, he happily describes his work as light and funny but capable of creating great impact in the community. His dream is to become a professional artist. Like his life story, Toots' drawings come from the heart, one that is resilient and full of desire to continue and enjoy living while helping others in need.

The Consortium for Street Children is grateful to the Community Fund, Foreign and Commonwealth Office (Human Rights Project Fund) and the Methodist World Development Action Fund for their financial support of this book.

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HOW TO USE THIS BOOK

STEP 1

DON'T PANIC! There is a lot of material but you don't have to read it all! The following guidelines will help you to navigate your way through the book.

STEP 2

Use the **detailed contents page** to identify the sections that interest you most.

However, it is strongly recommended that everybody should read:

- o **Chapter 2:** to get an overview of the key policy messages which are featured throughout the book;
- o **Chapter 5:** for an overview of the system and actors involved;
- o **Chapter 8:** to familiarise yourself with the recommendations that apply to you.

STEP 3

Read the brief 'chapter overviews' and 'chapter summaries' at the beginning and end of each chapter to get a clearer idea of what each chapter contains.

Within each chapter children's quotations, case studies, project examples and practical tips are clearly marked.

STEP 4

Please feel free to give us feedback: Which parts were most useful? How have you used the book? How can it be improved? Do you have better project examples or case studies to share?

Email info@streetchildren.org.uk

ACKNOWLEDGEMENTS

CSC would like to thank all those who contributed to this project. Special thanks go to the children who had the opportunity to take part in this project, as well as to those who did not: those who are still on the streets or behind bars. Hopefully this project will go some way towards sharing their stories and highlighting their incredible resiliency, courage and imagination in the face of exceptionally difficult circumstances, reminding us that street children are first and foremost children, humans entitled to human rights, who need us to work together as a matter of urgency to put the 'justice' back into the 'justice' system. This book is for them.

We are very grateful to the Community Fund, Foreign and Commonwealth Office (Human Rights Project Fund), the Methodist Association of Youth Clubs 'Streets Apart' Campaign and the Methodist World Development Action Fund for their financial support of this project.

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IBC ABOUT CSC

INTRODUCTION

Chapter overview

- Outlines **why there is a need for this book**.
- Provides a brief overview of the **background, audience and contents** of the book.
- Introduces the **key themes of the book** which act as **guiding principles** for a three-part approach to reform.
- Explores **issues around definitions** of 'street children', 'juvenile justice systems,' 'children in conflict with the law' and the need for child-friendly and accurate terminology.
- Gives an overview of issues relating to **gender** in the context of street children and juvenile justice.

PUTTING 'JUSTICE' BACK INTO THE 'JUSTICE' SYSTEM

In many countries around the world, children and adolescents who live and work on the streets suffer from wide-ranging human rights violations in so-called 'justice' systems. Each individual child has a story to tell. Taken together, these stories vary in the details, but they share a common theme: injustice.

Street children are highly likely to come into contact with the criminal justice system in the first place due to discrimination and the circumstances in which they are forced to survive, regardless of whether or not they have actually committed a crime. Due to outdated legislation they are arrested and face harsh sentences for petty (often 'survival') theft, substance abuse, begging and 'vagrancy'. Furthermore, they are less able to defend themselves from abuse once within the system due to limited or no contact with responsible adults who can speak up on their behalf, lack of funds to bribe their way out of the system, and the fact that their voices are not heard or respected. In short, street children are discriminated against and have their rights violated because they are poor.

Street children are seen as outsiders by society, often with only an outside chance of surviving and developing to their fullest potential. We owe it to their incredible

While selling sweets, I found a wallet lying on the ground and asked a woman standing nearby if it belonged to her. A man standing there said it was his and I had picked his pocket. He handed me over to the police. The police ate all my sweets and locked me up. I will sell sweets again when I get out of here, but I will never help someone again.

(8-YEAR-OLD BOY, BORSTAL JAIL, BAHAWALPUR, PAKISTAN)¹

¹ Quoted in Wagner-Rizvi, T., and Jillani, A., *Waiting for the Sunrise: Juvenile Justice in Pakistan*, SPARC and Consortium for Street Children, December 2003, p.84.

resiliency, courage and imagination in the face of exceptionally difficult circumstances to work together to turn this 'outside chance' of survival and development into the guaranteed fundamental human right to which they are entitled. This publication aims to share some of these young people's stories and to point the way forward to ways in which, working collaboratively, we can put the urgently needed 'justice' back into the 'justice' system.

OVERVIEW

This publication aims to provide a comprehensive overview of the causes and consequences of street children's involvement in criminal justice systems in a wide range of countries. It is based on the findings from a two-year research and advocacy project by the Consortium for Street Children with partners in Kenya, Nicaragua, Nigeria, Pakistan, the Philippines and Romania², along with information and case studies from other countries. It is the first time that information on street children and juvenile justice has been compiled into such a comprehensive publication. It builds on the experiences of a wide range of individuals and organisations internationally, drawing together both theory and practice into an innovative framework for overall reform.

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

It includes:

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

GUIDING PRINCIPLES FOR THE WAY FORWARD

The book outlines an approach to reform based on certain key themes:

- 1 The need for a **child rights-based approach**
- 2 The need for an understanding of the following **key concepts**:
 - a **Each child is unique** and requires an **individualised approach**
 - b Interventions should take into account **the concept of choices, limited choices and non-choices** available to children
 - c **Relationship-building** is key to reform
 - d The **role of the community** is essential
 - e There needs to be a better understanding of, and respect for, **children's resiliency and their peer relationships**
- 3 The need for interventions in the following four priority areas:
 - **prevention**
 - **separation of criminal justice and social welfare systems**
 - **diversion**
 - **alternatives to detention**

² See Appendix 1 for further details of the CSC project *Promoting and Protecting the Human Rights of Street Children in Juvenile Justice Systems, 2002-2004*.

These themes are described in more detail in Chapter 2 and will be drawn on throughout the book, demonstrating how lack of understanding of these issues contributes to the

problems currently experienced by street children in criminal justice systems and how increased understanding of these issues contributes to their solutions.

DEFINITION ISSUES

DEFINITION OF THE TERM 'CHILD'

For the purposes of this book, the term 'child' refers to any person under the age of 18, in line with the use of the term in the UN Convention on the Rights of the Child (Art. 1). However, given the significant age differences covered by this term, 'adolescent' and 'young person' are also used to refer more accurately and respectfully to older 'children' under the age of 18.

WHO ARE 'STREET CHILDREN'?

The term 'street children' has both positive and negative connotations. It can label and stigmatise children or it can provide them with an identity and a sense of belonging. It can include a very wide range of children who: are homeless; work on the streets but sleep at home; either do or do not have family contact; work in open-air markets; live on the streets with their families; live in day or night shelters; spend a lot of time in institutions (e.g. prison).

Examples of definitions of 'street children' include:

- "...those for whom the street (in the widest sense of the word: i.e. unoccupied dwellings, wasteland etc.) more than their family has become their real home, a situation in which there is no protection, supervision or direction from responsible adults".³
- 'children *of* the street' (those with limited or no family contact who often actually sleep on the street), also referred to as 'street-living' or homeless children and 'children *on* the street' (those who maintain family contact and return home in the evenings), also referred to as 'street-working' children.⁴ However, practitioners are increasingly critical of this broad binary division.
- Alternative terms such as 'street-involved children' are being used by some organizations to more accurately describe the spectrum of relationships in which children engage within the socio-economic, cultural and physical space of the street environment. For example, one NGO working in Mexico and Ecuador takes the term 'street-involved' to mean "street-living, street-working, street market children and their families and people for whom the street plays a defining role in their lives in the way that spaces such as office or school would in someone else's life (and that of their family)."⁵

For the purposes of this publication, the author acknowledges the limitations and many connotations, both positive and negative, of the term 'street children', but – in the absence of a widely acceptable alternative - uses the term for convenience, on the understanding that in reality, street children defy such convenient generalisations because *each child is unique*. Definitions of 'street children' in different contexts must take into account the child's own perceptions of their individual circumstances and how they themselves wish to be described.

WHAT DO WE MEAN BY 'JUVENILE JUSTICE SYSTEMS'?

The scope of 'juvenile justice' can vary. For the purposes of this book, juvenile justice is understood to comprise not only the treatment of children in conflict with the law, but also the need to address the root causes of offending behaviour and implement measures to prevent such behaviour. As identified by Roy and Wong (2004), there are two major strands of work under this broad definition:

- **Prevention** – in order to ensure that children do not come into conflict with the law in the first place and therefore do not come into contact with the formal criminal justice system, and

Everyone calls us tokais (scavengers) or beggars. Hardly anyone calls us by our own names.
(BANGLADESH)

*8-year-old-boy quoted in 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, p12.

3 Definition formulated by the Inter-NGO Programme for Street Children and Street Youth, cited in Ennew, J., *Street and Working Children: A Guide to Planning, Save the Children, London, 1994, p.15.*

4 *Ibid.*

5 JUCONI (Junto con los Niños), www.juconi.org, email communication with Consortium for Street Children, 25 February 2003. JUCONI in turn adopted the term from the Canadian International Development Agency in CIDA's *Action Plan on Child Protection: Promoting the Rights of Children who Need Special Protection Measures*, June 2001, p.10.

- **Protection** – of children who are already in conflict with the law from human rights violations, focusing on their development in order to deter them from re-offending and to promote their rehabilitation and smooth their reintegration back into society.⁶

In theory a 'juvenile justice system' is made up of the legislation, processes, institutions and personnel involved in the treatment of children accused of committing a criminal offence. Due to the specific needs and circumstances of children, this needs to be distinct from the workings of the regular adult criminal justice system. However, in reality there are three problems with the term 'juvenile justice system':

- 1 **There is no one single 'system' but a complex mixture and overlap between many different systems:** children pass through processes, institutions and personnel from a variety of different government departments, agencies and organisations such as the police, social welfare and probation departments, judiciary, lawyers, detention centres and prisons. Although these systems are supposed to be interrelated, coordinated and interdependent, in reality each sector has its own mandate, budget authority, regulations, governing body and political agenda. "Each one may act with the best of intentions and totally within its guidelines, but the effect of so many agencies making individual (or at best bilateral) decisions is that a 'non-system' is formed. In other words, there is no 'complex whole formed by interactive, interrelated, interdependent parts.' Complex, yes, but system, no."⁷ Understanding and respecting this complexity is key to implementing reform.
- 2 **In some countries, even if a separate 'system' for the treatment of children (as opposed to adults) exists in theory, in practice children are often still processed through the adult criminal justice system.** The term 'juvenile justice system' may therefore be misleading and this report often refers more accurately to the 'criminal justice system' in certain situations.
- 3 **The term 'juvenile' is increasingly being criticised in international human rights circles as it is seen as a stigmatising label which detracts from the fact that the individuals in question are children and adolescents,** entitled to special treatment and understanding, according to standards outlined in the UN Convention on the Rights of the Child and other instruments. Organisations such as Save the Children UK now use the term 'child justice' as opposed to 'juvenile justice' to reflect these policy concerns. However, this shift in terminology has been developing over the past few years and, whilst appreciating current trends, the term 'juvenile justice' is still used in the title and other places throughout this publication as it is more widely recognised.

UNPACKING THE TERM 'CHILDREN IN CONFLICT WITH THE LAW'

It is essential to understand from the outset that not all street children in criminal justice systems are criminals, but rather fall into three very different groups:

- 1 **Children in actual conflict with the law:** Some street children do engage in criminal behaviour ranging from minor to serious offences. These street children are in conflict with the law.
- 2 **Children in perceived conflict with the law:** Others may be arrested for activities that are officially criminalised in legislation but which the international human rights community calls for to be decriminalised as a matter of urgency. For example, street children are arrested for being victims of commercial sexual exploitation, for begging, 'vagrancy' and for 'status offences' such as truancy, 'running away from home', and being 'beyond parental control'. In these cases, although technically in conflict with the law, children in this category are actually victims of legislation that needs urgently to be reformed.
- 3 **Children in need of care and protection:** Some street children do *not* engage in criminal behaviour. Nevertheless, they may still be arrested randomly and illegally,

⁶ Roy, N. and Wong, M., *Juvenile Justice Review and Training Documents prepared for Save the Children UK*, 2002-3.

⁷ Feely, F., *Collaboration and Leadership in Juvenile Detention Reform*, publication No. 2 in the series *Pathways to Juvenile Detention Reform*, Annie E. Casey Foundation, p.10. See also Abramson, B., 'Juvenile Justice: The 'Unwanted Child' - Why the potential of the Convention on the Rights of the Child is not being realized, and what we can do about it', August 2003.

on prejudiced suspicion of being involved in criminal behaviour, or they may be detained 'for their own protection'. In some countries, in the absence of adequate social welfare responses, the criminal justice system is used to warehouse homeless children regardless of whether or not they have committed a crime.

The findings from the Consortium for Street Children project show that the vast majority of street children processed through justice systems fall into categories (2) and (3) in contrast to public opinion that generally sees them as criminals.⁸

WORDS MATTER: TERMINOLOGY USED IN THIS BOOK

Stressing the use of child-sensitive terminology and unless quoting references and identifying the titles of previous researches, words and phrases such as 'minor', 'juvenile', 'youthful offender' and 'juvenile delinquent' have been avoided in this publication. This is due to their negative and prejudicial connotations or the fact that they detract from the reality that the individuals involved are first and foremost children and adolescents. These terms have been replaced with more accurate references to 'child', 'adolescent', 'young person', 'child in actual conflict with the law', 'child in perceived conflict with the law' and 'child in need of care and protection'.

GENDER

The testimonies and experiences cited throughout this book come from both girls and boys. However, it is important to highlight at the outset the particular gender imbalance in the criminal justice system and the implications this has for reform interventions.

THE GENDER IMBALANCE

Amongst street-living children, girls are in a minority (estimates range between 3 and 30%, depending on the country in question⁹). This massive over-representation of boys living on the streets is carried over into the criminal justice system. For example, in Albania there were 386 boys sentenced in 1998 but only one girl.¹⁰ This low percentage of girls may be accounted for by their relative minority presence on the streets in the first place (due to cultural and social factors) as well as differences in some countries in the way girls are processed through the system – for example in Pakistan it is reported that girls are more likely to be diverted from the system at police stations¹¹ and in general girls are less likely to be prosecuted or to be given a custodial sentence than boys.¹² "However, it is not clear to what extent these differences derive from more lenient treatment, from a lack of facilities available for female offenders, or from the divergent patterns of offending behaviour displayed by boys and girls."¹³ Nevertheless, this gender imbalance in the criminal justice system has major implications for the treatment of both girls and boys.

PROBLEMS FACED BY GIRLS

As criminal justice systems are traditionally orientated towards boys, girls are particularly vulnerable to human rights abuses. For example, due to lack of space in many police and detention facilities girls are often held in detention with female adults. Furthermore, limited numbers of female staff in the criminal justice system makes girls vulnerable to inappropriate handling and sexual abuse, particularly by law enforcement personnel. Because of their 'non-normative' sexual activity on the streets (possibly involving multiple partners, 'survival' sex in exchange for food, shelter and protection, and the difficulty in drawing boundaries between this and sexual abuse and commercial sexual exploitation¹⁴), street girls suffer a perceived loss of rights over their bodies. This is compounded by gender stereotypes in male-dominated cultures which define these girls as not 'nice girls'. Combined with a general taboo around sexually active children, especially girls, and even a fear of them, this results in exceptionally high levels of sexual violence against street girls.¹⁵ Finally, in general, "prisons are ill equipped to deal with young women who are damaged and who display extremely challenging and difficult behaviour. The numbers of juvenile girls within the system are small and as a result they are simply tacked onto the rest of the system with little recognition that their needs are different and separate from older women. It also means that they attract fewer resources..."¹⁶



INDIA: street and working children's protest rally in 1995, featured on the cover of *Juvenile Justice: Report on the National Seminar 8-9 April 1999, New Delhi* by Butterflies (edited by Rita Panicker) © Butterflies

8 For example, in Nairobi, Kenya for the month of November 2001, the Juvenile Court Register indicates that 85% of children passing through the court were 'charged' with being 'in need of care and protection'.

9 1991 study, quoted in Barker, B. and Knaul, F., *Urban Girls: Empowerment in Especially Difficult Circumstances*, 2000, p. 8.

10 Data from Ministry of Public Order, quoted in 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.63.

11 AMAL Human Development Network and Consortium for Street Children, *Street Children and Juvenile Justice in Pakistan*, February 2004.

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

13 *Ibid.*

14 See Barker, B. and Knaul, F., *Urban Girls: 2000*, p.17.

15 Wernham, M., *Background Paper on Street Children and Violence*, Consortium for Street Children, updated 16 November 2001.

16 The Howard League for Penal Reform (UK) cited in Roy, N. and Wong, M., *Juvenile Justice Review and Training Documents* prepared for Save the Children UK, 2002-3.

*The penal system, adult and juvenile, is the most heavily gendered institution in society*¹⁸

PROBLEMS FACED BY BOYS

Discussions around gender in relation to juvenile justice often highlight the particular problems faced by girls. However, “overall, neither the human rights movement nor the CRC movement is treating imbalances in the well-being of *males* as a human rights issue, or even a ‘gender issue’”.¹⁷ Abramson points out that, despite evidence that “the penal system, adult and juvenile, is the most heavily gendered institution in society”, little – if anything – is being done by governments and child rights advocates to address the reasons why *boys* are so at risk in this area. He goes on to add that the general unpopularity or apparent lack of interest in addressing issues that disproportionately affect boys, rather than girls, is one of the most important reasons for the marginalisation of juvenile justice issues in the human rights movement.¹⁸

THE NEED FOR GENDER-SENSITIVE INTERVENTIONS

Any reform of the criminal justice system therefore needs to take into account this gender imbalance in order to ensure that interventions are appropriate and effective. For example:

- **Prevention programmes** need to address why boys are more at risk than girls of coming into conflict with the law and accordingly identify and mobilise protective factors which are gender-specific;
- The minority of girls in the system need to be protected through the **provision of adequate gender-sensitive staffing, facilities and services** (including gender-sensitive health services);
- **Psychosocial and rehabilitation interventions** with girls and boys need to take into account differences due to gender (e.g. research has shown that street migration for girls is more traumatic and the rupture more permanent than for boys; programmes in Kenya, Senegal, Bolivia, Brazil and Guatemala report that girls on the street display more psychological damage than boys – a combination of both sexual abuse and rupture in the family¹⁹; the internalisation by girls of the effects of domestic violence, sexual abuse and family break-up may find expression in violent behaviour, depression, withdrawal and self-mutilation²⁰; girls appear to grow out of crime more successfully and at an earlier age than is the case with boys²¹ - all of which have significant implications for professional counselling, family reintegration and other programmes);
- Programmes sensitising detention centre staff on **methods of discipline** which are not abusive or humiliating need to take into account any differences in the ways in which girls and boys are treated;²²
- Facilities for a **full range of community penalties** should be available to girls as well as boys in the local area, including community punishment orders and attendance centre orders. This might involve:
 - o ensuring that provision is in place to avoid the necessity of placing single girls alone with a group of boys;
 - o developing attendance centres for girls where these do not exist;
 - o providing child-care facilities where these are needed.²³

In short, “a gendered problem needs a gendered solution – regardless of the subject, and irrespective of which sex is on the winner/loser side of things.”²⁴ Practitioners must address the socio-economic and cultural factors that result in the massive over-representation of boys in the system whilst at the same time ensuring that service delivery does not discriminate against the female minority and that the particular needs of girls are not overlooked.

17 Abramson, B., ‘Juvenile Justice: The ‘Unwanted Child’ - Why the potential of the Convention on the Rights of the Child is not being realized, and what we can do about it’, August 2003.

18 *Ibid.*

19 Barker, B. and Knaul, F., *Urban Girls 2000*, p.9.

20 This is born out by reports from Guatemala, Bolivia and the USA in *ibid.*, p.9.

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

22 For example, street children in Nigeria commented on the perceived preferential treatment received by girls as opposed to boys in detention: they felt that girls were given less harsh punishments than the boys and were “spoken to nicely, advised and treated as if they are the officers’ own children”. Human Development Initiatives and Consortium for Street Children, *Street Children and Juvenile Justice in Lagos State*, February 2004.

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

24 Email communication with Bruce Abramson, May 2004.

Chapter summary

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

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

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

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

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

2

GUIDING PRINCIPLES FOR THE WAY FORWARD

Chapter overview

- Explains the **three-part framework for reform** in detail.
- 1** Outlines the need for a **holistic and child rights-based approach to reform** that balances specific international human rights standards on juvenile justice with an overall vision of the five umbrella rights of the UN Convention on the Rights of the Child – which are introduced through a practical programming tool called the ‘Table Leg Test’.
- 2** Explains each of the **five key concepts** of:
 - An **individualised approach** – explaining the negative impact of criminalisation and stereotyping of street children on policies and treatment of children (illustrated by case studies from Nicaragua and Brazil), and highlighting issues relating to racial and ethnic discrimination (case study from Bulgaria);
 - Addressing street children’s **choices, limited choices and non-choices** through the 3-stage ‘choice process’: understanding choices children have made, expanding the choices available to them and empowering them to make those choices;
 - **Relationship-building** in the context of the five pillars of the justice system (law enforcement, prosecution, courts, correction and community) with emphasis on the need for sensitization and collaboration, supported by examples of sensitization work with the police in India and the Philippines;
 - The importance of **the role of the community**;
 - Better understanding of, and respect for, **children’s resiliency and their peer relationships** – outlining the concept of resiliency and giving specific examples in relation to street children and juvenile justice from the Philippines.
- 3** Calls for **priority attention to the four areas** of prevention, separation of criminal justice and social welfare systems, diversion and alternatives to detention.

THE 3-PART FRAMEWORK FOR REFORM

As borne out by the testimonies of street children in the justice system, comprehensive reform is essential and urgent. This reform is proposed here in the form of:

- A) an overarching **child rights-based approach**
- B) a focus on **five key concepts**, and
- C) intervention in **four priority areas**.³

A) CHILD RIGHTS-BASED APPROACH TO REFORM: A HOLISTIC APPROACH TO THE UN CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

A.1 WHY DO WE NEED A HOLISTIC APPROACH?

Reform of juvenile justice systems (or multiple, overlapping systems / 'non-systems'⁴) can take many different approaches. As with a tangled knot, there are problems in many areas and yet pulling at the knot in some areas may actually make matters worse. For example, attention to conducting physical repairs of detention centres may divert attention and resources away from programmes to ensure that children don't end up in detention in the first place. Improving parts of the system without analysing the whole can result in making bad processes function even more efficiently! This problem has also been described as the 'balloon effect' in juvenile justice reform: "we grab a hold of one part of the problem, and it bulges out somewhere else".⁵ Difficult decisions need to be made in the context of scarcity of resources, conflicting interests, lack of political will and negative media influence. It is therefore useful to have a common framework to refer to in order to help simplify complex decision-making.

A.2 SPECIFIC CRC ARTICLES RELEVANT TO JUVENILE JUSTICE

Over the past 10 years or so, increasing attention has been given to the CRC and other international human rights standards as the common framework in juvenile justice reform and this will be examined in detail in Chapter 3. However, whilst capitalising on the detailed guidance available in, for example, Article 40 of the CRC, there is also a need to adopt the broader perspective offered by the CRC as a whole, rather than focusing on isolated articles. This is particularly important with regard to the wider spectrum of socio-economic rights which are essential to programmes on prevention, separation of criminal justice and social welfare systems, diversion and alternatives to detention. To illustrate this point, and to encourage broader use of the CRC, some of the other CRC articles that are relevant to juvenile justice are highlighted alongside the diagram on the following page and in the detailed discussion of the CRC in Chapter 3. However, it should be remembered that taking into consideration a longer list of articles will not necessarily result in a more holistic approach. Rather than just expanding the 'shopping list' of individual articles relevant to juvenile justice, we need to step back and consider the full 'meal' that we are trying to prepare with the 'ingredients'.

A.3 FIVE CRC UMBRELLA RIGHTS⁶

The CRC was written to be read integrally, not as a shopping list, every article being underpinned by the five umbrella rights of the CRC:

- **the best interests of the child**
- **non-discrimination**
- **participation**
- **implementation** (including of economic, social and cultural rights to the maximum extent of available resources)
- **the right to life, survival and development**

Together these principles make up the child-rights based approach, that is: an approach which sees each child as unique and *equally* valuable (**non-discrimination** – Art. 2) human beings, with the right not only to **life** and **survival**, but also to **development** to their fullest potential (Art. 6), offering the best understanding of anyone of their own situation / with essential experience to offer (**participation** – Art. 12), who deserve to have their **best interests** met (Art. 3) through adequate **allocation of resources** and implementation of all the rights in the CRC (Art. 4).

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

*I hope others would not go through this experience.*²

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

² *Ibid*, p.116.

³ Penal Reform International has developed a '10-Point Plan' for the reform of juvenile justice in general and this is included as Appendix 4.

⁴ Feely, F., *Collaboration and Leadership in Juvenile Detention Reform*, publication No. 2 in the series *Pathways to Juvenile Detention Reform*, Annie E. Casey Foundation, p.10.

⁵ Abramson, B., 'Juvenile Justice: The 'Unwanted Child' - Why the potential of the Convention on the Rights of the Child is not being realized, and what we can do about it', August 2003: "One of the reasons for the balloon effect is that changes in one system put pressure on the other interlocking systems, and these other systems push back, defeating the reform, or creating new problems. This is why we must address "juvenile justice" not as a system but as a set of *over-lapping systems*."

⁶ For many years the CRC has been analysed in terms of the 'four principles' (the best interests of the child, non-discrimination, participation and the right to life, survival and development). However, this approach has been criticised for marginalising the importance of Article 4 (on implementation and resources – especially for economic, social and cultural rights) and for terminology that weakens the strength of the four articles in question: the best interests of the child, non-discrimination, participation and the right to life, survival and development are *rights* rather than mere *principles*. The term 'rights' carries a greater psychological and legal weight and more accurately represents states' legal obligations regarding implementation whereas 'principles' are subject to being outweighed by other 'principles'. The term 'umbrella rights' was coined by Bruce Abramson to refer to Articles 1, 2(1), 3(1), 4 and 5 of the CRC and has been adapted here to refer to articles of the CRC which reflect a more programmatic as well as legal focus. See Abramson, B., 'Two Stumbling Blocks to CRC Monitoring: the Four "General Principles" and "the Definition of the Child"', September 2003.

Practical tips

INTRODUCING THE 'TABLE LEG TEST'

These five umbrella rights are illustrated in the diagram on the following page in the form of the 'Table Leg Test'. This illustrates how the best interests of the child, non-discrimination, participation and implementation (including of economic, social and cultural rights) underpin the ultimate goal of the CRC: the right to life, survival and development. The 'Table Leg Test' can act as a simple reminder in the design and implementation of any proposed reforms.

It can act as a checklist, by asking at every stage of the process: '**Is the table stable?**' - i.e.

- **Have each of the five umbrella rights been considered?**
- Is this proposed reform in the **best interests** of the children?
- Does it safeguard their **survival** and actively contribute to their **development**?
- Have the **children themselves been involved** in planning and implementing it?
- Is it reaching / taking into consideration the needs of all children, **without discrimination** against particular groups?
- Are there adequate **resources** available?

Underpinning the specific details of Articles 37 and 40, and the other UN guidelines, with this simple and holistic approach as a constant reminder may help in the following two ways:

1 To give an overview of / take a step back from the 'tangled knot' in order to identify where interventions are most needed overall (separation of social welfare and criminal justice systems, prevention, diversion and alternatives to detention). For example:

- Is it in the **best interests** of the children to focus on reform of release mechanisms such as bail, or on healthcare in detention at this stage?
- Which of the options best addresses the children's right to **life, survival and development**?
- Are police training materials addressing the particular **discrimination** against street children and ethnic minorities which is bringing them into the system in the first place?
- Have the children themselves **participated** in articulating problems in the system and been given the opportunity to contribute to solutions?
- Which areas are most in need of the government allocating sufficient resources and political will to ensure **implementation**?

2 To guide planning of specific reforms and programmes - i.e. once priorities have been identified from a holistic perspective, specific programmes need to be based on the five CRC umbrella rights which can then be supported by other, more specific articles. This is the also case even in urgent, short-term reform initiatives and where processing through the formal system cannot be avoided (i.e. improving conditions in detention). For example:

- In detention the children's right to **life, survival and development** needs to be met through adequate health (including mental health) and education services as well as anti-violence and other protection policies and training, all of which need to be adequately **resourced**;
- The **best interests** of children in detention are better served by not using denial of family visits as a punishment;
- Awareness-raising and sensitisation of staff regarding **non-discrimination** policies should ensure that offensive language is not used by police and prison staff against (e.g.) street girls and ethnic minorities;
- The children themselves will have the best perspective on which reforms are most urgent and should therefore be encouraged to **participate** as much as possible in the planning of projects as well as their implementation where possible (e.g. if it is in their best interests, can the children be involved in helping to conduct physical repairs on buildings in order to develop their practical skills?)

⁷ "It is not acceptable for inter-governmental bodies or states to promote multi-million dollar development projects without earmarking a portion for the progressive upgrading of the penal system, not when we consider the levels of inhumanity that we find in the juvenile and adult systems throughout the world. Economic development fuels social disruptions, like migration and changes in family structures, and disruption of the social fabric will lead to additional crime; that's the human condition. A holistic, human rights approach will anticipate these problems, and will ensure that developmental packages have dedicated a certain portion to the rehabilitation of the penal system." Abramson, B., 'Juvenile Justice: The 'Unwanted Child' - Why the potential of the Convention on the Rights of the Child is not being realized, and what we can do about it', August 2003.

A CHILD RIGHTS-BASED APPROACH TO REFORM: THE 'TABLE LEG TEST'

To what extent does the current situation in the justice system or any proposed reform programme take into account children's rights as set out in the CRC—particularly the five umbrella rights:

- the 'best interests' of the child as a primary consideration in all actions concerning children (Art. 3.1);
- **participation** – girls and boys have the right to be involved in decisions affecting them (Art. 12);
- **non-discrimination** on any grounds (Art. 2);
- **Implementation (including for economic, social and cultural rights** to the maximum extent of available resources) (Art. 4);
- the child's **right to life, survival and development** (Art. 6).

...as well as the more specific articles relevant to juvenile justice: Art. 3.3 (standards of care in institutions and services); 9 (separation from parents); 13 (freedom of expression); 14 (freedom of thought, conscience and religion); 15 (freedom of association and assembly); 16 (right to privacy); 17 (access to information / role of the media); 19 (protection from violence); 20 (special protection and assistance for children deprived of a family environment); 23 (children with mental and physical disabilities); 24 (health); 25 (periodic review of placements); 27 (adequate standard of living); 28 & 29 (right to, and aims of, education); 30 (minority rights); 31 (right to rest, leisure and play); 32, 33, 34 & 36 (protection from economic exploitation / child labour, substance abuse, sexual exploitation and abuse & other forms of exploitation); 37 (torture, cruel, inhuman and degrading treatment); 39 (recovery and reintegration of victims of all forms of neglect, exploitation or abuse); 40 (juvenile justice).



**IF ANY OF THE LEGS ARE MISSING,
THE SITUATION OR PROPOSED PROGRAMME IS
NOT STABLE!**

2

B) KEY CONCEPTS

- 1 **Each child is unique** and requires an individualised approach
- 2 Interventions should take into account **the concept of choices, limited choices and non-choices** available to children
- 3 Relationship-building is key to reform
- 4 The role of the **community** is essential
- 5 There needs to be a better understanding of, and respect for, **children's resiliency and their peer relationships**

B.1 EACH CHILD IS UNIQUE AND REQUIRES AN INDIVIDUALISED APPROACH

Victims, villains or heroes?

Many images and stories portray street children either as helpless victims, dangerous criminals or heroic survivors. The reality is usually somewhere in between. They show incredible resiliency and initiative in the face of desperate circumstances. They have to be resourceful and strong in order to survive, but some do not survive. Others can only do so by breaking the law. Despite our generalisations, only by respecting their individual stories and characteristics can we understand and effectively address the causes of the problems they face.⁹ Each child is unique and "even those living or working in the streets, are complex human beings with hopes and dreams whose problems need to be examined holistically, in relation to the individual circumstances in which they find themselves."¹⁰ In terms of juvenile justice system reform, this entails developing a range of options for intervention such that the most appropriate is implemented in individual cases. It also entails combating the generalised negative public perception of street children as criminals and/or as inferior beings, less deserving of respect and rights than others – an attitude which results in bringing children – often unjustly - into contact with the criminal justice system in the first place, and which impacts very negatively on their treatment once within the system.

I am bad... I am helpful too.
(PHILIPPINES)⁸

⁸ 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.120.

⁹ Adapted from Wernham, M., text from Consortium for Street Children and EarthAction campaign, 'You are Seven and You are Not Safe: End Violence Against Street Children' campaign, 2003. www.earthaction.org

¹⁰ Wernham, M., *Background Paper on Street Children and Violence*, Consortium for Street Children, updated 16 November 2001.

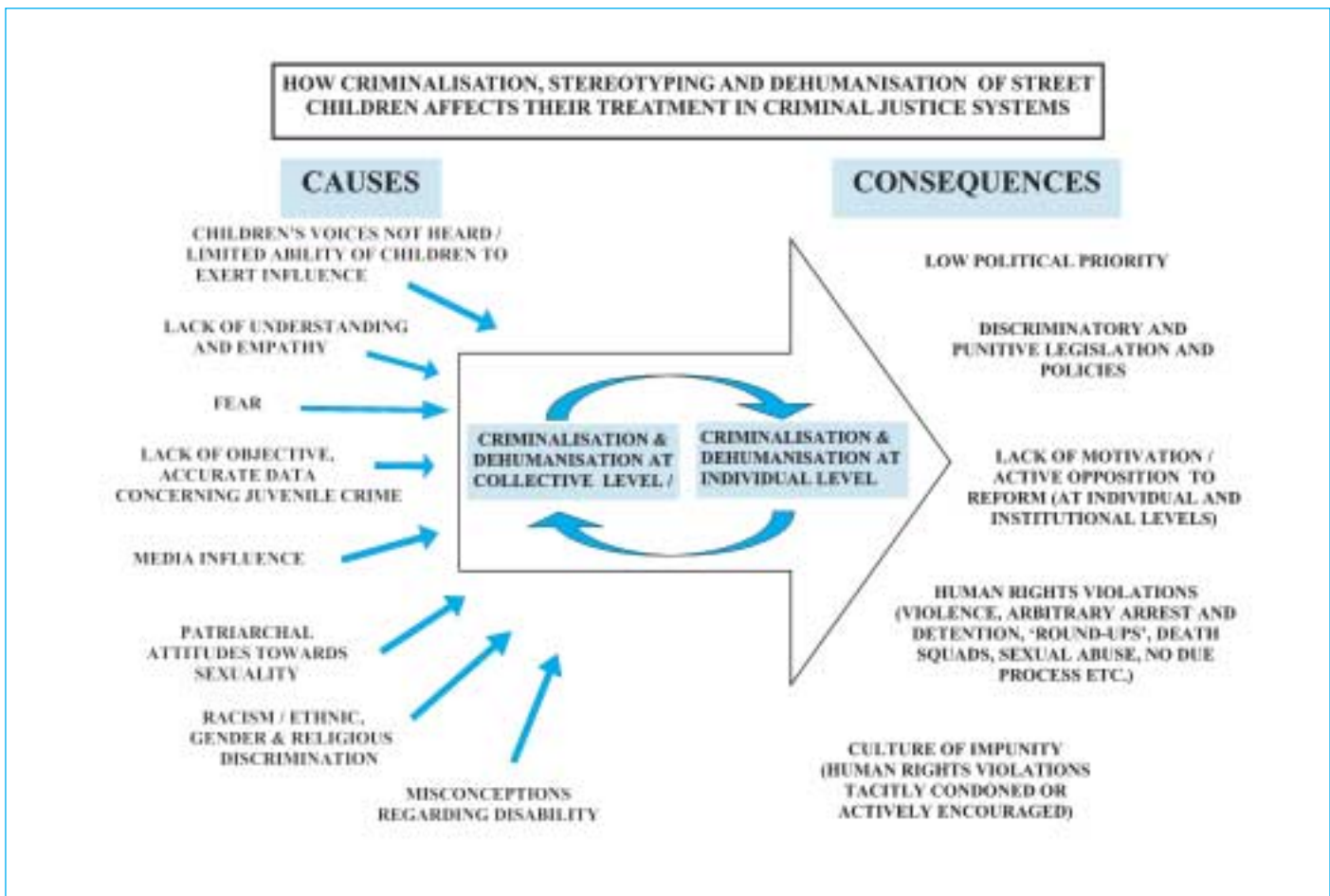
You have no one to take care of you. Nobody in the society respects you or wants to see you... People don't care whether you die, whether you live.
(KENYA)¹²

There is no love for us in this society.
(PAKISTAN)¹³

Criminalisation, stereotyping and dehumanisation of street children

Not only are street children (especially those who actually live on the streets) an embarrassing, visible reminder of a society's failure to provide for and protect its most vulnerable children, but they are also considered by many to be a criminal *threat* to that very society. It is therefore easy and more comfortable to either not see them at all, to fear them as dangerous outlaws (or well on their way to becoming dangerous outlaws) or to see them as less than human. This perception results in them being transposed from 'children' to 'street children' to 'criminals' deserving of ill-treatment in the public's mind, the most extreme manifestation of which are the death squads and vigilantes made famous in Latin America. Criminalisation and, to a lesser extent, dehumanisation are dangerous threats posed to vulnerable children in that they absolve people, especially the authorities, of the obligation to accord them their human rights.¹¹

Criminalisation, stereotyping and dehumanisation impact on street children at both a collective and individual level and constitute the most significant underlying factors influencing their treatment in the criminal justice system: such negative generalisation and stereotyping obscures the individuality of boys and girls who live and work on the street and thus leads to inappropriate and often abusive blanket responses from the criminal justice system. The following diagram illustrates the criminalisation, stereotyping and dehumanisation process and how it affects the treatment of street children in the criminal justice system. For example, at the collective level, the influence of negative public opinion on local and national politics helps to shape discriminatory policies and legislation. This same negative public opinion, often fuelled by sensational media reporting, helps to foster a culture of impunity where human rights violations against street children such as police brutality, arbitrary arrest, 'round-ups' and even death squads are tacitly condoned - or even actively encouraged. Criminalisation and dehumanisation at both the collective and individual level are inseparably linked: public opinion is shaped by the actions and attitudes of individuals and vice versa. This interrelationship is examined in more detail below along with the implications it has for reform interventions.



B.1.a) CRIMINALISATION, STEREOTYPING AND DEHUMANISATION AT THE COLLECTIVE LEVEL: MEDIA AND PUBLIC OPINION

Misconceptions are often based on the lack of objective, systematic and accurate statistics on juvenile crime, and the failure to distinguish between the causes and seriousness of offences. In other words, there is often a failure by the authorities, the media and the public to take into account why children and adolescents commit some crimes in the first place. For example, they may be victims of exploitation by others, the crimes may be status offences or may be necessary for the children's survival on the street. There is also a lack of detailed categorization of offences – for example the fact that stealing a piece of bread or fruit from a vendor, or sneaking into a building to sleep may be categorized alongside much more serious crimes of theft and breaking and entering. In short, there is a failure to assess incidents on an individual, case by case basis. Combined with the lack of reliable statistics in relation to juvenile crime (due to lack of infrastructure, poor training, lack of systematised data collection methods, inconsistent categorisation of crimes and political manipulation of statistics) “this leads to unwarranted exclusion, suspicion, exaggeration of risk, marginalisation, unnecessary fears and overconfidence in methods which fail to correct.”¹⁵

One of the main influences on public opinion is the media and inaccurate, unrepresentative and sensationalist reporting contributes to the criminalisation of children and young people: “Alarming messages on increasing juvenile delinquency and thus for some people, possible obstacles for a full recognition of children as bearers of human rights, are not always based on sound information but are often emotional expressions related to isolated but indeed shocking events, such as homicide or murder committed by young children.”¹⁶ The media can therefore fuel public fear and condemnation of street children. This public fear impacts directly on local and national politics, informing discriminatory, repressive and punitive policies and practices against street children as shown in the examples below.

Everyone calls us tokais (scavengers) or beggars. Hardly anyone calls us by our own names.”
“If we walk before a shop in the morning, some say ‘Our day is ruined, we have seen the face of tokais in the morning.
 (BANGLADESH)¹⁴

Case study

THE NICARAGUAN CHILDREN AND ADOLESCENTS' CODE IN DANGER

One of the key concerns highlighted by CSC partner Casa Alianza Nicaragua during the Street Children and Juvenile Justice Project is how public pressure is threatening the status of the progressive and child-friendly Children and Adolescents' Code (1998). Tension has arisen over the fact that, in line with international standards on juvenile justice, the Code makes it very difficult for judges to detain children and adolescents. However, the problem lies in the fact that resources have not been allocated to implement in practice the alternative sanctions that are provided for in theory. The result is that, left with no alternative, judges end up releasing children who have actually committed crimes. This in turn fuels public frustration with the following results:

- 1** *Public vigilante retribution against street children: for example, on a mission to Managua in April 2002 as part of the Street Children and Juvenile Justice Project, CSC accompanied Casa Alianza outreach workers and witnessed them providing first aid treatment to a boy who had been slashed on the back of the heel with a machete by a market stall owner who had caught him stealing;*
- 2** *Police use of punitive and illegal detention in police cells as a ‘short, sharp shock’ way of short-cutting the judicial system which is perceived to be failing to deliver justice;*
- 3** *Sporadic parliamentary proposals, such as that made in 2002, arguing for the suspension of the Code altogether, and a widening in the scope of crimes for which children may be detained. According to Casa Alianza, although this particular proposal failed, as long as the Code continues to be improperly and partially implemented, the rights of children within the justice system in Nicaragua will remain in jeopardy.¹⁷*

¹¹ Adapted from *Ibid.*

¹² Girl participant, CRADLE / USK / CSC National Workshop on Street Children and Juvenile Justice, Nairobi, Kenya, 6-7 March 2003.

¹³ Participant at the Pakistan National Conference on Street Children and Juvenile Justice, 13-14 June 2003.

¹⁴ Two boys, aged 8 and 11, quoted in 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.12.

¹⁵ Giles, Prof. G.W., *Turbulent Transitions: Delinquency and Justice in Romania*, Bucharest, March 2002, p.285.

¹⁶ Cappelaere, G., 'Juvenile Justice 10 years after the Convention on the Rights of the Child (CRC): Some Reflections for Hopeful Perspectives', in Butterflies, *My Name is Today*, Vol. X., No. 2, Special Issue: 'Children in Conflict with the Law', 2003, p.20.

¹⁷ See Casa Alianza Nicaragua and Consortium for Street Children, *Street Children and Juvenile Justice in Nicaragua*, February 2004 for more details.

Case study

Police see [street children] as a threat to the tranquillity of society; misjudge them as thieves and troublemakers”; “I had to go to sleep on an empty stomach and got beaten up by the ‘dadas’ (bullies) and policemen.
(NEPAL)²¹

The government curses us. They curse us badly—curses of religion, of mothers, of fathers.
(EGYPT)²²

THE BATTLE AGAINST LOWERING THE AGE OF CRIMINAL RESPONSIBILITY IN BRAZIL

Street children are considered to be “a blemish on the urban landscape and a reminder that all is not well in the country. Unwanted and considered human waste, these ubiquitous tattered, mainly black children and adolescents evoke strong and contradictory emotions of fear, aversion, pity and anger in those who view their neighbourhood streets, boulevards and squares as ‘private places’ under siege”.¹⁸ In addition to vigilante and police violence and death squads, this negative public opinion and fear of street children in Brazil has resulted in strong public resistance to the urgently needed reforms which are required to implement the country’s progressive child rights-friendly legislation: the Statute of Children and Adolescents (ECA).¹⁹ An example of this is the ongoing intense public and political pressure to lower the age of criminal responsibility in Brazil. This would enable the authorities to put children and adolescents straight into adult prisons rather than the current system of detention in ‘Centres for Socio-Education’ (even though in some states conditions in these centres are appalling, and are to all intents and purposes similar to prison). Reliance on detention, even in these so-called ‘socio-educative’ centres, flies in the face of extensive evidence exposing the appalling cycle of violence and human rights violations against children in detention, (see case study ‘Brazil: A Waste of Lives’: Cycles of violence in detention’ in Chapter 6 for more details). Detention of children in adult prisons is even worse. The movement to lower the age of criminal responsibility is due in part to an inaccurate perception that violent youth crime is prevalent, although it is stated that only 10% of all illegal acts are committed by adolescents, and these acts are more often crimes against property than against people.²⁰ NGOs throughout Brazil have been lobbying intensively against this move.

Further examples of the influence of public opinion can be seen in the phenomenon of ‘roundups’ or ‘street cleaning’ operations and death squads which are examined in more detail in Chapter 6.

B.1.b) CRIMINALISATION, STEREOTYPING AND DEHUMANISATION AT THE INDIVIDUAL LEVEL: RELATIONSHIPS

Failure to regard street children as individual children first and foremost, (each defined by their unique personality traits, life stories, hopes and aspirations) contributes to the blanket discrimination suffered by them in the criminal justice system. In the same way that the negative impact of public opinion contributes to a hostile political and legislative climate as seen above, criminal stereotyping and dehumanisation are also integral to the majority of negative relationships experienced by street children at an individual level in the justice system. For example, just as collective public opinion can fuel a policy that encourages police round-ups of street children in general, similar opinions held at an individual level can lead to treatment such as beatings and verbal abuse:

“Police see [street children] as a threat to tranquillity of society; misjudge them as thieves and troublemakers”; “I had to go to sleep on an empty stomach and got beaten up by the ‘dadas’ (bullies) and policemen” (Nepal).²¹

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” (Egypt).²²

¹⁸ Scheper-Hughes and Hoffman, 1994, quoted in 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. 9-10.

¹⁹ 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, p.4.

²⁰ Human Rights Watch, Cruel Confinement: Abuses Against Detained Children in Northern Brazil, April 2003.

²¹ 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.

²² Human Rights Watch, *Charged With Being Children: Egyptian Police Abuse of Children in Need of Protection*, February 2003, pp.17-18.

Street children's experiences at different stages and with different actors in the criminal justice system, as detailed in Chapter 6, illustrate in more detail the treatment they receive at an individual level and how this treatment is often based on lack of understanding and sensitivity and a failure to take into account their individual circumstances: *"They did not allow me to talk, or ask about my situation nor explain my side [when they arrested me]"* (Philippines).²³

B.1.c) RACIAL AND ETHNIC DISCRIMINATION²⁴

Criminalisation and discrimination at both collective and individual levels can be further fuelled by racism if street children are perceived as belonging to particular racial or ethnic minority groups as illustrated by the following case study.

Case study

ROMA STREET CHILDREN IN THE CRIMINAL JUSTICE SYSTEM IN BULGARIA

*According to a 1996 Human Rights Watch report, between twelve and fourteen thousand street children are estimated to live in cities throughout Bulgaria. "Most street children are Roma [estimated 85%, possibly higher], for whom the unemployment rate in Bulgaria is estimated to be as high as 90% in certain neighbourhoods, and 70% on average. The Bulgarian national unemployment rate is reported to be 12.5%. The depressed socio-economic status of Roma people coupled with inadequacies in the Bulgarian educational system were often cited among the reasons for children taking to the streets."*²⁵

*"Roma are often perceived by the Bulgarian public to be a criminal element of society. For these reasons, street children are often subject to extreme violence and abuse at the hands of both skinheads and police. Police often harass and abuse the children because they perceive them to be criminals, and skinhead gangs regularly attack and beat the children because of their Roma identity."*²⁶

*'A group of skinheads snuck up on us and surrounded us. They were cursing us and saying 'dirty Gypsies, we will kill you.' We all started to run, but my brother was caught. He was stabbed in the back with a knife. Then the skinheads ran away' [17-year-old girl, Sofia].*²⁷

*'[T]he worst beating I got was in Pleven by the bus station. Six skinheads caught me and started beating me and kicking me in the face with their boots. They knocked my teeth out. I didn't do anything to them. They beat me because I'm Roma' [13-year-old boy, Pleven].*²⁸

*In the words of one policeman: "...most of those kids are not Bulgarians, they're Roma." "He went on to comment that street children steal, that their parents force them to go out and beg, and that the children earn twice as much money as he earns as a policeman. When questioned about physical abuse of the children, he responded, '[o]f course if I catch a kid stealing, I'm going to kick his ass.' The significance of the ethnic identity of street children should not be underestimated in police attitude toward, and treatment of, street children. Human Rights Watch believes that Roma identity of street children may be a significant factor in their treatment by police."*²⁹

*"Street children, and Roma children generally, are particularly susceptible to confinement in Bulgaria's eleven Labour Education Schools. The Deputy Director of Slavovitza Labour Education School observed that '80% of the children [at Slavovitza] are Gypsies, mainly from large families. Most of them roamed the streets before coming to us.' It is estimated that Roma make up between 4 and 10% of the general population, thus indicating massive over-representation in the system."*³⁰

A group of skinheads snuck up on us and surrounded us. They were cursing us and saying 'dirty Gypsies, we will kill you.' We all started to run, but my brother was caught. He was stabbed in the back with a knife. Then the skinheads ran away.

[17-YEAR-OLD GIRL, SOFIA]²⁷

[T]he worst beating I got was in Pleven by the bus station. Six skinheads caught me and started beating me and kicking me in the face with their boots. They knocked my teeth out. I didn't do anything to them. They beat me because I'm Roma.

[13-YEAR-OLD BOY, PLEVEN]²⁸

²³ Child from Manila, Philippines, quoted in UP CIDS PST / CSC End of Project Report, 2003.

²⁴ See Appendix 9 for further details on the manifestation of racism and racial discrimination in criminal justice systems and ways in which to prevent and eradicate it.

²⁵ Human Rights Watch, *Children of Bulgaria: Police Violence and Arbitrary Confinement*, September 1996, pp.2-3.

²⁶ *Ibid.*, p.3.

²⁷ *Ibid.*, p.32.

²⁸ *Ibid.*, pp.32-33.

²⁹ *Ibid.*, pp.17-18.

³⁰ *Ibid.*, p.5.

Minority identity also affects access to complaints mechanisms: “These are problems which anyone who has been a victim of crime might encounter, but it is more so for the Roma people, who are less prepared to protest the irresponsibility of the judiciary organs.”³¹

Abusive treatment by police leads to a failure to report frequent racist attacks (sometimes several times a week) by skinhead gangs to the police. “Almost all the children we interviewed had suffered from such attacks. Despite the regularity of such attacks, children reported receiving little or no assistance from police. Those who did complaint to police said that police responded to their complaints with indifference, disbelief, and even suspicion.” This fosters a culture of impunity for attackers.³²

B.1.d) RISING TO THE CHALLENGE

Criminalisation, stereotyping and dehumanisation result from a failure to understand and treat each child as individual. Challenging these generalised, stereotyped attitudes, at the levels of both public opinion and individuals, is therefore key to any interventions to reform justice systems in favour of the most marginalised. The challenges must be met through sensitisation, public education and – wherever possible – breaking down the barriers between the children themselves and the individual decision-makers in local contexts. The centrality of promoting children’s individuality through sensitisation, relationship-building and children’s participation in reform will be examined in more detail in Chapter 7.

B.2 CHOICES, LIMITED CHOICES AND NON-CHOICES

The second key theme to bear in mind in the context of juvenile justice reform is the concept of choice. Based on experiences from organizations around the world, something that emerges very clearly is that work at an individual level with street children needs to be centred around choices. This approach can be seen as a three-stage process of understanding, expanding and empowering.

THE 3-STAGE ‘CHOICE PROCESS’

Practical tips

1 Understanding choices: We need to understand, *from their own perspective*, why individual children have made the choices they have: very often they have been confronted by limited choices or ‘non-choices’, for example when a boy or girl is faced with the dilemma: ‘Do I stay at home and continue to be abused by my step-father, or do I take my chances of being abused on the street?’ Only once we understand the background to a particular child’s situation can we attempt to identify a suitable intervention that we can work with them to implement. In the context of street children’s involvement in the criminal justice system, such choices or non-choices may include: ‘Do I steal or go hungry?’; ‘Do I agree to have sex with the policeman or let him arrest me?’; ‘Do I help in the older boy’s robbery or get beaten up by him?’

2 Expanding choices: The next logical step is to help expand the choices available to them, for example, offering the option of residential shelters as an alternative to sleeping in a dangerous alleyway; the option of family reunification or group living; the option of less hazardous employment; the option of self-protection against sexually transmitted infections and HIV/AIDS; the option of someone to call in times of trouble who can intervene at the police station. It may be that, due to socio-economic and cultural constraints, there are fewer choices available to girls than boys in a given situation and therefore particular efforts should be made to promote gender equality in programming.

3 Empowering children to make choices: Even when choices are expanded, it can be difficult for children make the transitions necessary to implement those choices. The final stage is therefore empowering girls and boys to

³¹ Human Rights Project, a Bulgarian NGO, quoted in *Ibid*, p.31.

³² *Ibid*, p.4.

actually make, and carry through, their choices. This can be especially difficult in the case of children who are not used to having this freedom through (e.g.) a history of repeated coercion / abuse which can be inherently *dis*-empowering. This is often particularly the case with girls who have been subjected to limited decision-making in cultural contexts that are inherently disempowering to women and girls. Likewise, many NGOs experience particular challenges with children who are substance abusers as their powers of analysis and clarity of thought / ability to see their own situation are diminished. The importance of this stage, however, is that the children – to the greatest possible extent within given circumstances - make educated choices for themselves, rather than having ‘choices’ made for them by others, no matter how well-intentioned. Children who are empowered are better able to protect themselves, assess and strengthen their own support networks, and take part in sensitization and collaboration efforts and other programmes needed for reform of the criminal justice system. They are able to play a key role in the relationship-building which is necessary for reform and which is described in the following section.

B.3 RELATIONSHIP-BUILDING IS KEY TO REFORM

By taking on board the implications of the holistic child rights-based approach described in Section A of this chapter - i.e. that each child is unique, equally valuable (non-discrimination), has the potential and right to develop (right to life, survival and development), and the ability and right to contribute to that process (participation) ensuring that the most appropriate solutions are developed (best interests) and adequately resourced (implementation) - reform becomes child-centred. In other words, the child is put at the center of decision-making processes.

However, a child obviously does not exist in isolation from others. It is a matter of common sense that, just as the CRC places emphasis on the importance of family, community and other stakeholders, so too must reform of justice systems take into account children’s relationships with the many stakeholders who make up the ‘five pillars’ of the system:

- law enforcement
- prosecution
- courts
- correction
- community

As will be demonstrated throughout this book, boys’ and girls’ relationships with any of these actors can either be positive (supportive) or negative (abusive). Relationships can either provide children with a network of support, or they can fail to do this so that children end up ‘falling through the net.’ The aim of reform is to capitalize on the supportive relationships and minimize the impact of (or preferably avoid altogether) the abusive relationships.³³

The issue of relationship-building in order to strengthen safety nets is particularly important in the case of street children whose relationships – particularly with responsible adults – may well have been damaged or ruptured (see Chapter 4 in relation to ruptured family links).

All justice reform programmes depend ultimately on the individuals involved. In the existing system policy decisions at macro level are originated and promoted by individuals who then influence other individuals; individual police officers either abuse or help; judges make decisions at their individual discretion; politicians push for either punitive or restorative policies; journalists write either stereotyped or sensitive stories etc. The criminalisation / stereotyping process of street children introduced earlier in this chapter is a vicious cycle of individual interactions with street children multiplying into public opinion and then influencing in turn yet more individuals. If this can be considered as a ‘ripple effect’, then so too can relationship-building and transformation, ‘turning the tide’ of criminalisation, stereotyping and discrimination.

*Good justice is good relationships. Bad justice is bad relationships.*³⁴

³³ Conceptualisation of the justice system in terms of ‘five pillars’ is widely used in the Philippines. These relationships are illustrated in the diagram in Chapter 5.

³⁴ Giles, Prof. G.W., *Turbulent Transitions: Delinquency and Justice in Romania*, Bucharest, March 2002, p.277.

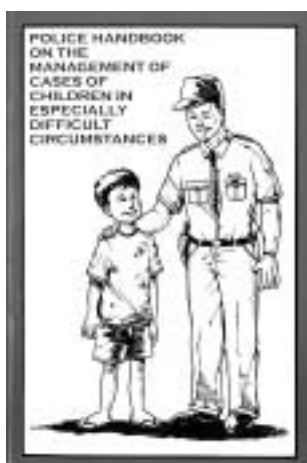
Reform must therefore work at the level of relationships: **“Good justice is good relationships. Bad justice is bad relationships.”**³⁴

- **Prevention** (of street migration, of first-time offending or of re-offending) depends not only on strengthening family, peer and community support networks but also on building relationship bridges between this level and macro-level decision makers who influence broader socio-economic policies;
- **Diversions programmes** depend on transforming bi-lateral and multi-lateral relationships between street children, police, social workers, community members, family etc.;
- **Alternatives to detention** depend on a street child’s relationships and support networks being strong enough to produce an enabling environment to respond to their multiple needs.

In short, “programmes should be based on the philosophy of social reparation and restoration of damaged relationships.”³⁵

Two strands therefore emerge:

- a) **Sensitisation** (working at the level of individual relationships) and
- b) **Collaboration** (the multiplier effect of relationship building).



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

B.3.a) RELATIONSHIP-BUILDING: SENSITISATION

Sensitisation is urgently needed amongst all the actors involved in the criminal justice system, for example, lawyers, magistrates, donors, government advisers, civil servants, social workers, probation officers, families, prison staff and so on. Well-targeted, persistent advocacy aimed at key decision-makers and those who help to influence public and institutional opinion is essential to combat ‘structural factors’ that weigh against even the most well-meaning of individuals trying to improve conditions for street children. However, whilst acknowledging the need for engagement with multiple actors simultaneously across all branches of the justice system, the following examples focus on sensitisation programmes specifically in relation to the police as this is an area that has been identified by overseas organisations in many countries as a priority area for intervention.³⁶

There are many examples of sensitisation work with the police, including:

- **Monthly ‘open forums’ held by NGOs where street children can ask the police questions** and the police get to find out more about the situation of the children. This has helped to break down barriers and misunderstandings on both sides (India).
- **Police training posters** have been produced in the Philippines in sets of two versions: one with simple stages for the police to take when dealing with a child who is in conflict with the law and one with the stages for dealing with a child who is ‘in need of care and protection’. The posters should be clearly displayed in the police station to act as a reminder that the two categories of children should be treated separately and clearly reminding them of the correct procedure to follow in each case.³⁷
- **Police guidelines / handbooks:** In the Philippines, the posters have been supplemented with a ‘Police Handbook on the Management of Cases of Children in Especially Difficult Circumstances’.³⁸ This contains information on the philosophy, legal bases, general policy and definition of terms in addition to detailed guidelines and procedures which clearly differentiate between children in need of care and protection, those accused of being in conflict with the law and those who are victims and/or witnesses. The guidelines cover areas such as protection and management (apprehension, investigation / interviewing, fingerprinting, detention, referral, linkages / networking), with specific procedures outlined for vulnerable groups. The handbook also has a section on recording and reporting and includes copies of report forms and log book format.³⁹

³⁵ *Ibid.*, p.289.

³⁶ E.g. The issue of police training and sensitisation was prioritised as an area necessitating urgent intervention during discussions held at the Consortium for Street Children International Workshop on Street Children and Juvenile Justice, 4-8 July 2003 with representatives from Kenya, Nicaragua, Nigeria, Pakistan, the Philippines, and Romania.

³⁷ These posters are also featured in Chapter 7 in reference to the separation of criminal justice and social welfare systems.

³⁸ *Police Handbook on the Management of Cases of Children in Especially Difficult Circumstances*, Department of Social Welfare and Development, National Police Commission and Philippines National Police in cooperation with UNICEF, Quezon City, Philippines, 1993.

³⁹ This handbook is also featured in Chapter 7 in reference to the separation of criminal justice and social welfare systems.

- **‘Children’s Desks’ in police stations staffed by police officers specially trained in dealing with children** (very often women). All children are supposed to be dealt with through these desks rather than through regular ‘adult’ processes which are not suitable for them. This approach is in place, or being developed in many countries such as India: according to the Juvenile Justice (Care and Protection of Children) Act 2000, it has been proposed to have a Child Welfare Officer (CWO) in each police station especially trained to handle cases involving children and child abuse. Further, a Special Juvenile Police Unit is to be formed [in Chennai], made up of CWOs. In addition to this, “At least one police personnel from each station in the city has attended a ‘sensitisation programme’ and has been given necessary instructions on handling juvenile offenders and children”. Meanwhile, ‘Childline’ volunteers will be visiting all police stations to display messages and interact with police personnel. These volunteers are also organizing street plays in slum areas to create an awareness on ‘Childline.’⁴⁰
- **Police training** – either as part of the formal police academy curriculum, as official and regular in-service courses, or on an ad hoc basis: for example, in Angola, training of police responsible for children, conducted by an NGO in association with the Ministry of the Interior “has been successful in raising awareness of street children’s problems and rights, and the level of mutual respect between children and police has increased. Both boys and girls are more willing to go to the police and report crimes of violence since the awareness-raising course, and the level of police violence has reduced.” A police officer has been nominated to take responsibility for co-ordinating work with street children.⁴¹

POLICE AWARENESS-RAISING AND SENSITISATION - SKCV, VIJAYAWADA, INDIA

The problem: *the majority of the police in India perceive street children as being a nuisance. They themselves are over-worked and underpaid and little or no time to help street children who are in trouble. Instead, it is easier to assume that they are criminals and treat them badly, even if they have not done anything wrong. A further problem is that the police in India are frequently ‘rotated’ around the country. Therefore, just as an NGO has begun to develop a good relationship with particular officers, they move out of the area and the work must begin again. [This is true of the system in many countries].*

The solution: *The NGO SKCV started to invite individual police officers, with the permission and encouragement of their Commissioner, to visit the street children who were living in the NGO’s long-term hostel and undertaking vocational training etc. The police were encouraged to spend time talking the children and listening to their stories. The experience deeply affected the police involved on a personal level, finding out that these children were no different from the policeman’s own children – except for being more unlucky, perhaps. The project works on the principle that sensitising and communicating with people on an individual level can make an impression that will stay with them no matter where they are posted later in the country.*

Lessons learned: *This type of sensitisation proved much more effective than traditional ‘training courses’ in a ‘classroom’ because it was able to touch the participants emotionally. The scheme has proved so successful that the NGO has become recognised as an official part of the training course of the national police training school. Police officers are sent to spend time at the project as part of their curriculum. This has extended the effects of the sensitisation beyond the city in which the project is located to wherever the police will be posted.*

Word of warning: *Extreme care must be taken with this type of ‘direct contact’ approach between children and the police. The primary consideration must always be the welfare, protection and best interests of the children. Children might see such an approach as a betrayal of trust on the part of the NGO. What works in one place may not be suited to another. [See Chapter 7 for further discussion on different approaches to working with the police].*

40 Newspaper article, ‘Special Juvenile Police Unit to Handle Child-Related Cases’, *The Hindu*, Madras, India, 2 May 2002, reproduced in Butterflies, *My Name is Today*, Vol. X., No. 2, Special Issue: ‘Children in Conflict with the Law’, 2003, pp.51-52.

41 Assis Calundungo, S. de, ‘Street Children in Angola’, CEIS (Centro di Informazione e Educazione allo Sviluppo) in Petty, C. and Brown, M. (eds), *Justice for Children: Challenges for Policy and Practice in Sub-Saharan Africa*, Save the Children, June 1998, pp. 75-76.

LESSONS LEARNED FROM SENSITISATION PROJECTS

Practical tips

- 1** Unless individuals are **touched and involved at a personal level**, it is very difficult to instigate reform: classroom lectures are short-lived, forgotten or deliberately ignored; motivation is lacking, leading to delays and obstructions; other priorities will always take precedence.
- 2** **Street children's participation** (in a context of child protection safeguards) is essential to this process: the impact of messages is greater; there is no substitute for first hand sharing of experiences.
- 3** **Creative methods of communication** are much more effective than traditional presentations of reports and recommendations: drama, music, pictures, diagrams etc. have a lasting impact and clarity.
- 4** **Regular follow-up sessions** can help to encourage individuals who, even with the best will in the world, are experiencing difficulties implementing their training due to significant if not overwhelming obstacles presented by other individuals or groups (e.g. pressure from other police officers to tolerate, participate in, and/or cover up abuse, to fulfil arrest or conviction quotas that can only be met through abusive means, to supplement low wages through bribery, extortion, or diversion of food and other supplies intended for detainees). However, if this is revealed to be the situation, then there is obviously a need for a comprehensive advocacy strategy to address the root causes of the problems.
- 5** In light of the obstacles outlined above, there needs to be **regular monitoring and more thorough evaluation of the impact and effectiveness of training and sensitisation programmes** in order to review and improve strategies for reform. This process may involve re-targeting the sensitisation work to include more influential actors higher up the organisational hierarchy and the scaling up of the numbers of personnel involved so as to gradually tip the balance of peer opinion in favour of reform rather than corruption. This would ideally need to be accompanied by the development of effective monitoring, investigating and complaints mechanisms to ensure that that abusive behaviour is not tolerated, as well as providing incentives and recognition to reward good behaviour. The immense challenges involved in this type of work underscore the need once again to base interventions on a holistic assessment of the system as a whole as well as emphasising the need to work collaboratively.

B.3.b) RELATIONSHIP-BUILDING: COLLABORATION

Collaboration is the next step in capitalising on relationships built at the individual level. It is also essential in a context of the overlap of multiple systems and actors that makes up the 'justice system': "Collaboration by multiple stakeholders may be the only way to address the barriers to change that juvenile justice's 'non-system' character poses."⁴² Collaboration can effectively address delays in processing cases (as illustrated by the examples of police and judiciary collaboration in Nicaragua given in Chapter 6) as well as helping to improve conditions in detention (as shown once again by the examples of the police in Nicaragua working with local business people and medical and legal students). Collaboration is essentially the glue that holds together the web of relationships between the five pillars of the justice system.

42 Feely, F., Collaboration and Leadership in Juvenile Detention Reform, publication No. 2 in the series Pathways to Juvenile Detention Reform, Annie E. Casey Foundation, p.12.

Case study

EXAMPLE OF COLLABORATION – GOVERNMENT AND NGOS, ANDHRA PRADESH, INDIA

The Indian government has recognised the problems highlighted by many NGOs in relation to the treatment of children in the criminal justice system 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.

Under this scheme each institution will have a key NGO co-managing the institution and other member NGOs on a committee to monitor implementation. This is one of several states developing such procedures under encouragement from the central government.

The NGO 'New Hope' has been appointed as the 'Nodal Agency' for the Observation Home at Rajahmundry and the local YMCA has been appointed for the Observation Home in Anantapur. Both of these organizations are project partners of CSC member The Railway Children. In addition, New Hope regularly visits the Observation Home in Warangal where their input is welcomed by the management and boys. In Vijayawada, there is a Child Rights Forum chaired by the mayor, and involving the police and other state authorities in addition to all of the NGOs working with street children in the city.

2

B.4 THE ROLE OF THE COMMUNITY IS ESSENTIAL

'The community' has already been highlighted as one of the 'five pillars' of the justice system. In this context, the scope of the 'community' is very broad ranging and includes many of the most important actors in the lives of boys and girls living and working on the street. As highlighted previously, these relationships can either be positive (supportive) or negative (abusive). The examples listed below obviously represent an ideal situation towards which programmes can be oriented. For example:

- **The child's family, extended family and / or 'alternative family' of supportive peers and friends:** these act as the 'front line' of a child's protective and supportive factors and are thus key to any programmes aimed at the essential areas of prevention, diversion and alternatives to detention;
- **Specific influential and/or professional community members / service providers such as teachers, doctors, social workers and religious leaders** who may be able to provide particular services and support to individual children as well as playing a key role in influencing local opinion in terms of awareness-raising and sensitisation to the needs and rights of street children;
- **The business community, ranging from local shop-keepers to large corporations:** these can play an essential role in prevention, protection and rehabilitation (through the provision of employment, development of local economies, support for income generation and micro-credit schemes for families in poverty, improvement in labour conditions through the development of corporate social responsibility, ensuring that any private security guards they hire are trained in child rights and made aware of child protection issues etc.);
- **Other community members such as neighbours:** these can act as mentors or role models for girls and boys who live and work on the streets or for those at risk of taking to street life, act as an 'early warning' system to draw attention to situations of abuse and act as prison visitors to monitor conditions in detention and other institutions;
- **Civil society organisations such as NGOs, women's groups, church groups, children's clubs, unions etc.:** these can act as facilitators and implementers of specific prevention and protection programmes, putting pressure on local and national governments to implement reform as well as offering fora for mutual community support, especially to at-risk families etc. In many countries and

Our lives are sometimes at the top, sometimes at the bottom, but we can still surmount problems.

(PHILIPPINES)⁴⁷

We thought of running away from home to be in the streets with our friends to escape our problems in the family. When we are with friends, we feel happy – we are together through thick and thin.

(PHILIPPINES)⁴⁸

communities it is these organisations who play the essential catalysing role in reform of the justice system;

- **Academics:** these individuals and institutions can provide much needed research to assist civil society organisations and governments to develop appropriate policies and interventions.

Sensitisation and collaboration at the level of the community is essential to establishing or improving the networks of support available to street children and involvement of the community should be a priority for any intervention.

B.5 RESPECT FOR CHILDREN'S RESILIENCY AND PEER RELATIONSHIPS⁴³

A child rights-based, child-centred approach obviously needs to take into account the specific circumstances of the individual children involved: relationships centred on the child are dependent on the child's individual personality and ability to communicate.

"Under the vulnerability paradigm, children are viewed as passive, weak, dependent and even problematic and this particular paradigm is evident in the issue of street children. However, what is also evident is that street children are also 'smart enough to beat the system and they will beat the system in order to survive.'⁴⁴ There has been a recent shift in the field of child development away from focusing on environmental risk factors towards consideration of personal resiliency and environmental protective factors that allow a child to survive the adversities of his or her environment. "The central idea behind this new paradigm is resilience. Resilience has been defined as the capacity to withstand, recover, and even grow from negative experiences."⁴⁵ The resiliency concept is useful in that it can help to highlight the complexity of psychosocial disorders and their causes, it can help us to identify previously undetected possibilities for preventive action and "the idea of resilience keeps hope alive in clinical practice; however much the odds against a good outcome, we know that many children escape their ill fate."⁴⁶

"Our lives are sometimes at the top, sometimes at the bottom, but we can still surmount problems." (Philippines)⁴⁷

"We thought of running away from home to be in the streets with our friends to escape our problems in the family. When we are with friends, we feel happy – we are together through thick and thin." (Philippines)⁴⁸

"Here we do not have any kind of blood relation with each other. But when we are in the street with other friends, though we do not have any name for our relation, we are like a family. We are all actually members of our street family." (Nepal)⁴⁹

"Life on the streets is not all about violence and abuse. The children develop strong friendships and spirit of mutual support and assistance. They play, sing, watch videos, tell each other stories and sometimes go to church together among other activities."(Kenya)⁵⁰

What is resiliency?

Studies have revealed the following critical factors associated with resiliency: external supports and resources available to a child (e.g. family, school and community institutions); personal strengths that a child develops (e.g. self-esteem, a capacity for self-monitoring, spirituality and altruism), and social interpersonal skills acquired (e.g. conflict resolution and communication skills).⁵¹ In-depth interviews with 25 street children in Manila, Philippines revealed the following personal resiliency traits and protective environmental factors:

- **'Internal strengths':** sense of direction or mission and self-efficacy ("a positive perception of one's competence to perform certain tasks"⁵²) / belief in self; social problem-solving skills – which "reinforce one's sense of competence and self-esteem"⁵³; street survival skills – which, unlike problem-solving skills, "often involve self-damaging behaviour that heightens the risk of failure in a street child that is not resilient"⁵⁴; adaptive distancing (ability to separate themselves

43 Much of this section draws on the pioneering work in this field of academics, researchers and practitioners in the Philippines, including the Program on Psychosocial Trauma and Human Rights, University of the Philippines Center for Integrative and Development Studies who partnered the Consortium for Street Children in the Street Children and Juvenile Justice Project.

44 UP CIDS PST, *Painted Gray Faces*, 2003, p.145.

45 Banaag Jr., C.G., M.D., *Resiliency: Stories Found in Philippine Streets*, AusAID, National Project on Street Children and UNICEF, Manila, Philippines, 1997, p.9.

46 Banaag Jr., C.G., M.D. citing the work of Surla Wolff (1995) in *ibid*.

47 Reginald, aged 18, in UP CIDS PST, *Painted Gray Faces*, 2003, p. 149.

48 *Ibid*, p.68.

49 *Street Diary*, Save the Children Fund -UK Nepal, 2001.

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

51 Banaag Jr., C.G., M.D., *Resiliency: Stories Found in Philippine Streets*, 1997, p.9.

52 Bandura (1977) quoted in *ibid*, p.16.

physically and/or psychologically from risk factors in their environment, a trait which requires the ability to realistically appraise situations and to self-monitor); having a hobby or creative talent; realistic view of their environment; self-monitoring; self-control; intellectual capacity; ‘easy’ temperaments and dispositions – which helps foster good interpersonal relationships thus allowing others to treat them in a more positive manner; capacity to recognize and learn from mistakes made in the past; sense of humour.

- **‘Externally directed traits’:** leadership skills; altruism; empathy; ‘going along with a group to avoid confrontations’ which can either be positive or negative, depending on the type of group in question.
- **‘Something bigger than oneself’:** sense of morality; religion or faith in God.

As can be seen here “individual traits, while very important are not always sufficient for the development of resiliency. Resiliency involves a process of interaction between individual and environmental factors, not fixed attributes or traits within an individual.”⁵⁵ It is this unique interaction between individual child and specific environment that brings us back once again to the need for an individualized approach when working with street children which focuses on children’s choices: understanding why they make particular choices, expanding the choices available to them and empowering them to make those choices. As emphasized throughout, any interventions in the field of street children in the criminal justice system need to focus on minimizing the risk factors and emphasizing the protective factors in their relationships. Such protective factors include:

- **Family protective factors:** having family responsibilities; family traditions and rituals; having a warm bond with a sibling; warm positive relationship with a parent or other adult; positive adult modeling; supportiveness of child’s abilities; high parental expectations.
- **Environmental protective factors:** agency intervention; opportunity for involvement in the community; school experience.⁵⁶

“In summary, the street child with his resiliency traits can be viewed as the center around which the family and community should provide protective elements that can serve as buffers against the risks of adversity. [...] Interventions on behalf of the street children should not only focus on supplying what is deficient in their families but should equally emphasise efforts at enhancing the children’s resiliency.”⁵⁷

In the context of children who lack ‘traditional’ family ties, the role of the peer group or gang as an ‘alternative’ family has important connotations for street children’s resiliency. Consider the following statements by some of the participants to one of the regional workshops in the Philippines which reveal both positive and negative influences:

“I am happy when I am with my friends because they help me whenever I have a problem”;

“My friend is fun to be with, especially when we do drugs, smoke, play and help each other.”⁵⁸

The testimony of Bernard, aged 17, demonstrates how important peer friendships are in detention in the absence of adult carers:

“If you had no visitors, you won’t have any food. [...] You’re like a sickly chicken. The one who helped me was a fellow child inmate, with whom I became close. His mother always visited him. He often shared me his food, and even gave me clothing. No one from government helped me.”⁵⁹

Examples of resiliency

Researchers in the Philippines who have worked with abused and exploited children identified fourteen themes of resilience.⁶⁰ Proofs of resilience linked to these themes

Here we do not have any kind of blood relation with each other. But when we are in the street with other friends, though we do not have any name for our relation, we are like a family. We are all actually members of our street family.
(NEPAL)⁴⁹

Life on the streets is not all about violence and abuse. The children develop strong friendships and spirit of mutual support and assistance. They play, sing, watch videos, tell each other stories and sometimes go to church together among other activities.
(KENYA)⁵⁰

53 Rutter and Werner (1993) quoted in *ibid*, p.18.

54 *Ibid*, p.18.

55 *Ibid*, p. 29.

56 Summarised from *ibid*, pp. 15-34.

57 *Ibid*, p. 34.

58 Thoughts shared by participants during the sentence completion exercises, in UP CIDS PST, *Painted Gray Faces*, 2003, p. 71.

59 *Ibid*, pp. 105-107.

60 Researchers from the Program on Psychosocial Trauma and Human Rights, University of the Philippines Center for Integrative and Development Studies.

are found in stories and drawings of the child participants as part of the Street Children and Juvenile Justice project. The examples below have been summarised from those found in *Painted Gray Faces, Behind Bars and in the Streets: Street Children and Juvenile Justice System in the Philippines* (UP CIDS PST, 2003).⁶¹

- **Acceptance of difficulty and adjustment to the demands of difficult situations**

Abandoned at age one, Alvin (aged 17) spent most of his early life in the streets and was into glue sniffing. He had committed robbery in order to survive. Nuns adopted him at age six, sending him to school. Nonetheless he felt a great longing for his real family, and he ran away and returned to the streets. Three years later, he found his real family and lived with them for two years. Through the support of his caregivers at the NGO which supported his educational needs, he learned to accept and adjust. His resilience was demonstrated by his drawing, a ballpen. He described the object as the “tool to bring him his future”. At the time of the workshop, Alvin was graduating from high school, something that made him very proud. He said that he wanted to finish his studies to help the other children under the care of the organisation.

- **Competent functioning in the presence of major life problems**

While in jail, Bernard (aged 17) experienced being beaten up and being forced to clean the toilets. Moreover, his mother never visited him throughout his incarceration. Fortunately, however, his classroom adviser took pity on him and administered tests and quizzes in jail which he passed with high scores. He managed to study despite living in a difficult situation, a time he described that he had been “living like a dog”. Despite the seemingly insurmountable burdens and in the presence of major life problems, Bernard had shown competence in his subjects, pulling through his tests. During the Regional Workshop, he revealed plans of momentarily becoming a construction worker so that he could continue his studies.

- **Learning from life’s adversities**

Donna (aged 12) was jailed for robbery. She experienced being humiliatingly photographed in a pose simulating how she had committed the crime. She had been a re-offender, escaping from one centre but then returning again on the advice of her elder brother. In spite of it all, Donna gave a positive outlook on what happened to her while in jail: “It is good because you’ll get disciplined in jail.” She expressed wishes to be a better person and stop all her vices. Apparently, Donna had learned from her experiences while in jail. Learning from life’s adversities and being able to resist temptation also mark Samuel’s recovery. He had lost his father, who died of a heart attack. After bringing his father to the hospital, Samuel got involved in a gang war and landed in jail. He appeared to have learned much from the adversities he experienced. Samuel drew a candle, saying that it “brings light”. He declared that he wanted to get out of the gang while there were still people who believed him. He said that he wants to finish his studies so he can help his family.

- **Capacity to be self-reliant and self-governing**

James (aged 17) was caught while trying to steal an item inside a truck. He experienced violence in prison, but apparently he managed to deal with his life’s struggles. The drawings he made exhibit his capacity to be a self-reliant and self-governing person. James drew a trishaw, explaining that he wanted to become a trishaw driver so he could buy rice for his mother, “so that when it rains, people will flag me down. It is better when you earn money out of sweat.” James, who had also drawn the picture of a letter, said that he also wanted to become a mailman, so that people would be happy when he delivers them letters.

- **Therapeutic construction of reality and forbearance and not making a big deal of problems**

Reginald (aged 18) had felt bad towards his mother, who had taken a lover and even brought him to their home. He soon learned to use illegal drugs. Jailed for stealing a pair of trousers, Reginald experienced being slapped and forced to clean the toilet. He was afterwards released. According to Reginald, his brief experience in jail gave him the chance to think about things. This clearly shows



PHILIPPINES: Taking part in activities at the Regional Community Based Workshop, Mindanao Region, 12-14 July 2002, organised by Tambayan as part of the CSC Street Children and Juvenile Justice Project.

⁶¹ 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, Examples are taken / summarized from pp. 145-151.

that he possesses a therapeutic outlook that helped him change. “If I had not been caught, I would have turned out worse.” Reginald also greatly understood the events in his life. His drawing of a wheel showed his forbearance. Through his drawing, he gave his views about life: “Our lives are sometimes at the top, sometimes at the bottom, but we can still surmount problems.” Reginald said he dreamed of helping his family and sharing his happiness with them.

- **Good and wholesome character in spite of deprivation and finding happiness amidst difficulties**

Jayson (aged 17) experienced sadness and boredom while in jail. “You would always be thinking especially when you have no visitors.” Despite having experienced deprivation and dismal conditions while in jail, Jayson remained good and wholesome at heart. This goodness and wholesomeness was shown in his drawing, a puppet. Jayson explained that he wanted to become a clown, to make other people happy. Despite difficulties while living in jail, Jayson managed to find happiness, a happiness that he wanted to share.

- **Recovering from past wounds: moving on with life**

Donald (aged 17) was no stranger to incarceration and the experiences of torture. However, with the educational and social support of an NGO on release from detention, he is recovering from his experiences. He drew a pencil, saying that his previous life was in shambles, like a broken pencil. He displayed the determination to move on with life, saying that he would like to continue what he is doing – “making the pencil whole again.” His words showed that he has been recovering from past wounds and is moving on with life.

- **A firm sense of what is right and wrong and ability to resist temptation**

Arrested for robbery, Marissa (aged 12) was jailed for three months. She experienced being shamefully photographed. Although she did not go through much hardship in jail, she admitted that the time she spent in jail and her experiences behind bars, particularly with the cell boss, had disciplined her. Having a firm sense of what is right and wrong, Marissa said that she does not want to go back to jail - “I have had enough.” David (aged 15) meanwhile, was released on condition that he would become an asset – an informer. “I don’t like to be an asset.” Knowing that it was wrong, he refused and gained support from an NGO. David ably resisted the temptation of becoming an asset, which could have been his passport for a way out of jail.

- **Ability to be other-centred and ability to see situations as temporary**

The two most common themes of resilience among all the children in this chapter are their abilities to be other-centred and to see situations as temporary. Since she had joined a gang, Carla (aged 16) often faced reprimands from her parents, who refused to believe that she was still going to school. “I want them to know that I love them and I hope that they will love me also.” Jailed for violating the Anti-Vagrancy Law, Carla experienced being humiliated when arresting officers asked her to sing the Philippine National Anthem, which she did not know by heart. She was brought to the police station, where she was told that she would be fed to the snakes. Carla’s experiences behind bars were not as traumatic as those of the other children, but her problems were deeper, closer to home – her relationship with her parents. Carla drew a flower, and wished that she would be able to work. “And if my parents are still alive, I would still help them to know that I love them. I will take care of them when they grow old. I hope things in my family would turn out for the better.” Carla apparently felt unloved by her parents, but she remained other-centred and devoted to them. On the other hand, she could have become indifferent and turned her back on her parents. But instead, she still included them in her life’s plans. Carla saw the situation in her family as temporary, hoping that things would turn out right for her and her family.

- **Ability to maintain sanity in the face of traumatic experience**

All these illustrated cases point out to this particular theme of resilience. Despite the traumatic experiences while in contact with the justice system, children were able to maintain sanity and not lose hope. They still held on to their dreams and went on living. “We have dreams too and no dreams are too small...”: Cynthia



NICARAGUA: *The NGO Casa Alianza Nicaragua encourages the young people in its programmes to take part in activities to help the community such as painting this local school, April 2002.*

*We have dreams too
and no dreams are
too small*
(PHILIPPINES)⁶²

(aged 15) drew a flower. Her wish is to see her family, to get married and have a child. Jasmine (aged 10) drew a notebook. Her wish is to finish her studies. George (aged 11) drew a hat. He explained that when he was still poor, he felt very uncomfortably hot. He wants to be a vice-councillor, for his family to become well-off and for him to finish school. David (aged 15) drew a rock as a symbol of his strength. He wants all his siblings to finish their studies. He wants to be an artist and even the Vice-President of the Philippines. Romel (aged 15) drew a ballpen and beamed about his literacy. He said he wanted to become the President of the Philippines. Philip (aged 15) drew a handkerchief. He dreams of having a united and happy family. He said that he wanted to have a job so he could buy school uniforms for his siblings. Fidel (aged 14) chose to draw an aeroplane. He wants to help his family. His wish is to be a pilot, and to forget his past at the rehabilitation centre. Tony (aged 13) drew a cross. He said he wanted to be a priest and to help his family. He even told the interviewer that he would always pray for him. Bong-Bong (aged 13) drew a straw hat. He wants to return to his hometown and be a farmer.

C) THE NEED FOR INTERVENTIONS IN THE FOLLOWING FOUR PRIORITY AREAS:

In the context of the child rights-based approach to reform and the five key concepts outlined above, the final element to complete the set of guiding principles for the way forward in juvenile justice reform for street children is the prioritisation of areas for reform. In the context of extremely limited resources and competing priorities, there are four areas in which reform would help to break the revolving door cycle of street children caught up in the criminal justice system:

- prevention
- separation of criminal justice and social welfare systems
- diversion
- alternatives to detention

Each of these areas is considered in detail, with project examples, in Chapter 7.

⁶² UP CIDS PST, Painted Gray faces, 2003, p.150.

Chapter summary

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

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

Capitalising on street children's natural **resiliency** (through **understanding and expanding their choices, and empowering them to make such choices**) strengthens the children's own ability participate in the relationship-building and transformation necessary to make reform of the justice system succeed.

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

3

INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

Chapter overview

- Outlines the range of international and regional human rights instruments in place that are of relevance to juvenile justice issues, indicating which ones are child-specific and legally binding.
- Provides an overview of the contents of the child-specific instruments and how they work together.

INTERNATIONAL AND REGIONAL HUMAN RIGHTS INSTRUMENTS AT A GLANCE

There are a series of international instruments in relation to children in the criminal justice system that can be grouped as follows. The shaded instruments are **legally binding** on states that have ratified them. However, all other guidelines and rules still carry the authority of the UN and can be used to support advocacy based on the legally binding instruments.

¹ Available at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm
 "It is surprising that the Covenant has hardly, if ever, been used for the promotion of good practice in juvenile justice. The Human Rights Committee states that it does not receive information on juvenile justice issues, although it would be interested to do so. NGOs working in this area could usefully meet with members of the Human Rights Committee to discuss ways in which the Committee could work for children." Seymour, D., in Petty, C. and Brown, M. (eds), *Justice for Children: Challenges for Policy and Practice in Sub-Saharan Africa*, Save the Children, June 1998, p.111.

² Available at [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\).GC.2.002.2.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol).GC.2.002.2.En?OpenDocument). This comment includes language on access to places of detention and to care institutions, provision of legal aid, collection of disaggregated statistical data, and other relevant issues. A 'general comment' issued by the Committee on the Rights of the Child is not legally binding, but reflects the official position of the Committee on particular issues and can be referred to when the Committee is considering state reports.

³ Available at http://www.unhchr.ch/html/menu3/b/a_cescr.htm

⁴ Available at http://www.unhchr.ch/html/menu3/b/h_cat39.htm

⁵ Available at http://www.unhchr.ch/html/menu3/b/d_icerd.htm

⁶ Available at <http://www.unhchr.ch/html/menu3/b/e1cedaw.htm>

CHILD-SPECIFIC INSTRUMENTS	NON-CHILD-SPECIFIC INSTRUMENTS
UN Convention on the Rights of the Child: CRC (1989)	UN International Covenant on Civil and Political Rights: ICCPR (1966) ¹
UN Committee on the Rights of the Child General Comment 2 on the role of independent national human rights institutions in the promotion and protection of the rights of the child (2002) ²	UN International Covenant on Economic, Social and Cultural Rights: ICESCR (1966) ³
UN Guidelines on the Prevention of Juvenile Delinquency: the 'Riyadh Guidelines' (1990)	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: CAT (1984) ⁴
UN Standard Minimum Rules for the Administration of Juvenile Justice: the 'Beijing Rules' (1985)	UN International Convention on the Elimination of All Forms of Racial Discrimination: CERD (1966) ⁵
UN Rules for the Protection of Juveniles Deprived of their Liberty: the 'JDLs' (1990)	UN Convention on the Elimination of All Forms of Discrimination Against Women: CEDAW (1979) ⁶
UN Resolution 1997 / 30 – Administration of Juvenile Justice: the 'Vienna Guidelines' (1997)	UN Standard Minimum Rules for the Treatment of Prisoners: The 'Standard Minimum Rules' (1995) ⁷
	UN Minimum Rules for Non-Custodial Measures: The 'Tokyo Rules' (1990) ⁸
	UN Code of Conduct for Law Enforcement Officials (1979) ⁹
	UN Basic Principles on the use of Force and Firearms by Law Enforcement Officials (1990) ¹⁰

INTERNATIONAL

3

CHILD-SPECIFIC INSTRUMENTS	NON-CHILD-SPECIFIC INSTRUMENTS
African Charter on the Rights and Welfare of the Child: ACRWC (1990)	American Convention on Human Rights: ACHR (1969) ¹¹ and Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights: the 'Protocol of San Salvador' (1988) ¹²
	European Convention for the Protection of Human Rights and Fundamental Freedoms: ECHR (1950) ¹³

REGIONAL

CHILD-SPECIFIC INSTRUMENTS

1. UN CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

In many ways the CRC is the most important legal instrument in relation to juvenile justice because it is legally binding on all countries except Somalia and the USA. It is therefore more powerful and more widely applicable than some of the other instruments. The most specific articles in relation to juvenile justice are Articles 37 and 40¹⁵:

ARTICLE 37 prohibits torture, cruel, inhuman, degrading treatment or punishment, capital punishment and life imprisonment, arbitrary or illegal arrest, detention or imprisonment; stipulates that arrest and detention shall only be used as a last resort and for the shortest appropriate period of time; outlines the right of children deprived of their liberty to be treated with humanity, respect and dignity in a manner that takes into account their age, to be separated from adults, to maintain family contact, to have prompt access to legal and other assistance, to challenge the legality of their detention and to expect a prompt decision in relation to any resulting action.

ARTICLE 40 more specifically covers the rights of all children accused of infringing the penal law. Thus it covers treatment of the child from the moment an allegation is made, through investigation, arrest, charge, any pre-trial period, trial and sentence. The article requires States Parties to promote a distinctive system of juvenile justice with specific positive rather than punitive aims. It details a list of minimum guarantees for the child and it requires States Parties to set a minimum age of criminal responsibility, to provide measures for dealing with children who may have infringed the penal law without resorting to judicial proceedings and to provide a variety of alternative dispositions to institutional care.

⁷ Available at http://www.unhcr.ch/html/menu3/b/h_comp34.htm

⁸ Available at http://www.unhcr.ch/html/menu3/b/h_comp46.htm

⁹ Available at http://www.unhcr.ch/html/menu3/b/h_comp42.htm

¹⁰ Available at http://www.unhcr.ch/html/menu3/b/h_comp43.htm

¹¹ Available at <http://www1.umn.edu/humanrts/oasinstr/zoas8pdp.htm>

¹² Available at <http://www1.umn.edu/humanrts/oasinstr/zoas10pe.htm>

¹³ Available at <http://www1.umn.edu/humanrts/instree/z17euroco.html>

¹⁴ Available, along with a list of states who have ratified it and those who have entered any reservations to any of the provisions at <http://www.unhcr.ch/html/menu3/b/k2ccr.htm>.

¹⁵ See Appendix 2 for further information on the CRC in relation to street children and the full text of Articles 37 and 40.

¹⁶ Conduct which would not, under law, be an offence if committed by an adult. Examples include truancy, running away and underage drinking. Its classification as an 'offence' is therefore related to the 'status' of the 'offender' as a child.

Although the decriminalisation of ‘status offences’¹⁶ is not specifically mentioned in the CRC, the Committee on the Rights of the Child is increasingly raising this issue during its country reviews. Furthermore, the CRC’s requirement that arrest and detention only be used as a last resort and for the shortest possible time is generally understood to prohibit the routine arrest and detention of children for status offences – an interpretation which the Committee has adopted in some of its concluding observations.

HOW TO USE THE CRC MORE HOLISTICALLY

Practical tips

However, bearing in mind the need for a holistic approach and the fact that Articles 37 and 40 do not deal with broader – yet essential – issues of prevention, it is very important to set Articles 37 and 40 in the context of the overall framework of the CRC and its umbrella rights. These include:

- Art. 6 (the right to life, survival and development)
- Art. 3.1 (the best interests of the child as a primary consideration)
- Art. 2 (non-discrimination on any grounds)
- Art. 12 (the right to ‘participation’)
- Art. 4 (implementation – including of economic, social and cultural rights to the maximum extent of available resources)

This more holistic approach allows a broader scope for lobbying for reform from a child rights-based approach. Other CRC articles pertinent to street children and juvenile justice, including aspects of prevention, are:

- Art. 3.3 (standards of care in institutions and services)
- Art. 9 (separation from parents)
- Art. 13, 14 & 15 (freedom of expression, thought, conscience, religion, association and assembly)
- Art. 16 (right to privacy)
- Art. 17 (access to information / role of the media)
- Art. 19 (protection from violence)
- Art. 20 (special protection and assistance for children deprived of a family environment)
- Art. 23 (children with mental and physical disabilities)
- Art. 24 (health)
- Art. 25 (periodic review of placements)
- Art. 27 (adequate standard of living)
- Art. 28 & 29 (right to, and aims of, education)
- Art. 30 (minority rights)
- Art. 31 (right to rest, leisure and play)
- Art. 32, 33, 34 & 36 (protection from economic exploitation / child labour, substance abuse, sexual exploitation and abuse and other forms of exploitation)
- Art. 39 (recovery and reintegration of victims of all forms of neglect, exploitation or abuse).

For further discussion of the CRC and the rights-based approach to street children and juvenile justice issues, including the ‘table leg test’ programming tool, see Chapter 2.

2 UN GUIDELINES FOR THE PREVENTION OF JUVENILE DELINQUENCY: THE ‘RIYADH GUIDELINES’¹⁷

The Riyadh Guidelines represent a comprehensive and proactive approach to prevention and social reintegration, detailing social and economic strategies that involve almost every social area: family, school and community, the media, social policy, legislation and juvenile justice administration. Prevention is seen not merely as a matter of tackling negative situations, but rather a means of positively promoting general welfare and well-being. It requires a more proactive approach that should involve “efforts by the entire society to ensure the harmonious development of

adolescents". More particularly, countries are recommended to develop community-based interventions to assist in the prevention of children coming into conflict with the law, and to recognise that 'formal agencies of social control' should be utilised only as a means of last resort. General prevention consists of "comprehensive prevention plans at every governmental level" and should include:

- Mechanisms for the co-ordination of efforts between governmental and non-governmental agencies;
- Continuous monitoring and evaluation;
- Community involvement through a wide range of services and programmes;
- Interdisciplinary co-operation;
- Youth participation in prevention policies and processes.

The Riyadh Guidelines also call for the decriminalization of status offences and recommend that prevention programmes should give priority to children who are at risk of being abandoned, neglected, exploited and abused.

3 UN STANDARD MINIMUM RULES FOR THE ADMINISTRATION OF JUVENILE JUSTICE: THE 'BEIJING RULES'¹⁸

The Beijing Rules provide guidance to states on protecting children's rights and respecting their needs when developing separate and specialised systems of juvenile justice. They were the first international legal instrument to comprehensively detail norms for the administration of juvenile justice with a child rights and child development approach. They pre-date the CRC, are specifically mentioned in the CRC Preamble, and have several of their principles incorporated into the body of the CRC (explaining why Article 40 is by far the longest and most detailed article of the whole Convention).

The Rules encourage:

- The use of diversion from formal hearings to appropriate community programmes;
- Proceedings before any authority to be conducted in the best interests of the child;
- Careful consideration before depriving a juvenile of liberty;
- Specialised training for all personnel dealing with juvenile cases;
- The consideration of release both on apprehension and at the earliest possible occasion thereafter;
- The organisation and promotion of research as a basis for effective planning and policy formation.

According to these Rules, a juvenile justice system should be fair and humane, emphasize the well being of the child and ensure that the reaction of the authorities is proportionate to the circumstances of the offender as well as the offence. The importance of rehabilitation is also stressed, requiring necessary assistance in the form of education, employment or accommodation to be given to the child and calling upon volunteers, voluntary organisations, local institutions and other community resources to assist in that process.

4 UN RULES FOR THE PROTECTION OF JUVENILES DEPRIVED OF THEIR LIBERTY: THE 'JDLS'¹⁹

This very detailed instrument sets out standards applicable when a child (any person under the age of 18) is confined to any institution or facility (whether this be penal, correctional, educational or protective and whether the detention be on the grounds of conviction of, or suspicion of, having committed an offence, or simply because the child is deemed 'at risk') by order of any judicial, administrative or other public authority. In addition, the JDLS include principles that universally define the specific circumstances under which children can be deprived of their liberty, emphasising that deprivation of liberty must be a last resort, for the shortest possible period of time, and limited to exceptional cases. In the context where deprivation of liberty is unavoidable, the following conditions should be fulfilled:

¹⁷ Available at http://www.unhcr.ch/html/menu3/b/h_comp47.htm
Information in this section is compiled from Roy, N. and Wong, M., *Juvenile Justice Review and Training Documents* prepared for Save the Children UK, 2002-3 and Penal Reform International, *International Instruments Governing the Rights of Children in Conflict with the Law*, www.penalreform.org.

¹⁸ Available at http://www.unhcr.ch/html/menu3/b/h_comp48.htm.
Information compiled as in *ibid*.

¹⁹ Available at http://www.unhcr.ch/html/menu3/b/h_comp37.htm.
Information compiled as in *ibid*.

- Priority should be given to a speedy trial to avoid unnecessarily lengthy detention periods;
- Children should not be detained without a valid commitment order;
- Small, open facilities should be established with minimal security measures;
- Deprivation of liberty should only be in facilities which guarantee meaningful activities and programmes promoting the health, self-respect and responsibility of juveniles. Food should be suitably prepared, clean drinking water must be available, bedding should be clean and sanitary installations sufficient, clothing should be suitable for the climate, and preventive and remedial medical care should be adequate;
- Detention facilities should be decentralised to facilitate contact with family members and children should be permitted to leave the facilities for visits to their family homes;
- Education should take place in the community and children should have the opportunity to work within the community;
- Juvenile justice personnel should receive appropriate training. They should respect the child's right to privacy and protect children from any form of abuse or exploitation;
- Qualified independent inspectors should conduct regular inspections.

The JDLs serve as an internationally accepted framework intended to counteract the detrimental effects of deprivation of liberty by ensuring respect for the human rights of children.

RIYADH, BEIJING AND JDLs – INTERRELATED STRENGTHS

These three sets of rules can be seen as guidance for a three-stage process:

- 1. Firstly, social policies must be applied to prevent and protect young people from offending (the Riyadh Guidelines);*
- 2. Secondly, a progressive justice system needs to be established for young people in conflict with the law (the Beijing Rules);*
- 3. Thirdly, fundamental rights must be safeguarded and measures established for social reintegration of young people deprived of their liberty, whether in prison or other institutions (the JDLs).²⁰*

In technical terms, unlike the CRC these Rules and Guidelines are not legally binding on countries. They do, however, present detailed guidance based on UN authority and can be referred to equally alongside the CRC for lobbying purposes.

5 UN RESOLUTION 1997/30 – ADMINISTRATION OF JUVENILE JUSTICE: THE 'VIENNA GUIDELINES' (1997)²¹

This UN Resolution (also known as the Vienna Guidelines) provides an overview of information received from governments about how juvenile justice is administered in their countries and in particular about their involvement in drawing up national programmes of action to promote the effective application of international rules and standards in juvenile justice. The document contains as an annex Guidelines for Action on Children in the Criminal Justice System, as elaborated by a meeting of experts held in Vienna in February 1997. This draft programme of action provides a comprehensive set of measures that need to be implemented in order to establish a well-functioning system of juvenile justice administration according to the CRC, Riyadh Guidelines, Beijing Rules and JDLs.

6 AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD (ACRWC)²²

When the CRC was written, it was important that it be applicable to countries and cultures across the globe. While this broad description of children's rights is relevant to all people, it became apparent that the situation of the African child was different from other regions. The Organisation for African Unity (now known as the African Union) responded by drafting the ACRWC, which guarantees children's basic rights within the context of African culture. For example, Article 21 of the ACRWC addresses

²⁰ Roy, N. and Wong, M., *Juvenile Justice Review and Training Documents prepared for Save the Children UK*, 2002-3.

²¹ Available at: www.unhcr.ch/huridocda/huridoca.nsf/Documents?OpenFrameset. Information in this section adapted from Roy, N. and Wong, M., *Juvenile Justice Review and Training Documents prepared for Save the Children UK*, 2002-3.

²² Available at <http://www1.umn.edu/humanrts/africa/afchild.htm>.

harmful traditional practices common in many African countries that can violate the rights of children, such as corporal punishment, child labour, early marriage and female genital mutilation.

As with the CRC, the ACRWC contains a broad range of socio-economic provisions that can be referred to holistically, as well as the specific juvenile justice provisions of Article 17, 'The Administration of Juvenile Justice', which provides that:

- Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others;
- No child who is detained or deprived of his/her liberty shall be subject to torture, inhuman or degrading treatment or punishment;
- Children are separated from adults in their place of detention;
- Every child shall be presumed innocent until proven guilty;
- Every child shall be afforded legal assistance in the preparation of his/her defence;
- The essential aim of treatment during the trial and if found guilty shall be his/her reformation, reintegration into his/her family, and social rehabilitation.

SUMMARY OF THE INSTRUMENTS

Provisions of the international guidelines

Taken together, the Convention on the Rights of the Child and the other international guidelines include the following provisions:

- *All children should be respected as fully-fledged members of society, with the right to participate in decisions about their own futures, including in official proceedings without discrimination of any kind.*
- Children have the same rights to all aspects of due process as those accorded to adults *as well as specific rights due to their special status as children.*
- Children should be diverted from the formal system of justice wherever appropriate and specifically to avoid labelling as criminals.
- There is a set of minimum standards which should be provided to all juveniles in custody.
- Custodial sentences should be used as a last resort, for the shortest possible time and limited to exceptional cases.
- A variety of non-custodial sentences should be made available, including care, guidance and supervision orders, counselling, probation, foster care, education and vocational training programmes.
- Capital and corporal punishment should be abolished.
- There should be specialised training for personnel involved in the administration of juvenile justice.
- Children have the right to release unless there are specified reasons why this should not be granted.
- *Children have the right to measures to promote recovery and reintegration for victims of neglect, exploitation, abuse including torture and ill-treatment, and armed conflict.*
- States are obliged to establish a minimum age of criminal responsibility which is not set too low, but reflects children's capacity to reason and understand their own actions.
- States should invest in a comprehensive set of welfare provisions to contribute to preventing juvenile crime. This should include provision for very young children. Provision should involve the government, NGOs, churches, volunteers, etc.

This summary is taken from Petty, C. and Brown, M. (eds), *Justice for Children: Challenges for Policy and Practice in Sub-Saharan Africa, Save the Children, June 1998, p.23 (with additional material shown in italics).*

Chapter summary

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

4

CIRCLE OF EXPERIENCE:

LINKS BETWEEN THE CAUSES OF STREET MIGRATION, BEHAVIOUR ON THE STREET AND TREATMENT IN THE JUSTICE SYSTEM

Chapter overview

- Outlines how some of the **specific factors that cause children to leave home in the first place** impact on their **subsequent behaviour on the street** and how this can in turn affect their **treatment in the criminal justice system**. Examples of treatment experienced on the streets and in the criminal justice system are used to illustrate points throughout, but a detailed discussion of this issue is left for Chapter 6.
- Illustrates the links between these issues in the form of a diagram and emphasises the importance of **choice and resiliency** in relation to **entry points for early intervention**.
- Includes detailed information on:
 - A) **Causal factors of street migration:** poverty, ruptured family links, urbanisation and HIV/AIDS.
 - B) **Behaviour and survival strategies on the streets:** 'vagrancy', substance abuse, coercion / involvement in adult criminal activity, gangs.

4

MAKING THE LINKS: CHOICES, RESILIENCY AND ENTRY POINTS FOR INTERVENTION

The causes of street migration are inherently linked with the behaviours and strategies children subsequently use to survive whilst on the streets. These behaviours and strategies in turn impact on their vulnerability and treatment within the criminal justice system. These links will be further explored throughout this chapter but are introduced in the form of the following diagram which aims to give an overview of the circular nature of street children's experience.

The rich boy won't go to jail, even for a serious offence such as voluntary manslaughter. The poor boy, meanwhile, will spend two months in jail for stealing a necklace. They are criminalizing the poor. Being poor is the surest indicator that a child who enters the system will end up in jail." (GUATEMALA)²

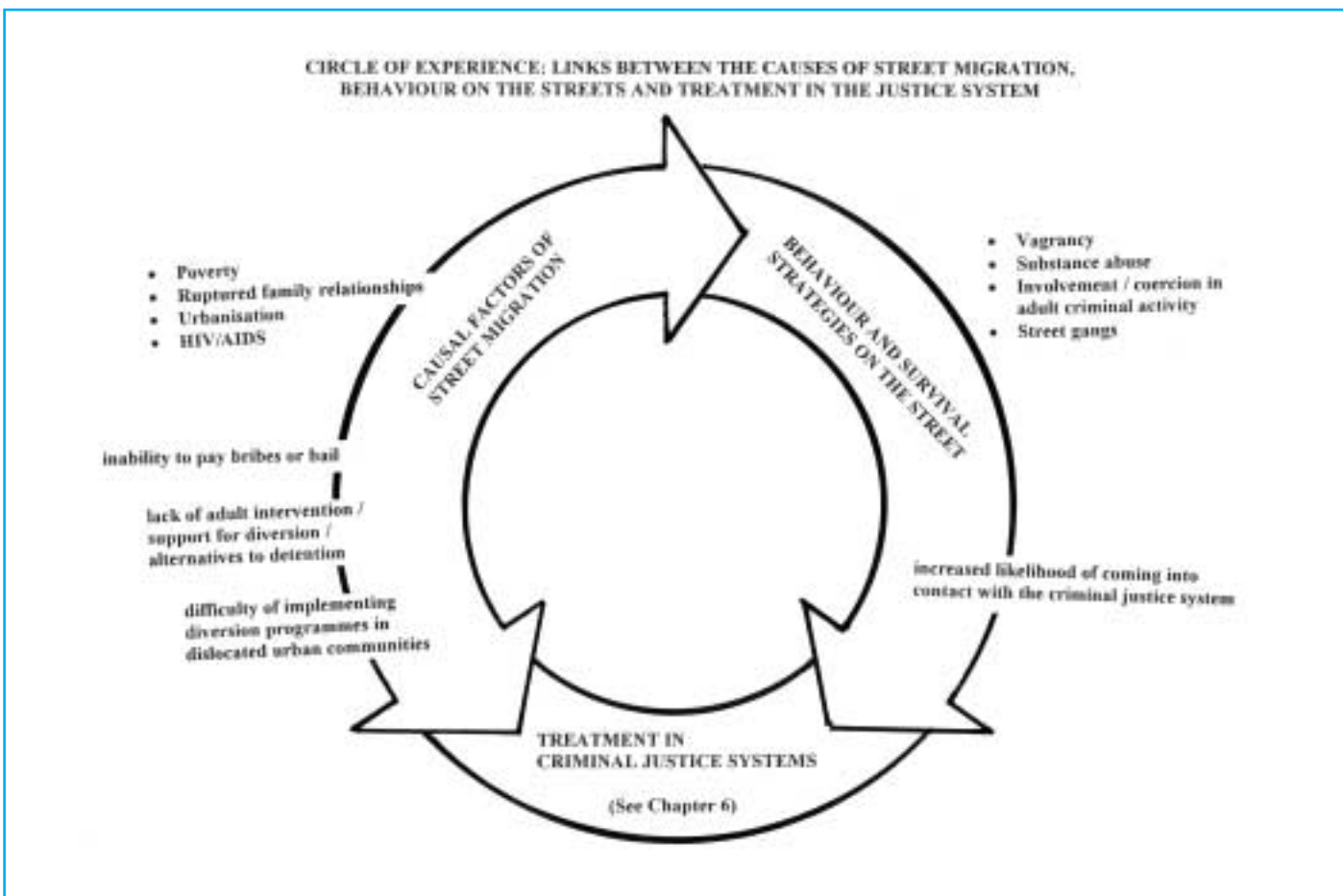
It is important at this stage to understand that this diagram is obviously generalised and that individual children's experiences will vary greatly, dependent largely on the part played by choices, limited choices and non-choices in their life stories. This concept of 'choices' has already been introduced in Chapter 2. To a certain extent, children's choices may become increasingly constrained as they progress around the 'circle': for example, a boy may 'choose' to leave home in order to earn money and escape from the responsibilities of having to look after younger siblings at home; however, once on the streets his choices may become more limited if (for example) he is forced or coerced into participating in criminal activity for a group of older boys; furthermore, when he is arrested (i.e. at the stage of contact with the criminal justice system), he may find his choices have turned into 'non-choices' as control of the situation is taken out of his hands by external factors (such as the police). At this point, his 'choices' are limited to how he reacts to these external factors and therefore issues such as resiliency come into play.

A key aim of work with street children in this context is therefore to employ the 3-stage choice approach: understanding and expanding choices available to children in specific circumstances and empowering them to make those choices. It is obviously preferable that this intervention take place as soon as possible in the 'circle of experience' before the available choices become too limited and it is for this reason that the framework for reform proposed in this book prioritises intervention in the following areas, *in a specific order which favours early intervention*: prevention, diversion and alternatives to detention. See Chapter 7 for a diagrammatic representation of these 'entry points'.

A) CAUSAL FACTORS OF STREET MIGRATION

In general, factors which cause girls and boys to leave home to live and work on the streets include:

- poverty
- ruptured family links (including neglect, violence and problems associated with 'reconstructed families')



- urbanisation
- HIV / AIDS
- conflict
- natural disasters¹

There is clearly an argument that any factor that causes children to come onto the streets automatically puts them at risk of contact with the justice system, but the discussion here will be limited to those factors which are more directly relevant to street children's involvement in the criminal justice system, namely poverty, ruptured family links, urbanisation and HIV/AIDS.

A.1 POVERTY

"The rich boy won't go to jail, even for a serious offence such as voluntary manslaughter. The poor boy, meanwhile, will spend two months in jail for stealing a necklace. They are criminalizing the poor. Being poor is the surest indicator that a child who enters the system will end up in jail." (Guatemala)²

The links between poverty and crime are well known³, not only in terms of income poverty, but also in the way that poverty can restrict access to services such as education, access to justice, and how it can limit life choices and opportunities.⁴ However, it is important to stress that not all poor children become street children: poverty as a push factor in relation to street migration and crime must be seen within the broader context of supportive or non-supportive relationships of an individual child – a concept explored further in Chapter 5.⁵ Likewise, not all street children engage in criminal activities as a means of economic survival. However, the choices available to children living and working on the streets can be very limited. Even making a deliberate choice not to engage in criminal activities is no guarantee of protection against involvement in the criminal justice system: poverty renders street children powerless to avoid arrest on the grounds of simply being in the wrong place at the wrong time (see the section in Chapter 1 outlining the confusion between children in actual conflict with the law, in perceived conflict with the law and those in need of care and protection for more details).

For those children who do 'choose' to become involved in crime, however, the links between poverty and survival explain clearly why the majority of crimes committed by street children are property-related offences. For example:

- In **Malawi**, statistics from 1997 show that 68% of registered offences were theft, burglary and robbery; a further 8% were 'vagabond': "a term ... representing obvious cases of street children";⁶
- According to the most recently published government statistics on children in conflict with the law in **Romania**,⁷ it would appear that the vast majority are arrested on charges of robbery or theft of private property (84%), and that a massive 95% of all children arrested are boys from urban areas;
- According to research in **Nigeria** by the NGO Human Development Initiatives as part of the HDI / CSC Street Children and Juvenile Justice Project, between March – April 2003, 70% of boys detained for criminal offences in the Boys' Approved School, Isheri, Lagos, were there on charges of theft;⁸
- In the **Philippines**, in 2001, 54% of all crimes committed by children were for theft, a further 21% for 'use of volatile substances', 6% for robbery and 3% for 'dangerous drugs' – far outweighing the remaining 16% made up of physical injuries and rape.⁹

In addition to being a push factor in relation to street migration and involvement in crime, poverty can also affect children's experiences once inside the system. Levels of corruption amongst police and other officials in many countries are particularly damaging to those who are unable to pay the necessary bribes for police 'protection', to prevent arrest, for early release from detention, and for more humane treatment within detention. Incidents have also been reported of members of the public – with more money than the children - bribing officials to bring heavier penalties against street children, or even to proceed on false charges. Poor families are less likely to have the resources to intervene on behalf of their children, even in terms of maintaining contact

1 Examples include: Hurricane Mitch in Central America (October – November 1998) which left an estimated 3,000,000 people either homeless or otherwise affected (see <http://www.casa-alianza.org/EN/reports/oneyear/naturaldisaster.phtml> for information on the response of organisations such as Casa Alianza to the disaster); and the Orissa Super Cyclone (October 1999) which – amongst other things - damaged 1,828,532 houses (and in response to which NGOs such as New Hope in Andhra Pradesh / Orissa (partner of the UK-based organization, the Railway Children) set up intervention centres on the Calcutta - Visakhapatnam railway line to pick up children drifting to Calcutta or Chennai - an intervention known as "Operation Stay Put").

2 Interview with Claudia de Carrillo, Chief Minors' Prosecutor (Fiscal de Menores), Guatemala City, 10 September 1996, quoted in Human Rights Watch, *Guatemala's Forgotten Children: Police Violence and Abuses in Detention*, July 1997, p.52.

3 See e.g. Prof. Dr. Veeraraghavan, V., 'Juvenile Violence', in Butterflies, *My Name is Today*, Vol. X., No. 2, Special Issue: 'Children in Conflict with the Law', 2003, p.8. In India, although there are children from higher income families that come into conflict with the law, "according to rough estimates, these children only constitute only about 0.5% - 1% of the total juvenile offenders who are apprehended and tried".

4 E.g. 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.10.

5 The Philippine NGO Childhope Asia Philippines (CHAP) points out that while living below the poverty line is a generally valid indicator, "it cannot be taken separately from other relevant indicators... Domestic violence, atmosphere of conflict at home, poor communication and parent's lack of clear expectations from the children are additional risk indicators that may strongly react with poverty in pushing children to the streets." On the other hand, CHAP also noted that the "presence of caring adults is the first positive factor for keeping the family intact even in the face of economic crises or other stressful experiences." 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.67.

through phone calls and travel expenses to visit or attend trials etc., let alone payment of bail and bribes. Furthermore, as with the children themselves – families may be disempowered through illiteracy and lack of status/social connections when dealing with police and judicial officers. Poverty is therefore one of the key links between street migration, survival strategies and treatment in the system.

A.2 RUPTURED FAMILY RELATIONSHIPS: ABUSE, NEGLECT, VIOLENCE AND RECONSTRUCTED FAMILIES

As borne out by testimonies from street children in the workshops organised as part of the Street Children and Juvenile Justice Project, ruptured relationships within the family – through neglect, physical, psychological and sexual violence, death, separation, abandonment, imprisonment of parents, divorce, re-marriage and the pressures on female-headed households etc. - play a key role in pushing children to leave home. When discussing street children and family relationships, as well as appreciating that each child has their own story to tell, it is important to note that there are often significant differences between street-living and street-working children, the latter being more likely to maintain more stable and supportive relationships than those who have chosen – or been forced – to leave home.

CHILDREN'S EXPERIENCES OF RUPTURED FAMILY RELATIONSHIPS

Gross abuse and maltreatment of children by parents, sometimes in the name of discipline is a great challenge to the children. Sometimes parents don't see their children as gifts. Step-parenthood sometimes means children live under harsh parent-substitutes. (NIGERIA)¹⁰

I used to go to school and have food, clothing. But in 1993 my mother died. I was 4 and my little sister was only one. My father used to do some little business. A month later, my sister died. Then my father died. The other relatives despised me and rejected me and did all kinds of things to me. Even now I have a burn on my leg from when I was cooking. They didn't help me. I was made to do work but I was only 4. I had no money. I had an uncle on my father's side and an aunt from my mother's side. At my uncle's, I had to sleep on the floor with no blankets. So I went to my aunt's house, but it was even harder there. It was not yet a year since father died. I was so lonely. (KENYA)¹¹

Because of family problems, we left home and stayed out in the streets with friends. Here, we learned how to break the law in order to survive and this is why the police caught us. We experienced different kinds of abuse under the hands of older people.

My father was imprisoned because of amphetamines. That's the reason why my family broke apart and why my mother went with another man. I ran away and stayed at a friend's house. My father is still in jail. (PHILIPPINES)¹²

6 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.16.

7 Government of Romania (2002) *Second Periodic Report to the Committee on the Rights of the Child*, Section 8(B), cited in ASIS and Consortium for Street Children, *Street Children and Juvenile Justice in Romania*, February 2004. See also Giles, Prof. G.W., *Turbulent Transitions: Delinquency and Justice in Romania*, Bucharest, March 2002, p.137.

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

9 UP CIDS PST, *Painted Gray Faces*, 2003, pp.80-81.

10 Michael, presenting findings of the children's session to the Workshop on Street Children and Juvenile Justice, Lagos, Nigeria, 2-4 June 2003, cited in HDI and CSC, *Street Children and Juvenile Justice in Lagos State*, 2004.

11 Sarah, child participant in the National Workshop on Street Children and Juvenile Justice, Nairobi, Kenya, 6-7 March 2003, cited in Consortium for Street Children, *Street Children and Juvenile Justice in Kenya*, February 2004.

12 Girl, aged 14 at the National Children's Workshop, August 2002, and Cora, street girl, aged 13, cited in UP CIDS PST, *Painted Gray Faces*, 2003, pp.45 and 60 respectively.

“My mother is not interested in where I am and what I am doing.” “My mother doesn’t know where I am, she spends all her time shooting craps with my father.” “My father doesn’t care about me, what I do or where I go, he’s into drinking and gambling. (ROMANIA)¹³

There is strong evidence from around the world that violence often constitutes the critical differentiating factor between children who work on the streets, and the relative minority who actually live on the streets.

- According to research conducted in **Peru**, family violence and child mistreatment was the precipitating factor in 73% of cases of children migrating to the streets.
- 53 % of **Guatemalan** street children interviewed reported having been abused by a family member.
- **Brazil** – 1992 research: street-living children reported higher levels of corporal punishment at home (62%), compared to street-working children (23%). The same trend was evident in Ethiopia.
- It is important not to underestimate psychological violence in this equation; for example, according to a 1997 study in **Angola**, “Many children complain of being shouted at or hit and talk of the fear of punishment, even if it is for a single misdemeanour, as a reason for leaving home.”¹⁴

In addition to violence, problems associated with ‘reconstructed’ families are a significant push factor. Large families resulting from poor family planning, multiple-partner relationships and - in some countries - polygamy, combined with the stresses associated with female-headed households (and increasingly child-headed households in the context of HIV/AIDS) mean that many children are not receiving the economic or emotional support they need for healthy development. Combined with the weakening of traditional extended family support systems, some of these children are falling through the net. In ‘re-constructed’ families children from previous relationships can end up bearing the brunt of any resulting power shifts within a changing household.¹⁵ This can manifest itself in the following ways: being treated differently in the house to other children, being shouted at and beaten more often, being asked to do a larger share of the work, not being given food or other goods or being made to feel like an intruder. This may be linked to either real pressure on resources or perceived pressure on resources. This resentment can be exacerbated if the child’s ‘direct’ relation is out of the house for long periods of time leaving primary care of the child to the new partner. Likewise if there is conflict between the child’s direct relation and their new partner this can be taken out on the scape-goated child.¹⁶ Child workshop participants as part of the Street Children and Juvenile Justice project frequently cited problems with step-parents and new partners as a factor involved in their decision to leave home.

Once on the streets, an individual child’s experience of family relationships will either act as a protective factor, or as a risk factor. Positive family relationships can factor into choices not to get involved in criminal activities whereas ruptured or negative family relationships can pre-dispose them to the opposite as the following case study from Romania shows.

¹³ Taken from interviews with street children in Save the Children, ILO/IPEC, *Working Street Children in Bucharest: A Rapid Assessment, 2002*, and cited in ASIS and Consortium for Street Children, *Street Children and Juvenile Justice in Romania*, February 2004, p.29.

¹⁴ Wernham, M., Consortium for Street Children, Written Submission to the UN Committee on the Rights of the Child, Day of General Discussion, Friday 28 September 2001, Violence Against Children Within the Family, citing research from *Prevention of Street Migration: Resource Pack*, Consortium for Street Children and University College Cork, 1999, and ‘Families Worldwide’, fact sheet by the International Sexual and Reproductive Rights Coalition, June 2001.

¹⁵ “Most children had experienced not only a conflictive and violent family context, but mainly a loss of their ‘place’ and status in the family, having previously experienced serious affective losses (mainly of parents) and having become the hostages of the power struggles which resulted as the family redefined itself.” 90% of the street-living children in a survey in Lima, Peru were found to have come from rebuilt (step-parent) or monoparental families or from rural families that had given the child to people in the city to raise. Dr Dwight Ordoñez Bustamante, ‘Family Structure Problems, Child Mistreatment, Street Children and Drug Use: A Community-Based Approach’, in CSC / UCC, *Prevention of Street Migration*, 1999, p. 28.

¹⁶ Wernham, M., CSC, written submission on Violence Against Children Within the Family, drawing on Moberly, C. (1999) *The ‘Voluntary Separation’ of Children in Angola: Recommendations for Preventive Strategies*, in CSC / UCC, *Prevention of Street Migration*, 1999, p.41.

Case study

FAMILY RELATIONSHIPS AND CONFLICT WITH THE LAW, ROMANIA¹⁷

Iulian is 17 years old and is serving his second prison sentence for having committed a robbery (i.e. theft with violence or threats). The second attempt occurred only one month after he was released from the penitentiary first time round.

Iulian comes from a broken family of 8 members, many of whom already had criminal records before he grew up. His family relations have been characterised by physical violence, alcohol use by both parents, arrests of his father and prostitution practiced by his mother. Iulian is aware of all of this, but when he tried to explain to his mother that part of the problems experienced by himself and his siblings was the lack of material and emotional support from their parents, she chased him out of the house. Iulian admits he has committed several thefts he was never caught for, has consumed alcohol, gambled and used violence towards both his friends and parents. In the penitentiary also, he has been punished several times for violent behaviour in relation to his room mates and with staff. Yet Iulian believes this lifestyle to be closely connected with his family situation and sees it as the only one possible for him. As such, he is determined not to continue living with his family after he is released from the penitentiary, and has decided instead to live on his own on the street.

Ruptured relationships not only render street children more vulnerable to contact with, and abuse within, the criminal justice system due to lack of protection from responsible adults, but absence of parents or guardians to take responsibility for their custody and supervision means that street children are less likely to benefit from diversion programmes and alternatives to detention.

The centrality of relationships to all aspects of work with street children in relation to criminal justice systems is explored in greater detail in Chapters 5 and 7. It is essential that relationships are placed at the centre of efforts to reform justice systems at every stage, especially in the priority areas of prevention, diversion and alternatives to detention.

A.3 URBANISATION

In the context of street children, poverty and ruptured relationships, as discussed above, are closely linked to issues of urbanisation. Rapid and uncontrolled urbanisation is associated with an increase in crime rates¹⁸ while urban migration is often accompanied by disruption of social support networks, fragmentation of communities and increased strain on limited physical and financial resources. Children end up on city streets either having left home directly from rural areas, or via urban or peri-urban slum settlements following family break-up (possibly linked to the stresses of urban life mentioned above) or the need to earn money to take home to such areas.

Particular challenges arise in implementing justice reform in urban areas. It has been questioned whether fragmented and fluctuating urban communities provide a stable enough framework within which to implement the types of community-based traditional and non-formal restorative justice initiatives which have proved successful in rural areas. On the other hand, the 'popular' justice which has flourished in urban areas, such as vigilante violence, is subject to very limited checks or balances.¹⁹ Initiatives on prevention, diversion and alternatives to detention may also be affected in urban areas where street children may not only lack family ties, but also ties to their wider community. These challenges are addressed in more detail in Chapter 7.

However, the relationship between street children, urbanisation and crime is not simple. The case study from Luanda, Angola that is later described in Chapter 7 demonstrates how individual and specific groups of street children can defy common

¹⁷ Cited in ASIS / CSC, *Street Children and Juvenile Justice in Romania*, 2004. As implied here, the neglect of children has been exacerbated by the problems encountered by adults/parents in adapting to the post-communist Romania and the consequent rise in alcoholism and gambling as distraction activities. By the year 2000, alcoholism and physical violence had respectively become the second and third most common reasons cited for divorce across Romania (Council of Europe, *Recent Demographic Developments in Europe 2002*, Strasbourg, 2003).

¹⁸ E.g., "In most parts of the world, urbanisation is associated with an increase in the crime rate. This means that in regions where urban populations are growing, the crime rate is also likely to rise. Crime rates in Africa, which has the fastest urbanisation growth rate of any world region (World Bank, 1995), conform to this pattern" in Petty, C. and Brown, M. (eds), *Justice for Children: Challenges for Policy and Practice in Sub-Saharan Africa*, Save the Children, June 1998, p.63. In Albania, "The migration within country, from poor urban and rural areas towards the big cities, has caused high rates of criminality where children and young people have been involved as offenders or victims of crimes", in 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.62.

¹⁹ Petty, C. and Brown, M. (eds), *Justice for Children*, 1998, p.65.

assumptions made about them. It also illustrates how very different situations can be from country to country, city to city and between neighbourhoods. The case study describes the mutually supportive relationship that certain groups of street children have developed with local community residents. The children have devised their own codes of conduct which strictly prohibit stealing from the local community on whom they rely for shelter, protection and the successful running of their small businesses. In return, the local residents support the children's businesses, protect them from outside threats, and in some cases develop a more 'parental' role with them. Whilst there are also other, less stable groups of street children in the city who are more likely to engage in criminal activity, the community relationships developed by the former group mentioned above provide hope for the relationship-building strategies focused on in this book.²⁰

A.4 HIV/AIDS

"We did not have enough food to eat, so we would steal manioc [cassava] from the market and get beaten by the shopkeeper." (TOGO)²¹

Susan B., age ten, who had lost her mother to AIDS only a few weeks before Human Rights Watch met her ... said that things were so bad when her mother was dying that her mother would send her to the streets to steal. Stealing on the streets of Nairobi is potentially very dangerous labour, particularly in view of the abusive treatment of street children by the police and in the juvenile justice system. (KENYA)²²

HIV / AIDS can act as a push factor for street migration and consequently involvement in the criminal justice system in a number of ways:²³

- Children may be sent out to work or steal on the streets in order to supplement family income if economically productive adults become unable to work as a consequence of contracting AIDS-related illnesses;
- Children who have been orphaned by AIDS and who are not capable of being supported by extended family and/or community members (who are themselves put under strain by the pandemic) may end up migrating directly to the streets;
- Children orphaned by AIDS or whose parents are ill with the disease may run away from abusive substitute carers;²⁴
- Children orphaned by AIDS might also move to the streets after finding themselves unable to cope with the pressures of looking after younger siblings in a child-headed household;
- Community alienation and stigma following the death of a family member, or as a result of suspected of being HIV positive, may also encourage children to move away from communities;
- "Girls and women in households touched by AIDS and by poverty frequently find their choices and possibilities so diminished that they have to turn for survival to the sex trade or to situations of lodging or work that expose them to sexual abuse and violence, increasing the risk that they themselves will die of AIDS."²⁵ Human Rights Watch goes on to highlight that in **Zambia**, for example, police conduct round-ups of sex workers and charge them with loitering or indecent exposure. Usually, the women pay 10,000 kwacha (U.S. \$2.30) and are freed in the morning;²⁶ at other times, the police take the women's money or demand sexual services as payment.²⁷

HIV infection – or suspicion of infection – may render street girls and boys vulnerable to even greater discriminatory treatment once within the system. Furthermore, in the



GUATEMALA: Santa Fas - shanty dwellings on the outskirts of Guatemala City, a community severely affected by Hurricane Mitch in 1998 and identified by local NGOs as a high-risk area for street migration.
© The Toybox Charity

²⁰ *Ibid.*

²¹ Human Rights Watch interview with a girl who had been trafficked into Togo and was living on the streets, Bassar, Togo, May 3, 2002, cited in Human Rights Watch, *In the Shadow of Death: HIV/AIDS and Children's Rights in Kenya*, 2001, p.14.

²² *Ibid.*, 2001.

²³ Also, once on the street, street children – particularly those living on the streets and/or those involved in the worst forms of child labour (e.g. commercial sexual exploitation) are at very high risk of contracting HIV themselves. Coming from poor communities, often with limited access to education and information on HIV prevention and primary healthcare, and combined with potential psychosocial problems as a result of lack of counselling available to deal with unresolved grief issues, children orphaned by AIDS who are living and working on the streets are very vulnerable to infection. This vulnerability may be exacerbated by substance abuse which is likely to contribute to them engaging high-risk sexual activity as well as potentially putting them in direct conflict with the law.

²⁴ See e.g. Human Rights Watch, *In the Shadow of Death*, 2001, p.4.

²⁵ *Ibid.* See also 2003 report, Policy Paralysis: A Call for Action on HIV/AIDS-Related Human Rights Abuses Against Women and Girls in Africa

²⁶ Human Rights Watch interview with Eric Ngoma, Tasintha program manager, Lusaka, Zambia, May 23, 2002, cited in Human Rights Watch, *In the Shadow of Death*, 2001.

²⁷ Human Rights Watch interview with Clemire Karamira, MAPODE, Lusaka, May 20, 2002, cited in *ibid.*

case of children orphaned by AIDS who are living and working on the street, the same issues relating to ruptured family links will apply.

B) BEHAVIOUR AND SURVIVAL STRATEGIES ON THE STREETS

Having examined some of the key factors that bring children onto the streets and into conflict with the law in the first place, this section will examine four examples of behaviours or survival strategies that girls and boys may engage in whilst on the streets that may further compound their vulnerability to contact with the criminal justice system and negative treatment once within the system.

B.1 'VAGRANCY'

Maybe you have not done anything – just loitering – you are put in a car boot or a lorry with the prostitutes, drunkards, murderers and 'all the nonsense' that have been collected that night, then they drive you around for a long time, go to police station, accuse you of sniffing glue, bhang – even they pour alcohol on you – then you are put in the cell with the others and put to sleep in a nasty place and beaten by police and others in the cell. (KENYA) ²⁸

One of the most common legal provisions discriminating against street children is the legacy of outdated 'vagrancy' legislation left over from colonial times. As an illustration, a study in Bombay reported that an astounding 74.6% of children sent to remand homes were on charges of 'vagrancy' or 'suspicion'.²⁹

Huge numbers of children are being arrested and locked up simply for being poor and in the wrong place at the wrong time. 'Vagrancy' provisions criminalize poverty and demonstrate the confusion between social welfare and criminal justice systems as detention orders are often framed as 'safe custody' or 'protective custody orders'. As the testimony of children will show in Chapter 6, such detention is rarely 'safe' or 'protective'. The international human rights community calls for an immediate decriminalisation of 'vagrancy' as well as status offences such as truancy and running away from home. Street children may be arrested on the grounds of 'vagrancy' either individually, in small groups, or in larger numbers as part of more systematic 'round-ups' or 'street sweeps' which are considered separately, in chapter 6.

Progress has been made in some countries such as **Uganda** where being a 'rogue' or 'vagabond' have now been decriminalised under the Children's Statute³⁰ (although this doesn't seem to have had much of an impact on the ground as demonstrated by the current government policy of routinely rounding up street children).³¹ Likewise, in the case of Nigeria, although the government declared an amendment to the relevant sections of the Criminal Code in 1989, deeming it unconstitutional for the police to arrest anyone for "wandering",³² the police still conduct raids and street children are still being arrested simply for being poor.³³

28 Boy participant, National Workshop on Street Children and juvenile justice, Nairobi, Kenya, 6-7 March 2003.

29 Human Rights Watch, *Police Abuse and Killings of Street Children in India*, November 1996, p.14, referring to UNICEF / India Ministry of Labour research.

30 Petty, C. and Brown, M. (eds), *Justice for Children*, 1998, p.39.

31 Information from the Inter NGO Forum for Street Children, Kampala, May 2004. This issue is featured as a case study in Chapter 6.

32 Amendment to the Criminal Code through the Minor Offences (Miscellaneous Provisions) Act No. 29 of 1989, now Cap 230 Laws of Nigeria, 1990.

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

Case study

CURFEWS AND THE ANTI-VAGRANCY LAW IN THE PHILIPPINES



I was caught because of the curfew.

I went to a girlfriend.

I helped peel and slice vegetables. I did not notice the time.

The police drove by, I ran and I was caught.”

“I was signalling a truck to move backwards when a patrol came by. I was arrested because it was already curfew hours.

I forgot that it was already curfew hours.

(DENNIS, AGED 17, AND DENCIO, DAVAO CITY, JULY 2002)



As part of the intensified anti-crime campaign waged by President Gloria Macapagal-Arroyo in early 2003, the Philippine National Police revealed plans to explore the possibility of talking with the seventeen city and municipal mayors of Metro Manila to implement a ban on under-18s on the streets at night. Strict curfew laws have been implemented in the cities of Olongapo, Davao, and General Santos. In 2002, the cities of Manila and Marikina imposed a nightly curfew on children, and police officials said that crime incidents in these two cities had dropped significantly following the implementation of the curfew. On the other hand, it has been noted that a problem arises in areas where “there are no existing drop-in and processing centres because children arrested during night time are placed in jails together with other adult inmates.” Furthermore, abuses by law enforcers have been documented. In many cases, the children were just victims of circumstances. Apparently, policemen fail to explain to children the reason why they had been arrested, particularly for violating the Anti-Vagrancy Law. The logic for the imposition of the Anti-Vagrancy Law stemmed from the need to protect children from the perils of the street at night. Furthermore, the Revised Penal Code considers vagrancy as an offence.

One participant to the National Capital Region Regional Workshop, during the sentence completion exercise, readily identified the incumbent mayor of the City of Manila as one of the persons he disliked: “Because he has us arrested” was the child’s reply.

Notwithstanding a particular government’s or community’s support for anti-vagrancy laws and campaigns and the perceived “merits” of such moves in combating crime, the international human rights community lobbies strongly against outdated legislation such as anti-vagrancy laws, under which, children are being arrested simply for being on the streets due to a lack of social safety nets.³⁴

B.2 SUBSTANCE ABUSE



First case [arrest], I was at a shabu [amphetamines] session. The police caught us. Second case, I was high on marijuana. I hit two people who were on a date. The police had caught me and they saw that I had some marijuana in my pocket. Third case, we stole a fighting cock. Fourth case, I stole a watch from my grandmother, and some money many times. I did not know that she had already filed a complaint and that there was already a warrant of arrest. Once, I came home, the police arrested me. I did it because of my addiction to drugs. (PHILIPPINES)³⁵



³⁴ UP CIDS PST, *Painted Gray Faces*, 2003, pp.88-89.

³⁵ Donald, aged 17, a participant to the workshop in Mindanao, July 2002, quoted in *ibid*, p.80.

On the understanding that substance abuse is linked to individual choice (albeit a 'limited' or a 'non'-choice as discussed previously), street children in many countries nevertheless abuse substances for a number of reasons, for example:

- to quell hunger;
- for escapism / to anaesthetise physical or emotional pain;
- as part of peer bonding activities linked to friendship and street gang culture;
- to keep street-living children awake for work and / or alert to possible violence;
- to facilitate sleep during the cold nights.

In many countries street children sniff glue due to its low cost and easy availability and this may be mixed with other substances such as petrol, as is the case in Kenya. Other substances used by street children include alcohol, tobacco, marijuana and, in some places, crack, amphetamines, cough syrups containing alcohol and/or codine, black market prescription pain medications and opium. Cocaine and heroine are generally less common due to prohibitively high prices.

I've been living on the streets for the past 5 years...I've tried just about everything: glue, marijuana, crack, hard liquor and cigarettes. Now I just sniff glue. I do it because I feel very sad. I feel like I'm really alone. I don't want to live on the streets. I've already suffered a lot and I'm only 15 years old. (NICARAGUA)³⁷

The types of substances used by street children vary greatly, influenced by local circumstances, availability, cultural practices and geography (some countries / areas that lie in processing regions and/or along trafficking routes are particularly badly affected by high levels of drug abuse) and this list is in no way exhaustive or attributable to all countries.³⁸ However, substance abuse is yet another risk factor that is likely to bring street children into contact with the criminal justice system for the following reasons:

- **The practice of using drugs is, in itself, usually criminalized:** As reported in 2001, offences in Brazil involving adolescents with drugs make up about 70% of all offences. Whereas middle class young people who consume drugs are considered in the context of a medical approach, young people from the lower classes who sell drugs are seen purely as criminals. This has led to a huge process of criminalisation of poor young people who overpopulate institutions for adolescent offenders. **(Brazil)³⁹**
- **Selling, trafficking drugs or acting as couriers as part of gangs:**

Because of the gang, I peddled shabu [amphetamines] and when the pushers I knew no longer liked me, I was sold out to the authorities. I was framed, so when the police conducted a raid, I was caught. (PHILIPPINES)⁴⁰

³⁷ Marilin, 'Voices of Nicaragua', taken from Radio Netherlands website, www.rnw.nl/humanrights/html/stories3.html

³⁸ For example, an example of another substance abused in Romania is *Aurolac*, a paint thinner that is cheap and easy to obtain, but also very addictive and damaging. However, despite cost implication already mentioned, more recent reports suggest that heroin is becoming more common among street children in Romania, also increasing the risk of HIV/AIDS through groups of children sharing needles to inject. (Sinagra, L., 'Beneath Bucharest', City Pages.Com, 7 July 2001.

- **Committing crimes such as theft in order to satisfy addiction:** "Addiction to glue sniffing is making street children more dependent on substances. This dependency is resulting in an increase in street children carrying out petty thefts. This trend, in the course of time, will lead children to ever more violent and unsocial activities." **(Nepal)⁴¹**

BB *Crack puts you crazy, like you're flying, and then when you come down, it'll make you do anything to get another fix, even rob your neighbours, your friends, your own family even... it's not like marijuana, which just makes you feel at ease with everybody... (NICARAGUA)⁴²*

- **Crimes involving violence may be committed under the influence of drugs:**

BB *It makes the user more aggressive... this drug, crack, it makes you really violent, I tell you... when I smoke up and somebody insults me, I immediately want to kill them, to get a machete and do them in, to defend myself... I don't stop and think, talk to them, ask them why or whatever... all I want to do is kill them... it's the drug, I tell you, that's where the violence comes from. (NICARAGUA)⁴³*

In terms of treatment in detention, drug addiction and/or withdrawal makes young people more vulnerable to exploitation (sexual abuse, recruitment for criminal activities, recruitment as informers, giving coerced testimony, etc.) by guards or other detainees who may have access to drugs. Also, for street children who engage in substance abuse, this can provide yet another weapon in the police arsenal with which to inflict abuse and humiliation. For example, according to one 15-year-old boy in **Guatemala**:

BB *The police treat us badly. [...] They also take our paint thinner and pour it over our heads. They've done that to me five times. It's awful, it hurts really bad. It gets in your eyes and burns; for half an hour you can't see anything. (GUATEMALA)⁴⁴*

In this case, in addition to the pain caused, and the added distress a drug addict might feel at being deprived of his or her 'stash' there may be an element of the police wanting to 'teach the drug user a lesson.'

Even if particular street children are not actually involved in substance abuse, they are often assumed to be. Populist perceptions that all street children are drug addicts have further restricted their access to basic services, while rendering them more susceptible to verbal abuse and humiliation at the hands of the public and police, regardless of whether not they are actually abusing substances:

BB *If you get sick on the streets, the big people take you to the hospital but sometimes people don't pay attention to you – 'no, I'm not giving you money because you will spend it on glue...' It's really hurting to the other guys. There's nothing you can do about it. (KENYA)⁴⁵*



GUATEMALA: street boy inhaling glue, Guatemala City. © Richard Hanson/The Toybox Charity

39 São Martinho, *No Mundo da Rua: Alternativas à Aplicação de Medidas Sócio-Educativas*, 2001, pp.48 and 55.

40 Child participant in the National Children's Workshop, August 2002, quoted in UP CIDS PST, *Painted Gray Faces*, 2003, p.83.

41 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, pp. 8-9.

42 Quoted in Rodgers, D. (2002) *'We live in a State of Siege' – Violence, Crime and Gangs in Post-Conflict Urban Nicaragua*, Development Studies Institute, London School of Economics and Political Science, September 2002. Crack began to supplant marijuana and glue as drug of choice in Nicaragua from around mid-1999, rapidly spreading to such an extent that today it is omnipresent. This shift has also been accompanied by a dramatic increase in violent crime on the streets, largely due, it would appear, to the increased 'high' that crack offers its users.

43 *Ibid.*

44 Interview with Beto, Guatemala City, 3 September 1996, quoted in Human Rights Watch, *Guatemala's Forgotten Children*, 1997, pp.22-23.

45 Child participants at the National Workshop on Street Children and Juvenile Justice, Nairobi, Kenya, March 2003, quoted in CSC, *Street Children and Juvenile Justice in Kenya*, 2004.

Nobody in the society respects you or wants to see you. The drivers wind up the windows of the car and when you beg, the passers-by will just ignore you because of this song that was sung: 'woi woi chokora usiwape pesa za kununua gamu' ('gosh gosh, don't give the streets kids money 'cos it's for buying glue'). They fear that they want money for glue or want to steal their hubcaps. They don't want to associate with you or touch you." (KENYA)⁴⁵

All of us were girls. We got jailed in February 20, 2001 because of failing to observe the curfew. We came from a birthday party. The policemen were very rude towards us and they accused us of using [glue]. They took photographs of us with some glue in our possession even if we never had any. We cleaned the toilet and they cut our hair. (PHILIPPINES)⁴⁶

This negative perception can be further reinforced by discrimination based on other factors, such as in cases where the children come from ethnic minorities. For example, in **Bulgaria**: "Many of the children are addicted to glue or liquid bronze which they inhale from plastic bags. A fourteen-year-old boy told Human Rights Watch, 'the best part of living on the street is the glue. I haven't eaten in two days because I'm not hungry. The glue makes me feel that way'. As a result, street children are viewed by police and private citizens as criminals. Their Roma identity further reinforces this image."⁴⁷

In addition to substance abuse being yet another a risk factor in relation to street children's contact with, and treatment within, the criminal justice system, it is also worth mentioning that valuable opportunities for counselling and therapy are being wasted throughout the system. Medical and counselling services in detention are generally poor or non-existent. For example, in **India**: "Drug abuse and smoking in boys' homes is another major problem. Instead of sensitizing and educating these boys regarding the harmful effects of drugs, and motivating them to go in for de-addiction, the staff penalizes and ridicules them."⁴⁸ There is a general failure to provide the necessary educational and rehabilitative programmes required to break the drug-crime cycle at any of the key stages of the system: prevention, diversion or alternatives to detention. This helps to perpetuate the 'revolving door' experiences of many street children on the streets and in detention. For example, in **Guatemala**, "there is no detection of psychological issues, no treatment for drug withdrawal, and no programmes for drug addiction. When the children are released in six or twelve months, they haven't been helped. They go out, and they get back on drugs."⁴⁹ Furthermore, lack of treatment for withdrawal can be particularly agonizing for children facing short term detention.

Without specific services targeted at substance abusers, it is likely that reform efforts will be severely hampered. This is especially true given the immense challenges of working with street children who suffer from addictions: substance abuse interferes with their ability to engage in the 'choice' process that is key to interventions with street children (identifying the choices the child has already made, expanding the choices available to them and empowering the child to make those choices).

⁴⁶ Roxanne, aged 16, quoted in UP CIDS PST, *Painted Gray Faces*, 2003, p.108.

⁴⁷ Human Rights Watch, *Children of Bulgaria: Police Violence and Arbitrary Confinement*, September 1996, p.3.

⁴⁸ Tandon, S.L., 'Fettered Young: Children in Conflict with the Law and Children in Prisons' in *Butterflies, My Name is Today*, 2003, p.14.

⁴⁹ 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.72.

B.3 INVOLVEMENT / COERCION IN ADULT CRIMINAL ACTIVITY

My Grandmother is in her 70s. She's been feeding us out of her pension money. She always said to me, 'My boy, don't steal.' But these two men asked me to steal with them. They told me, 'If you steal for us we will clothe and feed you.' I said 'No', but they then said, 'Then we'll kill you and bury you.' So that's why I started to steal for them. (MONGOLIA)⁵⁰

In line with the 'choice' paradigm established previously in this report, street children – dependent on their individual risk and protective factors amongst other things – may choose to become involved in adult criminal activity (as a result of free choice or limited choice), or they may be forced or coerced (as a result of non-choice). Street children are particularly useful to adult criminals for the following reasons:

- **They are small enough to climb through windows and small spaces to assist in burglaries, and they are nimble enough to pick-pocket successfully:**

"I go inside a house first by opening the window in order for the other gang members to go inside and cart away all the things from the house." (Philippines)⁵¹

- **There is a plentiful supply of street children desperate enough** (especially if they need money or drugs to support drug habits) to undertake unpleasant or dangerous tasks that adult criminals may be unwilling to perform, – e.g. as 'ants' in cross-border trafficking.⁵²
- **They are easily threatened and controlled** by using a combination of 'carrot and stick' approaches –i.e. through violence and intimidation offset with 'protection' and/or small gifts of food or drugs: e.g. one boy found himself living in the company of a man who promised to take care of him for as long as he followed everything the man asked him to do

... because if I don't, he's going to beat me up. He also asked me to steal a pair of trousers. He also bought solvent for me. (PHILIPPINES)⁵³

- **They are expendable and can be easily sacrificed** (even killed) or used as scapegoats when an operation goes wrong: e.g. reportedly, street children who are being used as drug couriers and as accomplices to car-theft rings are killed when they learn too much or otherwise become a liability. (Guatemala)⁵⁴
- **They may be deliberately chosen for being under the age of criminal responsibility** and are thus (theoretically) exempt from prosecution if caught (see Brazil case study below).
- **They are ideally placed to sell drugs amongst their peers.**

The activities they commonly perform include theft (burglary, petty theft and pick-pocketing), commercial sexual exploitation, organised begging and drug vending / trafficking / general 'gopher' jobs for drug gangs. If a street child is arrested along with an adult, they run the risk of being detained and tried alongside them as adults, rather than being processed as a child. Involvement or coercion in adult criminal gangs may take place on an individual level, or in small groups, or as part of a more structured, organised criminal gang, syndicate or trafficking ring, as illustrated by the following examples. The issue of street gangs is discussed in more detail below.

⁵⁰ At the time of this interview, Enkbater had been in cells for 4 months without appearing in court. Footage from Blewett, K. and Woods, B., *Kids Behind Bars* [film], True Vision productions, 2001.

⁵¹ 12-year-old participant at the Manila Street Children's Workshop on Street Children and Juvenile Justice, quoted in UP CIDS PST, *Painted Gray Faces*, 2003, p.83.

⁵² For example in Romania: "Street children, former prisoners and rootless adolescents leaving state institutions have easily been recruited in the fringes of [...] expanding corrupt activities: as 'ants' for carrying cross-border illicit consignments; as drug dealers to their peers; and as members of organised begging or prostitution rings", Giles, Prof. G.W., *Turbulent Transitions*, 2002, p.148.

⁵³ A participant to the First Metro Manila Street Children's Conference in 1990, cited in UP CIDS PST, *Painted Gray Faces*, 2003, p.3.

⁵⁴ Human Rights Watch, *Guatemala's Forgotten Children*, 1997, p.18.

Case study

“ Ensnared Young: School dropouts and runaway children on the streets are soft targets for adult criminals on the lookout for new recruits to their gangs – INDIA⁵⁵ ”

“When Jeetu and Dinesh, two nine-year-olds, were arrested by the Government Railway Police and booked for pick-pocketing at the Patna Junction, their insistent plea was that they were not thieves, but were forced into crime by a local criminal, Raju Sharma. According to Dinesh, Raju caught hold of him one evening and took him forcibly to his hide-out. Here, Raju threatened him with dire consequences if he defied his orders to pick the pockets of railway passengers. This marked the beginning of Dinesh’s nightmarish journey. In a few days, Dinesh roped in his cousin, Jeetu. Both came from poor slum families. Taking advantage of the confusion at the entry points to compartments, the boys would steal passengers’ wallets when they were alighting or boarding trains. Once, Raju even threatened to throw Jeetu off a running train when he failed to pick a single pocket on a particular day. According to the police, Raju had several young recruits like Jeetu and Dinesh working for him.”

Case study

DEHUMANISATION AND BRUTALITY AT THE HANDS OF MAFIAS - PAKISTAN⁵⁶

“Many economic activities of the street children are controlled by “territories” which are guarded by members or gangs. A number of these children are terrorized by such gangs and they end up working for them to sell drugs or steal. According to the Director of the Human Rights Commission of Pakistan, “There are certain mafias who take the children on the street and exploit them.” “They are the mafias who run begging rings, child prostitution rings.” In a report into gang activity on the streets of Pakistan, the Commission found such practices were worryingly widespread. In Sheikhpura, in the Punjab province, one such gang would kidnap young children from the street, break their legs or arms and let the bones reset crooked, and then send them back into the streets to beg. Any alms collected would then be handed over at the end of the day under the threat of beating. Another gang was traced to Multan, also in Punjab, where kidnapped boys between 10 and 14 years were castrated and then sold to the circus and stage shows for entertainment.”

Case study

STREET CHILDREN AND THE DRUG TRADE - BRAZIL⁵⁷

Under the Statute of the Child and Adolescent (ECA), unlike adults, children under 18 can only be held in the juvenile detention system for a maximum of three years and this therefore makes them ideal couriers for drug gangs. “But they are often killed because they know too much, steal too much, or get caught in the crossfire. The hierarchy of the favela drug trade is a vertical one, and children are recruited into the lowest level, serving primarily as lookouts. They progress to running errands for the hillside dealers, and if they are successful, they begin delivering drugs to customers. Survivors from these operations may become armed ‘controllers’ (security guards who protect the operation and proceeds of drug transactions). Finally, there are the corporate levels of the local drug business, but few children ever last that long. Most die while they are still at the lower end of the hierarchy. When a hillside dealer is dissatisfied with a child’s work, or decides that the youth is dangerous as a witness, he or she is simply killed. And altogether, it is estimated that as many as four to five street children are murdered each day throughout Brazil, and two each day in Rio de Janeiro alone.”

⁵⁵ ‘Innocence behind the bars’, The Hindustan Times, Patna, India, 5 October 1999, reproduced in Tandon, S.L., ‘Fettered Young’, 2003, p.11.

⁵⁶ Gannon, K., ‘Few Look out for Street Children’, Associated Press, 20 April 2000, cited in AMAL Human Development Network and Consortium for Street Children, Street Children and Juvenile Justice in Pakistan, February 2004.

⁵⁷ 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, p.11.

B.4 STREET GANGS

As already shown above in the sections on substance abuse and involvement / coercion in adult criminal activity, street children's involvement in 'gangs' is often associated with criminal behaviour. However, it is extremely important to understand that the nature of gang activity varies greatly on a case by case basis. Just as it can be one of the main risk factors in an individual child's experience of crime, it can also be one of the main protective factors, depending on the nature of the gang, the character of the leader, the local environment, the extent and type of substance abuse engaged in and so on.

There was a gang war everyday. I did not want to join because I feared that I might die. One of my companions was raped. Her belly was sliced open. She was murdered. I was forced [to join the group]. They slapped me and I cried. (PHILIPPINES)⁵⁸

Street children join gangs in response to social exclusion, loneliness and the need for protection, in a society that has failed to provide them with their basic physical and emotional needs.⁵⁹ In many countries it is a key coping strategy for survival in a hostile environment and the negative aspects of gang involvement must therefore be balanced against the positive ones. Negative aspects include violence (to maintain discipline and assert authority within the hierarchy of the gang as well as taking the form of inter-gang violence),⁶⁰ introduction to substance abuse and potential for increased criminal behaviour. On the other hand, positive aspects of gang involvement include mutual protection from outside threats, a sense of belonging, security and pride (often gained through undergoing harsh initiation rites), friendship and emotional and financial support (gang members may often share resources).

Fundamentally we are friends who hang out together. We started this gang about five years ago to protect ourselves from other gangs. (NICARAGUA)⁶¹

The need for a case by case approach is illustrated in the example of street children in **Angola** cited earlier (in the section on urbanization) which shows how one NGO in Luanda has identified two distinct types of male gangs operating in the same city: type 1 are the relatively stable groups that are heavily integrated into the local economy and have self-imposed codes of conduct that forbid stealing in their area so as not to upset the balance of the mutually-respectful relationships they have developed with local community members; type 2 are less stable, more crime-prone groups.⁶²

Similarly, in the Philippines, the associations that street children form with their peers are often described by the term 'barkada' - a colloquial Filipino word with both positive and negative connotations which can be translated as "friend/s, gang, gangmates, peers, peer group, buddy/buddies, colleagues, and companion/s."⁶³ Just as this term has both positive and negative connotations, the link between gang membership and crime is inconclusive in the Philippines: results of studies vary, suggesting that the commission of crimes does not necessarily mean that the children in question are part of a gang. Different studies in the Philippines indicate that statistics for gang membership amongst children in conflict with the law range from 18.2% to 40.9%. Therefore in the Philippines, at least, whether gang membership is a contributory factor to the commission of an offence or not, may depend on the individual experience of the child.⁶⁴ This brings us back once again to the importance of an individualized approach to street children.



PHILIPPINES: Girl drawing a picture to illustrate the positive and negative aspects of gangs / peer groups at the Regional Community Based Workshop, Mindanao Region, 12-14 July 2002, organised by Tambayan as part of the CSC Street Children and Juvenile Justice Project.

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⁵⁸ 10-year old Jasmine, participant at the workshop in Mindanao, Philippines, July 2002, quoted in UP CIDS PST, *Painted Gray Faces*, 2003, p.73.

⁵⁹ Wernham, M., *Background Paper on Street Children and Violence*, Consortium for Street Children, updated 16 November 2001.

⁶⁰ *Ibid.*

⁶¹ Kocic, M. (2003) 'Help for Nicaragua's Violent Slums', International Federation of Red Cross and Red Crescent Societies News, 18 September 2003. <http://www.ifrc.org/docs/news/03/03091801/>, cited in Casa Alianza Nicaragua and Consortium for Street Children, *Street Children and Juvenile Justice in Nicaragua*, February 2004.

⁶² Petty, C. and Brown, M. (eds), *Justice for Children*, 1998, p.65.

⁶³ UP CIDS PST, *Painted Gray Faces*, 2003, p.13.

⁶⁴ *Ibid.*, pp.24 and 149.

The importance of gangs or peer groups as support structures for street children should not be underestimated: in the context of the criminal justice system, the potential to capitalize on the positive aspects of gangs, and minimize the negative aspects as much as possible, is key to the relationship-building that needs to underpin prevention as well as diversion efforts. "For the social worker attempting to establish contact with street children, the leader is [...] the key-element for approaching the group, and will often control the extent to which group members access or take advantage of external interventions."⁶⁵

Case study

THE GROWTH OF STREET GANGS IN NICARAGUA ⁶⁶

An important feature of street life in Nicaragua and other countries in Central America is the increasing emergence of street gangs. According to one newspaper article from May 2003, "The influence of US gang culture is evident in poor neighbourhoods or barrios across Central America," with over 100 different gangs estimated to operate in Managua, the capital of Nicaragua.⁶⁷ Membership in these groups has offered many from the poorer communities a way to fit into the new realities of post-conflict Nicaragua. As one Red Cross worker put it, "If home life is tough, children will look outside the home to get the love and support they need. Look around, you will see all these young kids hanging around the older gang members. They are the role models."⁶⁸

Many gang members agree: "Fundamentally we are friends who hang out together..." explains the leader of one, "We started this gang about five years ago to protect ourselves from other gangs." Most gangs are male only, and often act as the informal leaders of marginalized communities, while others develop into criminal groups and commit a range of offences from kidnapping to violent armed robberies to pay for deep-rooted drug addictions. Gangs will often cross each other in the fight for territory, sometimes for a few city blocks or a football field. Their weapons range from primitive sticks and knives, to home-made 'zip' guns, to AK-47 assault rifles and fragmentation grenades.⁶⁹ There is an unofficial curfew restricting many parts of Managua at night and 40,000 gang members were arrested in 2001 alone.⁷⁰

The official response to street gangs in Nicaragua has been a mix of repression and attempts to open a dialogue with gangs and young people, and in Managua police have set up 'prevention committees' to visit gang members and their families. The organisation Ceprev has also worked with more than 3,000 bandilleros (gang members) over the past six years in one district of Managua with the aim of improving their relations with their families. Its director, Monica Zalaquette, says: "The problem is not economic poverty, it is the poverty of our family culture - that's what we have to change."⁷¹ The widespread lack of services is also a contributing factor according to Bruce Harris of Casa Alianza: "For years, the authorities have left young people without hope, without access to school or jobs and the only governmental response to youth dissent has been repression. We have forced the kids to the extremes of society and they have responded with violence. Gangs can no longer be ignored, especially if we want to live in peace."⁷²

⁶⁵ European Network on Street Children Worldwide, http://www.enscw.org/eng/satellite/country_salvati_copii.htm with reference to the group dynamics of street children in Romania.

⁶⁶ Taken from CAN / CSC, Street Children and Juvenile Justice in Nicaragua, 2004.

⁶⁷ Widdicombe, R. & D. Campbell (2003) 'Poor Neighbours Fall Prey to US Gang Culture', The Guardian, 27 May 2003.

⁶⁸ Kokić, M. (2003) 'Help for Nicaragua's Violent Slums', International Federation of Red Cross and Red Crescent Societies News, 18 September 2003. /

⁶⁹ Ibid.

⁷⁰ Widdicombe, R. & D. Campbell (2003) 'Poor Neighbours Fall Prey to US Gang Culture', The Guardian, 27 May 2003.

⁷¹ Ibid.

⁷² Ibid.

Chapter summary

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

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

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



PHILIPPINES: Taking part in activities at the Regional Community Based Workshop, Mindanao Region, 12-14 July 2002, organised by Tambayan as part of the CSC Street Children and Juvenile Justice Project.

5

HOW DOES IT ALL WORK? PROCESS AND ACTORS

Chapter overview

- Explains, with the aid of illustrations, the **different stages of the criminal justice system** through which street children pass and how the process as it stands in many countries is comparable to a **'revolving door'** which 'recycles' children from the streets into detention and then back onto the streets again and again, often leaving them worse off than they were before.
- Maps out the key **actors in the 'five pillars' of the juvenile justice system** (law enforcement, prosecution, courts, correction and community) and calls for an assessment of ways in which we can:
 - Protect children from negative / harmful relationships as much as possible;
 - Assess to what extent some relationships between children and the formal justice system can be bypassed altogether;
 - Transform negative relationships into more positive ones;
 - Identify where children are falling through the nets of support altogether and build up positive 'safety nets' of relationships instead through sensitisation and collaboration.
- Introduces a **practical 'mapping exercise'** involving visual diagrams or a group of people and a ball of string (!) to map out these relationships in a particular local or national context.

STREET CHILDREN IN THE CRIMINAL JUSTICE SYSTEM – A REVOLVING DOOR

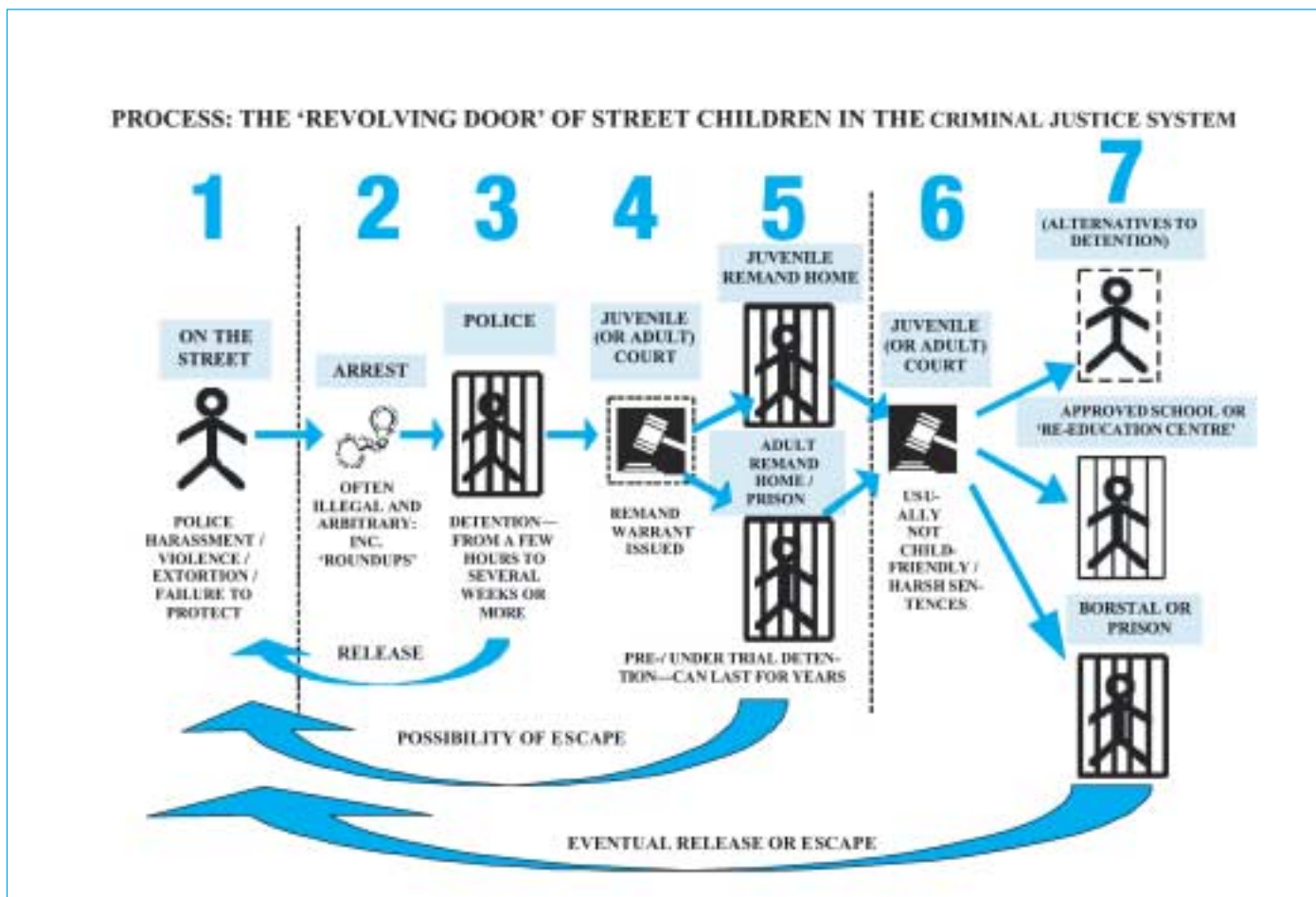
The diagram below shows a generalised / typical overview (based on experiences from many countries) of what happens to street children caught up in the criminal justice system in practice (as opposed to theory). The process is likened to ‘a revolving door’: however far the children enter into the system, without intervention, they are likely to end up back on the streets again where they started from – most likely even worse off than before, with *additional* mental, physical and sexual scarring to add to the existing catalogue of difficult experiences with which they must already cope.

Based on the first hand experiences of children who took part in the CSC project as well as secondary research from other countries, this diagram broadly represents the experience for street children in countries that have repressive justice systems, where reform of juvenile justice is either non-existent or in its infancy.

It is in no way intended to indicate that all countries are the same, nor to disregard the commendable efforts of civil society organisations and governments that are working towards more child-friendly options for the processing of children through the criminal justice system. These interventions will be discussed in detail in Chapter 7 which indicates key points for interventions needed to break the revolving door cycle of life on the streets or in detention, focusing on the stages of prevention, diversion and alternatives to detention.

Accompanying notes to diagram:

The following accompanying notes to the diagram give a brief overview of issues involved at each stage of the process. A more detailed insight based on the children’s own experiences is given in Chapter 6 on ‘Street children’s experiences in the injustice system.’ Although not all of the conditions mentioned here apply to every justice system, they are nevertheless common to many.



1 ON THE STREET

They see us as objects of torture. You want to practice boxing, you choose a child. You want to kick someone, you kick a street child because they are there. (KENYA)¹

Street children are particularly vulnerable to harassment, including threats, insults and physical and sexual abuse. This may be committed by both members of the public as well as police officers themselves. 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, by threatening arrest, to extort sexual favours or money from street children (CRC 34,36).

2 ARREST

Policemen often arrest us for sleeping under a bridge. (PHILIPPINES)²

Arrest may be with a warrant. For example if a particular child is suspected of having committed a crime, a judge may issue a warrant for their arrest as part of an ongoing investigation. However, by far the majority of arrests of street children are without a warrant. Depending on the legislation in place in a particular country, this type of arrest may be legal or illegal. For example, arrest without a warrant is permitted if the child is caught in the act of committing a crime (*in flagrante*). Contrary to international human rights standards (RG 56), 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. Furthermore, in some countries there are legal provisions for 'preventive arrest' – i.e. in order to stop someone suspected of being about to commit a crime. This form of arbitrary arrest violates international human rights law and is subject to misuse which particularly discriminates against street children. Illegal arrest is where street children are picked up by the police, either individually or in groups as part of 'round-ups', for no particular reason at all, or as 'scapegoats' for a crime which has been committed by someone else (CRC 376). 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 **Kenya**, for example, the street children complained particularly about being transported to the police station in car boots (trunks). In addition to the specific example from Kenya, abuses may occur more generally during transport between facilities (JDL 26) as children are likely be mixed with adult detainees, including convicted prisoners, or with much older children who may be from rival groups, or charged or convicted of serious crimes. The mode of transportation itself may be unsafe, lack adequate ventilation or expose children to extreme heat or cold, or entail hours of travel without food or toilet breaks. This applies not only to the stage following arrest, but also at other stages where transportation is necessary.

¹ Susan, child participant, National Workshop on Street Children and Juvenile Justice, Nairobi, Kenya, 6-7 March 2003.

² Eugene, aged 15, child participant, Street Children and Juvenile Justice Project, Philippines.

³ Participants in the National Street Children Workshop, Nairobi, Kenya, 22 February 2003.

3 POLICE CELLS

In the cells, there's no good meal. It's bad meal. It's a cup of tea but it's called breakfast by name, but it's not really breakfast... It tastes like it is for cows, but not for a living being". "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. (KENYA)³

Following arrest, the children are taken to the police station where abuse is rampant. Violence, intimidation, torture, forced confessions, false accusations, exploitation (e.g. children being made to clean the toilets or run errands), extortion, inhumane conditions (including lack of food or water, overcrowding, no bedding or toilet facilities, poor light and temperature extremes) and mixing of children with adults are frighteningly commonplace (CRC 3.3, JDL 31-37, BJ 13.5, 24, 26.2, 34, 19, 37a). Even if children are detained separately from adults they are frequently not adequately separated from child detainees of significantly different ages or criminal statuses. Girls are especially likely to be held with adults and to be inadequately separated from other categories of children because there are often insufficient facilities for detaining girls. Girls and boys may be beaten up or sexually abused (CRC 19, 34), have their money stolen (to 'teach them a lesson') and released straight away, or they may be held for longer (usually exceeding the period of time legislated for) pending transfer to a remand home or other place of detention. Parents or guardians (including social welfare officers in cases where guardians cannot be traced) are frequently not informed of the situation (CRC 40.2bii, BJ 7.1, 10.1) and the assistance of a lawyer is the exception rather than the rule (CRC 37d, JDL 18a, BJ15.1, 24, VG16).

In some cases at this stage children go to prosecution offices for investigation and possible referral to court. Most countries require such a step within 24 to 48 hours of detention (in some countries a trip to a judge serves the same purpose). However, street children are often held for longer periods of time before having their detention reviewed, and in some systems are frequently released to the street or to the police for return to their families after having gone to the prosecution office but without having seen a judge. In such systems this is the stage where the prosecutor should investigate cases of abuse in custody, but this rarely happens with street children.

4 *I did not know what is happening in the case filed against me because I wasn't even brought to court. (PHILIPPINES)⁴*

The child may or may not be taken to court in person at this stage for the purposes of the authorities securing a 'remand warrant' from the judge (legal permission to further detain an individual pending hearing of the case). If they are, then – once again – legal representation for the child is very unlikely. See stage 6 for further details about courts.

5 *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." "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. (PAKISTAN)⁵*

Following issue of a remand warrant (or occasionally without, in cases where children are transferred directly from the police station to the remand home with no regard for due process) the child is then transferred to a remand home (place of temporary detention for those accused of a crime pending outcome at trial). The remand home may be a specific 'juvenile remand home' or it may be for adults, with or without a separate wing for children. In fewer cases, often depending on the proximity of institutions, they may be transferred into an adult prison (again, with or without a

4 JUVENILE (OR ADULT COURT)



5

5 REMAND HOME OR ADULT PRISON



⁴ Simeon, aged 15, child participant, Street Children and Juvenile Justice Project, Philippines.

⁵ Child participants, Street Children and Juvenile Justice Project, Pakistan, cited in AMAL Human Development Network and Consortium for Street Children, *Street Children and Juvenile Justice in Pakistan*, February 2004.

separate children's wing). Due to widespread lack of birth certificates and identity documents (CRC 7, JDL 79-80, VG 12) it is quite common for children to be registered as being older than they really are. This is either for the malicious purpose of having them subjected to harsher sentencing as adults, or – bizarrely – the opposite where, in some cases due to legislative anomalies, it may be in the best interests of the child for them to be processed as an adult.

At this stage, the child spends an extraordinary amount of time in often appalling conditions of detention ranging from weeks to years pending the outcome from a trial or hearing (JDL 17, BJ 14.1, 20). In spite of gradual improvements in this area in some countries such as **Romania**, delays at this stage are commonplace in many other countries due to bureaucracy, ineptitude, lack of transport, mistakes, lack of communication between actors in the system and because nobody cares about what is happening to these children: they have limited or no contact with responsible adults who are able to plead their case – or who are rich enough to pay bribes to speed up the process. Once again girls are especially likely to be detained with adults or in otherwise inappropriate circumstances due to a lack of sufficient facilities for girls. In addition, placement in facilities located at a distance from a child's home area decreases the chances that family and community links may be regularly maintained. Children may be encouraged to plead guilty, regardless of whether or not they have committed the offence with which they are charged, simply in order to speed up the process. Conditions are usually very poor in terms of quality and quantity of food, sleeping arrangements, overcrowding, poor hygiene, abuse and violence, exploitative labour (CRC 32), lack of (or poor) education (CRC 28, 29, JDLS 18b, 38-46, RG 20-31), recreational facilities (CRC 31, JDLS, 18c, 32, 47), psychological support and health services. None of the children at this stage have been found guilty of committing a crime. Social welfare cases (children in need of care and protection) are freely mixed with children accused of committing crimes. In many cases staff are doing their best with limited resources, but in only very few cases do children prefer the conditions here to life on the streets where at least they have their independence, their own social networks and the possibility of running away from abusers. In short, the situation in most cases is deplorable. Escape from such institutions is not uncommon.

6 JUVENILE (OR ADULT COURT)



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)⁶

In general, there are very few courts designated as 'juvenile courts' (VG 14d). Hearings are often held in an adult court. They may or may not be held on a separate day and/or in a separate room and/or with a magistrate or judge specifically trained on juvenile legislation. In many cases, even if the judge has a specialised knowledge of the national legislation relating to children, they may well not be trained on international human rights standards or sensitised to the specific needs and handling of children. Features of a 'child-friendly' courtroom include, amongst other things: informal setting – e.g. around a table rather than an intimidating 'bench' situation; officials not wearing wigs or black robes; proceedings in jargon-free, simple language that the child understands (VG11b); a qualified interpreter available if necessary (CRC 40.26vi, JDL 6); qualified and sensitised legal representation for the child; the child is given an opportunity to speak and ask questions (CRC 12.2, BJ 14.2). Experiences of the children at this stage were mixed, ranging from worst to best case scenarios. In most cases, even where a range of sentencing options is provided for in legislation, the most common method of disposal in the case of street children is some form of detention.

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

⁷ Participants in the National Street Children Workshop, Nairobi, Kenya, 22 February 2003.

If you come with possessions, you never keep them. The good ones the staff take. The bad ones stay there. You say you're sick and nobody cares. You're only given attention when you're on the verge of death. (KENYA)⁷

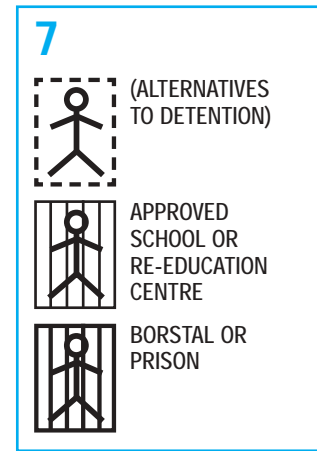
As previously highlighted, **alternatives to detention** are rarely implemented, even if they exist as legislative options at the discretion of the judge (CRC 40.36, BJ11, 17.1c, VG15). Street children are particularly discriminated against in this regard, either through prejudice, or due to their frequent lack of support structures which are necessary to implement many of the alternatives (e.g. release to the custody of a responsible parent or guardian, or payment of a fine).

The majority of street children end up in some form of detention, usually in institutions known as **'approved schools' or some form of 're-education centre'**. The objective of these institutions is supposedly the 'reform' or 'rehabilitation' of children through education and training, with varying degrees of freedom and access to the outside world. (They are nevertheless included under the overall heading of 'detention' as they are usually closed facilities). Although some of these institutions are run with the best of intentions and maintain good community links, lack of resources (human and financial) can still hamper efforts to provide the necessary care and protection for children. In the worst cases, they are little more than prisons. Most fall somewhere in between. The time spent here is determined by the court decision and can be renewed indefinitely in most cases, especially in 'care and protection' cases. Many children stay until the upper age limit (often 18).

Detention in **borstals (juvenile prisons) or adult prisons (with or without separate areas for children)** is a harsher sentence usually meted out for more serious crimes. Transfer from an approved school or re-education centre to borstal or prison may also be permitted in the case of children who are deemed by the authorities to be 'incorrigible.' In general there are fewer borstals in countries than regular prisons, so children are likely to be sent to an adult prison if it is nearer. In this case, even where there are separate facilities or sleeping areas for children, children often still have the opportunity to mix with adult criminals at meal times and during recreation. Yet again girls are especially likely to be detained with adults due to lack of facilities. Except in the cases of some approved schools, there is usually very little or no attempt to prepare children for life after detention and this can be exacerbated in cases where institutions are located far away from a child's family and community. After release, without the intervention of an NGO with residential facilities, children end up back on the streets, worse off than before. Often they will have come into contact with more hardened criminals, and are therefore better schooled in the art of committing crime. On the other hand, those who are innocent and have been wrongly imprisoned, or forced or coerced into admitting guilt, have no reason not to commit crime in future if the justice system fails to distinguish between guilty and innocent.

RELATIONSHIPS IN THE CRIMINAL JUSTICE SYSTEM: ARE STREET CHILDREN 'FALLING THROUGH THE NET', OR CARED FOR IN A NETWORK OF SUPPORT?

The experiences of street children in the criminal justice system are defined by the relationships they experience at each stage of the process described above. Due to the 'non-system' nature of the criminal justice system – i.e. the fact that it is made up of a number of separate, overlapping systems often with conflicting agendas – these relationships are very complex. The diagram on the following page represents an illustration of how these relationships most often fail to protect and support children. For simplicity, the actors have been grouped according to the 'five pillars of the criminal justice system'⁸: law enforcement, prosecution, courts, correction, and community.



⁸ Conceptualisation of the justice system in terms of 'five pillars' is widely used in the Philippines.

Relationships between street children and actors in each of the pillars, as well as across the different pillars of the system, may be positive, negative or neutral. For example, a street child may have a positive and supportive relationship with their family in the community, but a negative relationship with the police whereas the community might have a 'neutral' relationship / not be involved at all in the correction system. Unfortunately, due to widespread prejudice and criminalisation of street children, based on the experiences of street children related in Chapter 6, these relationships in many countries are more likely to be negative than positive. Furthermore, the stages of the system where street children are spending the most time – i.e. arrest, pre-/under trial detention and post-sentence detention – are also the stages characterised by the most negative relationships.

As outlined in Chapter 2, interventions in the priority areas of juvenile justice reform rely on building relationships that are supportive rather than abusive. For example:

- **Prevention** (of street migration, of first-time offending or of re-offending) depends not only on strengthening family, peer and community support networks but also on building relationship bridges between this level and macro-level decision makers who influence broader socio-economic policies;
- **Diversion programmes** depend on transforming bi-lateral and multi-lateral relationships between street children, police, social workers, community members, family etc.;
- **Alternatives to detention** depend on a street child's relationships and support networks being strong enough to produce an enabling environment to respond to their multiple needs.

The challenge is therefore to:

- **Protect children from negative / harmful relationships as much as possible** (e.g. separation of pre-/under-trial children from convicted children and from adults; development of children's own coping strategies to minimise peer bullying and abuse in the community);
- **Assess to what extent some relationships between children and the formal justice system can be bypassed altogether** (e.g. by minimising contact between street children and the police / prosecution / courts / detention centres through the development of prevention and diversion programmes and alternatives to detention);
- **Transform negative relationships into more positive ones** (e.g. through awareness raising, sensitisation and training of actors in each of the pillars; speeding up the processing of children through the system). In this context, 'positive' relationships can mean not only facilitating personnel to perform their job adequately, according to international standards (which would be more of a 'neutral', professional relationship), but also going further to proactively help children to develop to their fullest potential in the context of rehabilitation and reintegration. This process can be managed through a series of stages with intermediate goals.
- **Identify where children are falling through the nets of support altogether and build up positive 'safety nets' of relationships** (e.g. by the strengthening of links / improvement of communication between the various pillars (such as between the police and the courts); encouraging interaction amongst community actors (such as between children and shop keepers, families and teachers, academics and civil society organisations); improving advocacy from this level to that of decision makers in local and national government).

As previously outlined in Chapter 2, this can be achieved through:

- Sensitization** (working at the level of individual relationships) and
- Collaboration** (the multiplier effect of relationship building).

THE ROLE OF DIFFERENT ACTORS IN REFORM

This need for collaboration is further emphasized by an overview of the matrix of recommendations for reform outlined in Chapter 8 which are disaggregated according to different actors in the system from each of the five pillars:

- Government
- Police
- Lawyers & judiciary
- Social welfare
- Probation & correction
- Community, including NGOs
- Media
- Academics
- UN
- Donors

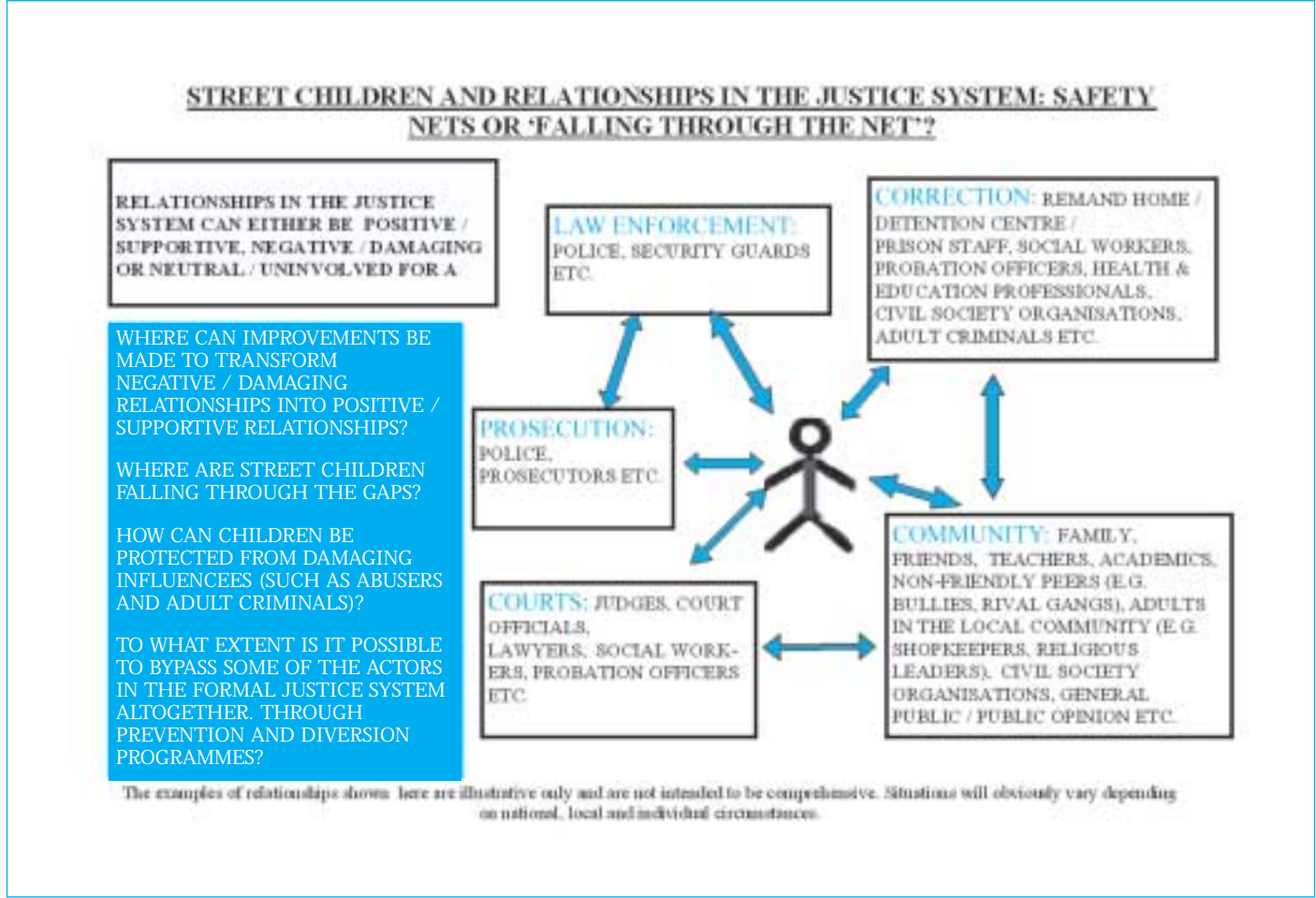
⁹ "National and State governments' responsibility should be to strengthen family and community structures and not necessarily take 'over the charge' of looking after children." Rita Panicker, Director, Butterflies, Delhi, India in response to a Consortium for Street Children questionnaire, January 2001.

¹⁰ Teresita Silva, Executive Director, Childhope Asia Philippines, speaking at the Consortium for Street Children International Workshop on Street Children and Juvenile Justice, 14-18 July 2003.

THE IMPORTANCE OF THE COMMUNITY

Furthermore, although every pillar is important, the findings from the CSC project emphasise the importance of the community above all.⁹ Without community strengthening, the priority areas of reform– i.e. prevention, diversion and alternatives to detention – are impossible to achieve: "It is impossible for civil society (community) to move towards helping a child without knowledge of the structure of society and the justice system; community must be an inherent part of focusing on the criminal justice system."¹⁰ The particular challenges that this raises in relation to street children, due to their experience of ruptured family relationships and the need to capitalise on their 'alternative' support systems such as peer groups, are addressed in Chapter 7.

The examples of relationships shown in the diagram are intended to be illustrative only and are by no means comprehensive. Situations will obviously vary depending on national, local and individual circumstances.



Practical tips

RELATIONSHIP MAPPING EXERCISE

Diagrams such as this can be adapted to reflect local or individual circumstances and can serve a variety of purposes for use by governments and civil society organisations. For example they can be used:

1 To analyse where systems are currently failing / where children are falling through the net. For example, are social workers talking to the police? Are NGOs involving the child's family and peers enough in programmes? Are remand home staff cooperating with probation officers or is this communication breakdown leading to delays in processing children's cases? Are judges providing children with a child-friendly space and opportunity to speak for themselves?

2 As a planning tool to transform negative and neutral relationships into positive ones and to identify (in consultation with children themselves) which relationships (i.e. with adult criminals, peer abusers etc.) can and should be cut out of the child's experience as much as possible, either through formulating strategies to limit the frequency or likelihood of contact, or – where contact is unavoidable – supporting children to develop and strengthen their own coping strategies in these circumstances. In an ideal world, through programmes that concentrate on prevention and diversion in the first place (by strengthening these relationships at family, household and community levels), it is ultimately preferable that children avoid contact with the formal criminal justice system altogether.

3 As part of individual or group counselling sessions with children themselves.

If repeated at intervals, the mapping exercise can be used as part of child-centred 'life planning' techniques to set targets for, and show progress of, an individual child in terms of building positive relationships and support networks.

The essential starting point for this exercise, for any of the purposes stated above (analysis, planning or counselling) *must*, however, be the experiences of the children themselves, from their own point of view.

This exercise can be demonstrated more visually, either with children or adults in the following way: individuals choose, or are assigned, role play identities of relevant actors. They then stand in a circle and connections are made between the various actors using a ball of string crossing backwards and forwards across the circle. The relationships can be drawn out by narrating a case study or by having a child describe a day in their life which points out how they come into contact with others. This can then form the basis of a discussion about addressing gaps and strengthening support networks.

Participants from Kenya, Nicaragua, Nigeria, Pakistan, the Philippines and Romania take part in a relationship mapping exercise based on a case study of a street child in the Philippines, as part of the Consortium for Street Children International Workshop on Street Children and Juvenile Justice, London, 4-8 July 2003.



Chapter summary

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