

Chapter 2 –Guiding Principles for the Way Forward

Chapter overview

- Explains the three-part framework for reform in detail.
- 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’.
- 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.
- 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

“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

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

¹Child 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.

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 5 CRC umbrella rights⁶

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 *overlapping 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.

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).

[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?⁷

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:

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.

- 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:

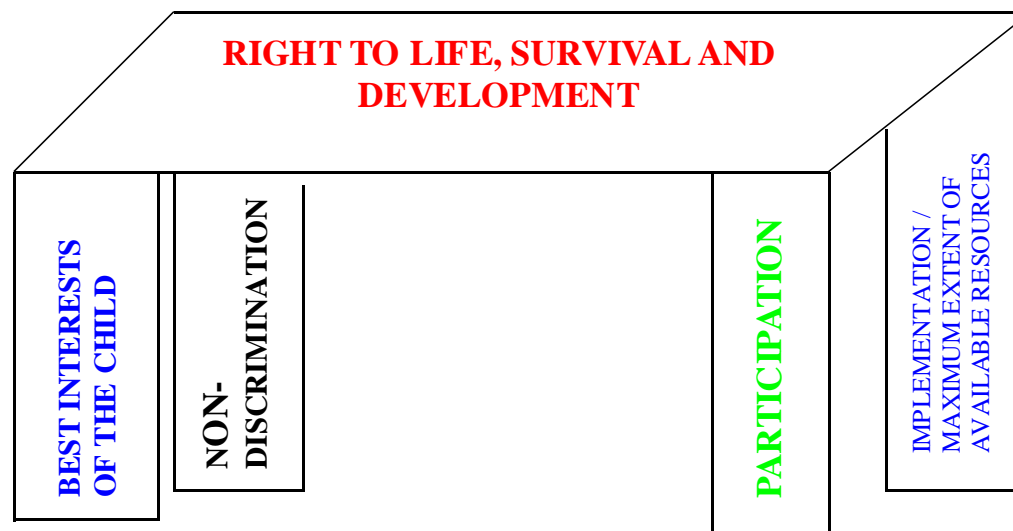
- In detention the children's right to **life, survival and development** needs to be met through adequate health (including mental health) and education services as well as anti-violence and other protection policies and training, all of which need to be adequately **resourced**;
- The **best interests** 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?)

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!**

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?

*"I am bad... I am helpful too." (Philippines)*⁸

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.

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

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.

threats posed to vulnerable children in that they absolve people, especially the authorities, of the obligation to accord them their human rights.¹¹

“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

*“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*

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.

¹¹ Adapted from Wernham, M., *Background Paper on Street Children and Violence*, Consortium for Street Children, updated 16 November 2001.

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

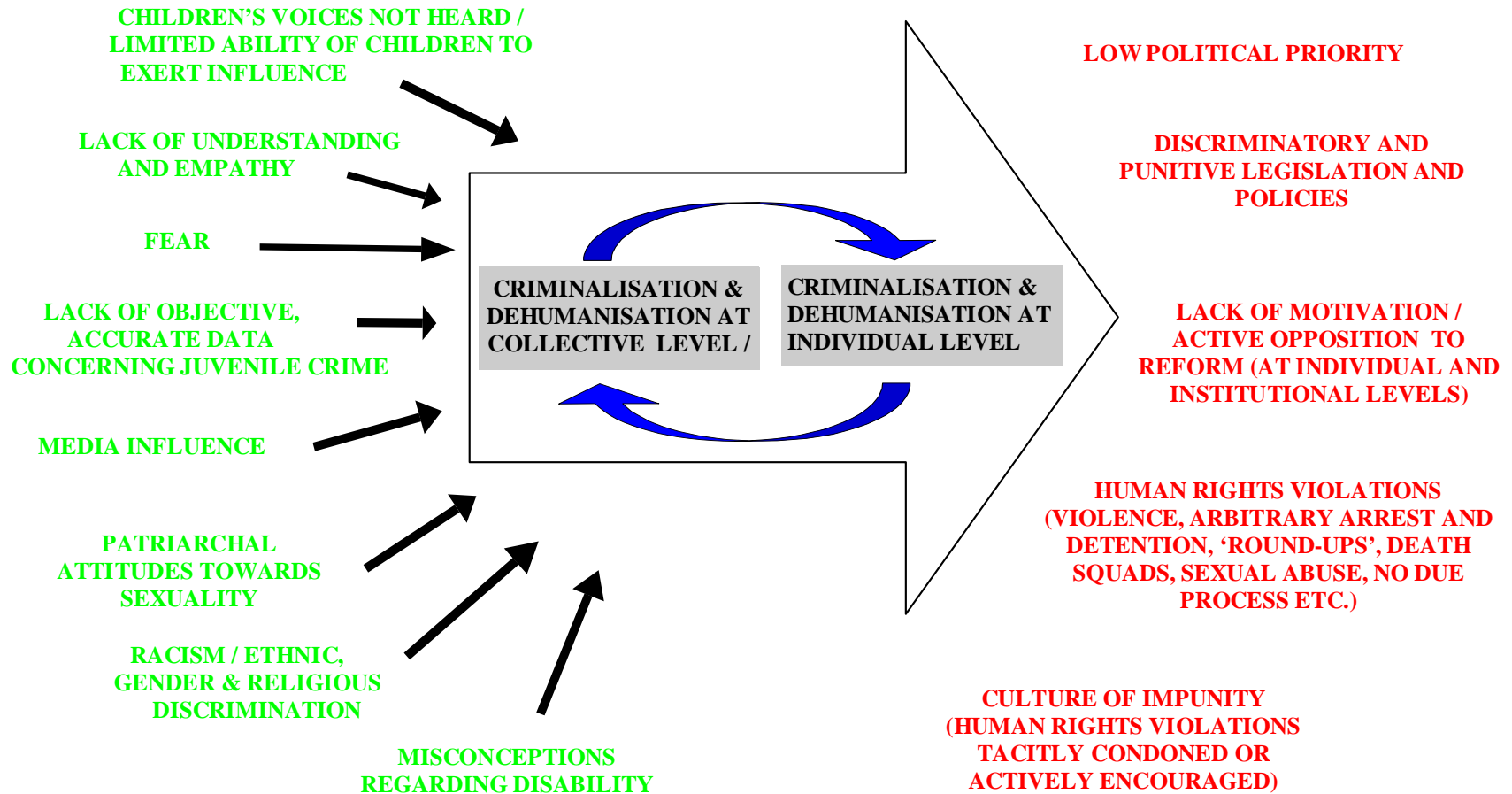
¹³ Participant at the Pakistan National Conference on Street Children and Juvenile Justice, 13-14 June 2003.

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.

HOW CRIMINALISATION, STEREOTYPING AND DEHUMANISATION OF STREET CHILDREN AFFECTS THEIR TREATMENT IN CRIMINAL JUSTICE SYSTEMS

CAUSES

CONSEQUENCES



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.

[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;

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.

(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

[case study]

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

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

¹⁸ Schepers-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.

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

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

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.

²³ Child from Manila, Luzon and Visayas, 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.

“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

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 unique. 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

²⁶ *Ibid*, p.3.

²⁷ *Ibid*, p.32.

²⁸ *Ibid*, pp.32-33.

²⁹ *Ibid*, pp.17-18.

³⁰ *Ibid*, p.5.

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

³² *Ibid*, p.4.

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**:

[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 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 system³³:

- 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.

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.

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.;

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.

- **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).

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

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.

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

- **'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

[project example]

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.

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.

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.

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].

[practical tips]

Lessons learned from sensitisation projects

- 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.

[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 The Railway Children (www.railwaychildren.org). 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.

B.4. The role of the community is essential

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. This publication is one of a series of very useful resources.

‘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 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.

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 University who partnered the Consortium for Street Children in the Street Children and Juvenile Justice Project.

“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:

⁴⁴ 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, p145.

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, Behind Bars and in the Streets: Street Children and Juvenile Justice System in the Philippines*, Quezon City, UP CIDS PST and CSC, 2003, p. 149.

⁴⁸ *Ibid*, p68.

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*, AusAID, National Project on Street Children and UNICEF, Manila, Philippines, 1997, p.9.

- **‘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 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:

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

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 Summarised from *ibid*, 1997, p. 34.

“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 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.

⁵⁸ Thoughts shared by participants during the sentence completion exercises, 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. 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 University.

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, p. 27. Examples are taken / summarized from pp. 145-151.

- **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 (m 18) 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 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 (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.

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.**