

Chapter 1: 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

“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

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 Due to outdated legislation they are arrested and face harsh sentences for petty (often ‘survival’) theft, substance abuse, begging and ‘vagrancy’.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 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

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.

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**

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.

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*.

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.

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.

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
- **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

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.

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, 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.

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’.

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 girl¹⁰. 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

⁹ 1991 study, quoted in *Urban Girls: Empowerment in Especially Difficult Circumstances*, Gary Barker and Felicia Knaul, 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 *Urban Girls: Empowerment in Especially Difficult Circumstances*, Gary Barker and Felicia Knaul, 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.

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:

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 *Urban Girls: Empowerment in Especially Difficult Circumstances*, Gary Barker and Felicia Knaul, 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.

- ensuring that provision is in place to avoid the necessity of placing single girls alone with a group of boys;
- developing attendance centres for girls where these do not exist;
- 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.²⁵

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.

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.

²⁵ Adapted from Roy, N. and Wong, M., Juvenile Justice Review and Training Documents prepared for Save the Children UK, 2002-3.