

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

Chapter overview

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

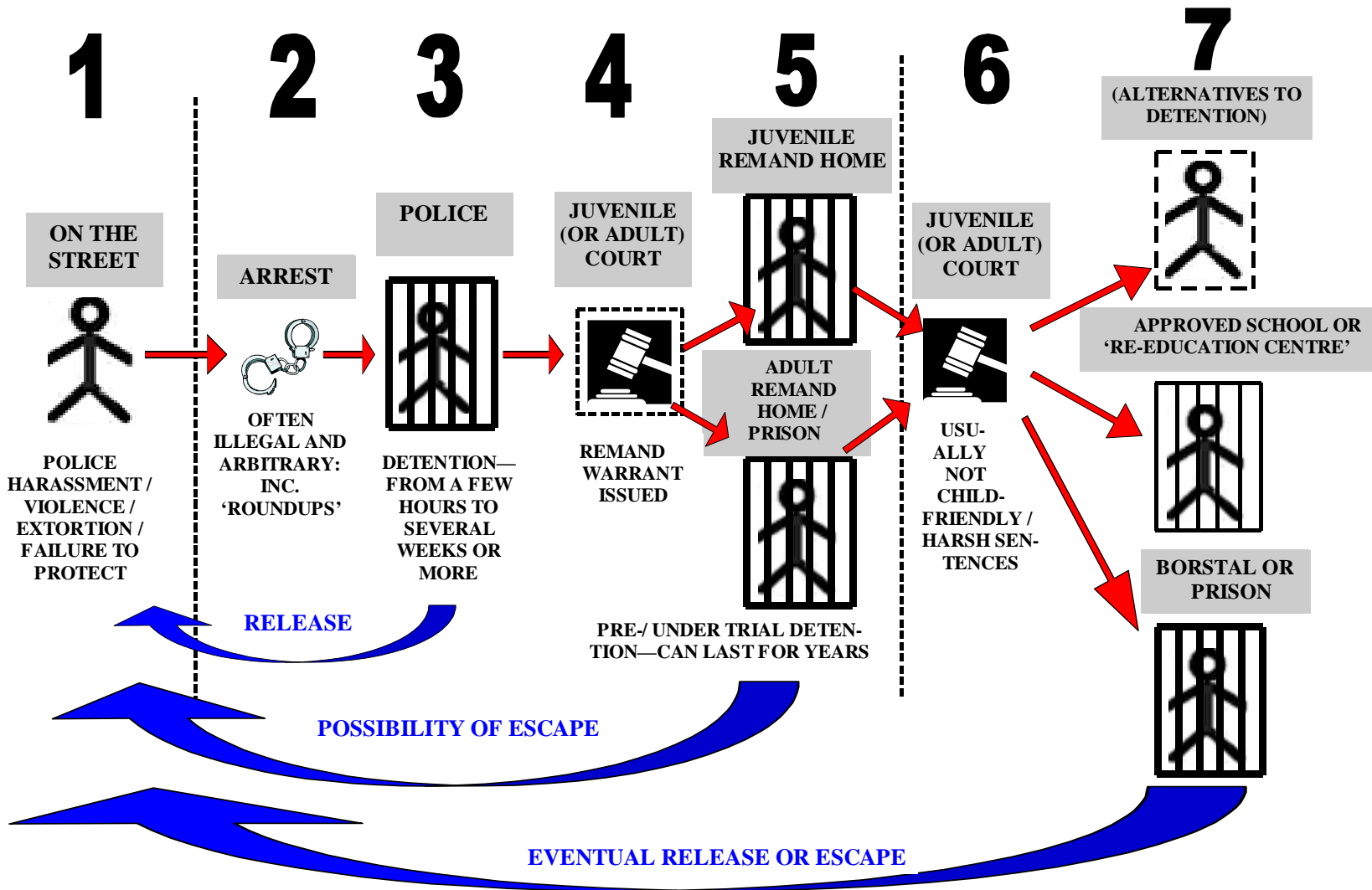
Street children in the criminal justice system – a revolving door

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

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

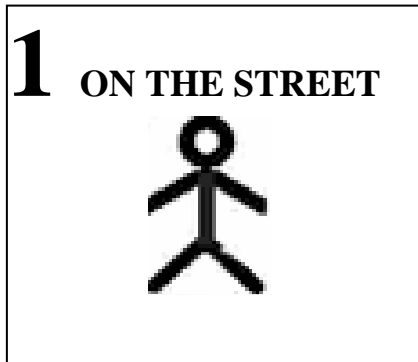
It is in no way intended to indicate that all countries are the same, nor to disregard the commendable efforts of civil society organisations and governments that are working towards more child-friendly options for the processing of children through the criminal justice system. These interventions will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

PROCESS: THE 'REVOLVING DOOR' OF STREET CHILDREN IN THE CRIMINAL JUSTICE SYSTEM



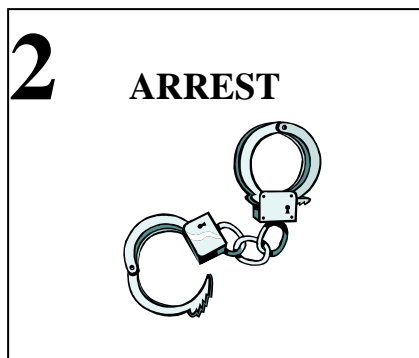
Accompanying notes to diagram:

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



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

Street children are particularly vulnerable to harassment, including threats, insults and physical and sexual abuse. This may be committed by both members of the public as well as police officers themselves. The police are therefore doubly responsible for human rights violations, as perpetrators themselves, and for failing to protect children from abuse by others. The police may also be guilty of using their power, by threatening arrest, to extort sexual favours or money from street children.



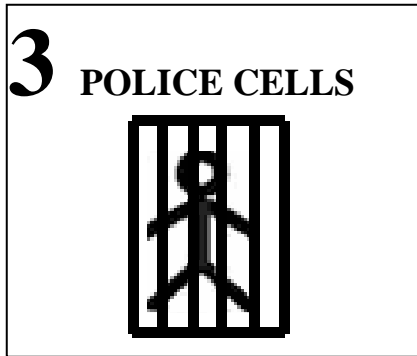
"Policemen often arrest us for sleeping under a bridge." (Philippines)²

Arrest may be with a warrant. For example if a particular child is suspected of having committed a crime, a judge may issue a warrant for their arrest as part of an ongoing investigation. However, by far the majority of arrests of street children are without a warrant. Depending on the legislation in place in a particular country, this type of arrest may be legal or illegal. For example, arrest without a warrant is permitted if the child is caught in the act of committing a crime (*in flagrante*). Contrary to international human rights standards, legislation criminalizing 'truancy', 'running away' and 'vagrancy' may also be in place – to which street children are especially vulnerable. In these cases there is an obvious case for legislative reform. Furthermore, in some countries there are legal provisions for 'preventive arrest' – i.e. in order to stop someone suspected of being about to commit a crime. This form of arbitrary arrest violates international human rights law and is subject to misuse which particularly discriminates against street children. Illegal arrest is where street children are picked up by the police, either individually or in groups as part of 'round-ups', for no particular reason at all, or as 'scapegoats' for a crime which has been committed by someone else. The manner of arrest may also violate human rights standards, for example use of force, unnecessary use of handcuffs or restraints, degrading treatment etc. In Kenya, for example, the street children complained particularly about being transported to the police station in car boots (trunks). In

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

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

addition to the specific example from Kenya, abuses may occur more generally during transport between facilities as children are likely be mixed with adult detainees, including convicted prisoners, or with much older children who may be from rival groups, or charged or convicted of serious crimes. The mode of transportation itself may be unsafe, lack adequate ventilation or expose children to extreme heat or cold, or entail hours of travel without food or toilet breaks. This applies not only to the stage following arrest, but also at other stages where transportation is necessary.



“In the cells, there’s no good meal. It’s bad meal. It’s a cup of tea but it’s called breakfast by name, but it’s not really breakfast... It tastes like it is for cows, but not for a living being”. “The girls go into the police cell and have to do sexual intercourse with the police to get released, but she is not released. The policeman is even 42 and the girl is 16. It’s really bad.” (Kenya)³

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

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

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

4 JUVENILE (OR ADULT) COURT



“I did not know what is happening in the case filed against me because I wasn’t even brought to court.” (Philippines)⁴

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

5 REMAND HOME OR ADULT PRISON



“They have no proper place for us... Most of the time I slept in standing position and there were 8 individuals in a small lock up room.” “The food provided inside the jails is low standard and unhygienic.” “They torture us physically - kicking, beating with leather shoes and sticks, slapping and shouting abuse.” “They use different cruel styles of punishment like being beaten, hung upside down, whipped with a rubber strap or leather slipper.” “We are sometimes made to wear iron shackling.” (Pakistan)⁵

Following issue of a remand warrant (or occasionally without, in cases where children are transferred directly from the police station to the remand home with no regard for due process) the child is then transferred to a remand home (place of temporary detention for those accused of a crime pending outcome at trial). The remand home may be a specific ‘juvenile remand home’ or it may be for adults, with or without a separate wing for children. In fewer cases, often depending on the proximity of institutions, they may be transferred into an adult prison (again, with or without a separate children’s wing). Due to widespread lack of birth certificates and identity documents it is quite common for children to be registered as being older than they really are. This is either for the malicious purpose of having them subjected to harsher sentencing as adults, or – bizarrely – the opposite where, in some cases due to legislative anomalies, it may be in the best interests of the child for them to be processed as an adult.


At this stage, the child spends an extraordinary amount of time in often appalling conditions of detention ranging from weeks to years pending the outcome from a trial or hearing. In spite of gradual improvements in this area in some countries such as Romania, delays at this stage are commonplace in many other countries due to bureaucracy, ineptitude, lack of transport, mistakes, lack of communication between actors in the system and because nobody cares about what is happening to these children: they have limited or no contact with responsible adults who are able to plead their case – or who are rich enough to pay bribes to speed up the process. Once again girls are especially likely to be detained with adults or in otherwise inappropriate circumstances due to a lack of sufficient facilities for girls. In addition, placement in facilities located at a distance from a child’s home area decreases the chances that family and community links may be regularly maintained. Children may be encouraged to plead guilty, regardless of whether or not they have committed the

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

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

offence with which they are charged, simply in order to speed up the process. Conditions are usually very poor in terms of quality and quantity of food, sleeping arrangements, overcrowding, poor hygiene, abuse and violence, exploitative labour, lack of (or poor) education, recreational facilities, psychological support and health services. None of the children at this stage have been found guilty of committing a crime. Social welfare cases (children in need of care and protection) are freely mixed with children accused of committing crimes. In many cases staff are doing their best with limited resources, but in only very few cases do children prefer the conditions here to life on the streets where at least they have their independence, their own social networks and the possibility of running away from abusers. In short, the situation in most cases is deplorable. Escape from such institutions is not uncommon.

6 JUVENILE (OR ADULT) COURT



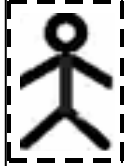
“We heard that in Court we have to say that we were guilty in presence of the magistrate. It is a custom. If we don’t do so, the police will torture us and we will be sent back into police custody.” (Bangladesh)⁶

In general, there are very few courts designated as ‘juvenile courts’. Hearings are often held in an adult court. They may or may not be held on a separate day and/or in a separate room and/or with a magistrate or judge specifically trained on juvenile legislation. In many cases, even if the judge has a specialised knowledge of the national legislation relating to children, they may well not be trained on international human rights standards or sensitised to the specific

needs and handling of children. Features of a ‘child-friendly’ courtroom include, amongst other things: informal setting – e.g. around a table rather than an intimidating ‘bench’ situation; officials not wearing wigs or black robes; proceedings in jargon-free, simple language that the child understands; a qualified interpreter available if necessary; qualified and sensitised legal representation for the child; the child is given an opportunity to speak and ask questions. Experiences of the children at this stage were mixed, ranging from worst to best case scenarios. In most cases, even where a range of sentencing options is provided for in legislation, the most common method of disposal in the case of street children is some form of detention.

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

7



(ALTERNATIVES
TO DETENTION)



APPROVED
SCHOOL OR 'RE-
EDUCATION
CENTRE'



BORSTAL OR
PRISON

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

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

The majority of street children end up in some form of detention, usually in institutions known as **'approved schools' or some form of 're-education centre'**. The objective of these institutions is supposedly the 'reform' or 'rehabilitation' of

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

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

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

Relationships in the criminal justice system: are street children ‘falling through the net’, or cared for in a network of support?

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

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

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

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

The challenge is therefore to:

- **Protect children from negative / harmful relationships as much as possible** (e.g. separation of pre-/under-trial children from convicted children and from adults; development of children’s own coping strategies to minimise peer bullying and abuse in the community);
- **Assess to what extent some relationships between children and the formal justice system can be bypassed altogether** (e.g. by minimising contact between street children and the police / prosecution / courts / detention centres through the development of prevention and diversion programmes and alternatives to detention);
- **Transform negative relationships into more positive ones** (e.g. through awareness raising, sensitisation and training of actors in each of the pillars; speeding up the processing of children through the system). In this context, ‘positive’ relationships can mean not only facilitating personnel to perform their job adequately, according to international standards (which would be more of a ‘neutral’, professional relationship), but also going further to proactively help children to develop to

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

their fullest potential in the context of rehabilitation and reintegration. This process can be managed through a series of stages with intermediate goals.

- **Identify where children are falling through the nets of support altogether and build up positive ‘safety nets’ of relationships** (e.g. by the strengthening of links / improvement of communication between the various pillars (such as between the police and the courts); encouraging interaction amongst community actors (such as between children and shop keepers, families and teachers, academics and civil society organisations); improving advocacy from this level to that of decision makers in local and national government).

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

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

The role of different actors in reform

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

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

The importance of the community

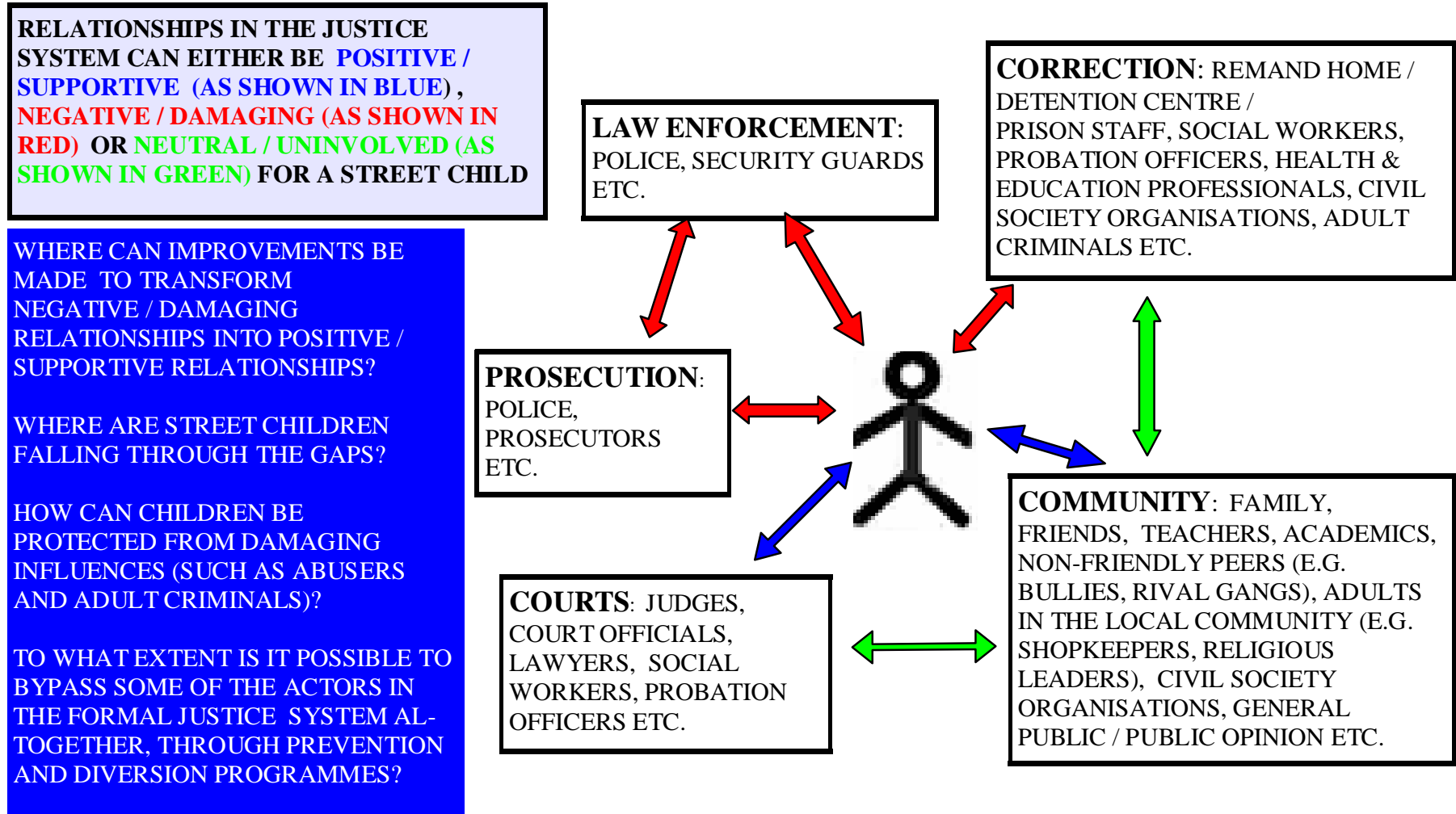
Furthermore, although every pillar is important, the findings from the CSC project emphasise the importance of the community above all.⁹ Without community strengthening, the priority areas of reform– i.e. prevention, diversion and alternatives to detention – are impossible to achieve: “It is impossible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

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

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

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

STREET CHILDREN AND RELATIONSHIPS IN THE JUSTICE SYSTEM: SAFETY NETS OR 'FALLING THROUGH THE NET'?



The examples of relationships shown here are illustrative only and are not intended to be comprehensive. Situations will obviously vary depending on national, local and individual circumstances.

[PRACTICAL TIPS]

Relationship mapping exercise

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

1. **To analyse where systems are currently failing / where children are falling through the net.** For example, are social workers talking to the police? Are NGOs involving the child's family and peers enough in programmes? Are remand home staff cooperating with probation officers or is this communication breakdown leading to delays in processing children's cases? Are judges providing children with a child-friendly space and opportunity to speak for themselves?
2. **As a planning tool to transform negative and neutral relationships into positive ones and to identify** (in consultation with children themselves) **which relationships** (i.e. with adult criminals, peer abusers etc.) **can and should be cut out of the child's experience as much as possible**, either through formulating strategies to limit the frequency or likelihood of contact, or – where contact is unavoidable – supporting children to develop and strengthen their own coping strategies in these circumstances. In an ideal world, through programmes that concentrate on prevention and diversion in the first place (by strengthening these relationships at family, household and community levels), it is ultimately preferable that children avoid contact with the formal criminal justice system altogether
3. **As part of individual or group counselling sessions with children themselves.** If repeated at intervals, the mapping exercise can be used as part of child-centred 'life planning' techniques to set targets for, and show progress of, an individual child in terms of building positive relationships and support networks.

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

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

Chapter summary

- The majority of street children's experiences in the system are negative – marked particularly by extensive (and often unjust) periods of detention where conditions are poor and abuse rampant. Detention isolates children from their communities and support networks. Furthermore, as can be seen by the 'revolving door' analogy, it also does little to break the cycle of street life and institutionalisation into which street children are trapped.
- One of the key themes of this book is the centrality of relationship building to challenging the underlying criminalisation and stereotyping of street children that characterises their current

negative treatment on the streets and in criminal justice systems. This relationship building needs to take place at the levels of both individuals and institutions. Reform is only possible if it is based on a holistic overview of the system which engages *all* of the five pillars.