

STREET CHILDREN AND JUVENILE JUSTICE – RECOMMENDATIONS

[TAKEN FROM THE BOOK “AN OUTSIDE CHANCE: STREET CHILDREN AND JUVENILE JUSTICE – AN INTERNATIONAL PERSPECTIVE” BY MARIE WERNHAM, CONSORTIUM FOR STREET CHILDREN, MAY 2004]

GENERAL RECOMMENDATIONS¹

The following general recommendations apply mainly to governments, but usually in partnership with the other actors in the justice system, including police, social services, probation, lawyers, judiciary, staff in institutions, community – including NGOs, media and academics. They are relevant / of interest to all actors in the system. The specific recommendations for different stages of the system are shown in a following table, indicating specific actors’ responsibilities.

Because these general recommendations apply to many actors it is important that they do not ‘get lost’ through people ‘passing the buck’. Governments are legally bound to take a lead in reform in line with their international obligations under the UN Convention on the Rights of the Child and other instruments. However, it is everyone’s responsibility to ensure that they do so, working collaboratively and constructively together to ‘put the justice back into the justice system’.

- **Legislation:** Urgently amend national legislation in line with the UN Convention on the Rights of the Child and other UN guidelines on juvenile justice (including the Riyadh Guidelines, Beijing Rules, and JDLs), including:
 - ensure that children below the age of 18 are accorded the protection of separate justice provisions and are not treated as adults;
 - de-criminalise ‘vagrancy’, ‘loitering’, victims of commercial sexual exploitation and status offences such as truancy and ‘running away’;
 - set the minimum age of criminal responsibility (not to be confused with the minimum age of imprisonment) at a suitable level, with due regard for the protection of *all* children, above and below that age, according to comprehensive implementation of international human rights standards, and with special regard for children who may end up in the custodial system through welfare or administrative rather than criminal provisions;
 - outlaw the death penalty for crimes committed by children under the age of 18 at the time of the offence and commute any existing death sentences passed on children.
 - ensure the protection of *all* children, regardless of gender, race, ethnicity, sexuality, disability and social, economic or any other status from discriminatory laws and practices (e.g. laws that discriminate against girls in relation to sexual behaviour).

In addition to amending legislation, urgently develop, implement and monitor child-centred and child rights-based policies and procedures in the following key areas:

¹ See also specific recommendations for different stages of the system.

- **Prevention:** Orient political will and allocate resources to the structured development of child rights-based comprehensive prevention policies as outlined in UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), 1990.
- **Separation of social welfare and criminal justice systems:** Separate the systems to avoid processing children who are *not* in conflict with the law through the criminal justice system.
- **Diversion:** Amend legislation and practices and allocate resources to ensure that arrest and detention are only used as a last resort. Promote diversion programmes as an additional procedural mechanism to allow / propose exit points at each stage of traditional criminal proceedings, with an emphasis on restorative justice and child rights-friendly traditional and non-formal justice systems. Immediately end the practice of lengthy pre-trial detention / remand.
- **Alternatives to detention:** Prioritise the use of non-custodial sentencing options as measures at the disposal of the judiciary (to constitute diversion from imprisonment, but not necessarily diversion from criminal proceedings) and implement immediate review of children currently in detention with a view to withdrawing them from detention for placement in alternative programmes.

General recommendations

- Immediately stop the abuse and maltreatment of children by law enforcement and other justice system personnel and safeguard their human rights. Protect children on the street and in custody from torture and ill-treatment, including rape and sexual abuse, whether by officials or other detainees.
- Guarantee immediate investigations into any alleged abuse and ill-treatment, identify those responsible, bring them before a civil competent and impartial tribunal and apply the penal, civil and/or administrative sanctions provided by law and according to international human rights standards.
- Ensure adequate budget allocation to social services, probation and programmes focusing on prevention, diversion and alternatives to detention.
- Develop and implement screening procedures (including psychological profiling) in the recruitment of all juvenile justice system personnel, including *all* police and military law enforcement personnel (not just those specialised in juvenile justice).
- Establish and enforce stricter time limits for all actors in the justice process in order to speed up the processing of cases involving children in conflict with the law.
- Ensure proper remuneration for justice system personnel to increase professional motivation to work with children and combat bribery and corruption.
- Conduct a mass sensitisation campaign amongst all personnel in the social welfare and criminal justice systems (police, social services, probation, lawyers, judiciary, staff in institutions), as well as civil society and children themselves, regarding child rights legislation and practices.

- Make children's participation central to reform processes. Create spaces for children's voices to be heard at all levels.
- Facilitate closer and stronger communication and coordination between *all* actors and sectors in the criminal justice and social welfare systems, including among central and local government agencies, and between government agencies and civil society.

Training

- All juvenile justice system personnel (police, social services, probation, lawyers, judiciary, staff in prisons and institutions), should receive rigorous initial training school and periodic in-service training in human rights, children's rights, and relations with street children. Such training should include:
 - Awareness and understanding of the principles of human rights and child rights (especially the best interests of the child, non-discrimination, right to life, survival and development, children's participation and resourcing for economic, social and cultural rights);
 - Awareness and understanding of international and local legal frameworks and guidelines in observing the rights of children and the protection they require from local enforcement;
 - Explicit definitions of what constitutes abusive behaviour and how to avoid and report it (e.g. stealing, extortion, soliciting bribes, soliciting sex, sexual assault, physical beatings, verbal abuse, degrading / humiliating treatment and illegal detention);
 - Non-violent dispute resolution / mediation and communication skills;
 - Diversion options and the use of detention as a last resort only for the shortest possible period of time';
 - Referral systems to social welfare and civil society organizations;
 - Importance of speedy processing of children's cases;
 - Compliance with due process and importance of informing children and their families / guardians;
 - The importance and value of child participation (soliciting and taking into account children's views).

Monitoring and evaluation

- Establish appropriate monitoring systems of both the government and independent, non-governmental organisations. Monitors should be permitted to conduct confidential interviews with detained children of their choosing, with the consent of the children involved. Such monitoring should include making unannounced inspections of all detention facilities, including police cells, and should be given the authority and means to intervene whenever there are reasonable grounds to believe that abuses have been committed.
- Establish regular evaluation mechanisms for both the component parts of the system and how they function as a whole, identifying and addressing – through a child rights-based approach, priority areas for reform.

Complaint procedures

- Complaints regarding mistreatment of children by the police or other authorities should be investigated promptly, thoroughly and independently and violators must be disciplined and/or prosecuted to the fullest extent of the law in order to challenge cultures of impunity that perpetuate violence and human rights violations of street children and children in the criminal justice system. Complaint mechanisms must be consistent with international standards (e.g. Paris Principles, CRC General Comment on National Human Rights Institutions).

- Establish a complaint system that allows street children and children in the criminal justice system to make confidential complaints – without fear of redress - to facility directors, to nominated national child rights representatives / ombudsmen, and/or to other appropriate national or international agencies. The system should ensure that all complaints are investigated and responded to promptly.
- During investigations (which often last for years or are open-ended), either suspend alleged perpetrators or move them to posts where they have no contact with children.
- Establish, publicise and support toll-free child helpline numbers which are adequately staffed by trained personnel and which are available 24 hours a day. Any child or interested party, including police officers, should be able to call the number to report an incident of abuse or obtain information regarding services available to street children and children in the criminal justice system.

Research and documentation

- Collect and disseminate / make widely available (within government, civil society and the UN Committee on the Rights of the Child) statistical data regarding children in the criminal justice system. Such information should be disaggregated by gender, age and geographical location and should include: number of children in detention; the reason for detention; the length of time in detention; the disposition of the case (i.e. measures imposed by judge); the frequency of review of these measures; family history; medical condition, including any substance addiction or abuse; previous detentions; and any complaints or concerns noted by the child.
- Ensure that comprehensive official statistics are properly maintained. These should be used to monitor and evaluate implementation of policy.
- Promote and/or undertake, in association with academic and civil society institutions: longitudinal research on effective crime prevention and diversion strategies; participatory research involving the community and children and young people into crime prevention and rehabilitation in the community, focusing on existing structures (local associations, youth and church groups); research on public perceptions of juvenile offending in order to identify appropriate ‘entry points’ for influencing public opinion.
- Promote and/or undertake, in association with academic and civil society institutions, cost / benefit analyses of investing in comprehensive child protection systems at local and national levels in order to develop a more accurate picture of the economic and social costs of failure to invest in prevention and protection programmes.

Media

- Develop partnerships with the media to promote advocacy messages regarding child rights, restorative justice and the importance of prevention, diversion and alternatives to detention; to publicise positive outcomes with young offenders; to encourage community-level support for vulnerable children and young people.
- Undertake media training on the effects of criminalising and discriminatory references and stories regarding street children, children in conflict with the law and other marginalized groups of children such as ethnic minorities. Promote responsible, gender-sensitive and unbiased reporting that involves the voices and stories of children in their own words (subject to child protection guidelines).

RECOMMENDATIONS ACCORDING TO STAGES OF THE SYSTEM

(Recommendations from the street children involved in the CSC Street Children and Juvenile Justice Project are shown in *italics*).

	GOVERNMENT	POLICE	LAWYERS & JUDICIARY	SOCIAL WELFARE	PROBATION & CORRECTION	COMMUNITY	MEDIA	ACADEMICS	UN	DONORS
PREVENTION										
Advocate awareness and implementation of the UN Convention on the Rights of the Child	X					X	X	X	X	X
Rigorously examine states' progress towards respecting the rights of children in conflict with the law and encourage a single-minded focus on rehabilitation and re-integration, not criminalisation, for all children up to the age of 18						X	X	X	X	X
Devise a methodology to analyze the child protection system at local levels in order to assess risk and protective factors and build better prevention strategies and programmes	X	X	X	X		X		X		
Organize / institutionalize community-based Councils for the Protection of Children in each city / town / village	X					X				
Train residents / leaders as community child support advocates against child abuse	X					X				
Programmes should be regularly monitored to ensure that prevention strategies reflect the changing situations of street children and crime	X	X		X		X	X	X		X
Children should be sensitised on their rights and how to redress abuse, and encouraged to speak up when they are abused	X			X		X	X			
Child helpline telephone numbers should be developed and made accessible to	X	X		X		X	X			X

children in distress									
Poverty reduction to be addressed through employment generation for families and family-friendly small-funds management training and micro-lending programmes. / Increased government and donor support for poverty alleviation programmes that incorporate investment in community social capital (including psychosocial support) as well as economic capital	X			X		X			X
<i>Government should provide free and compulsory quality education or vocational skills training to children who have no family and help poor parents with financial support</i>	X			X		X			X
<i>Government should make the provision of welfare and social security support top priority in the communities</i>	X			X					
Political and financial support for the widespread implementation at community level of participatory parenting and teaching skills programmes that address the emotional consequences of violence and non-communication	X			X		X	X	X	X
Domesticate and enforce international law and policies in the local legal system outlawing archaic and harmful child-rearing practices in order to stem child abuse which drives children into the streets. <i>Hold parents, teachers and other caregivers responsible for cruelty to children in the home, school, etc. Protect children from cruelty and torture by parents and teacher</i>	X	X	X	X		X	X		X
Children at risk should be identified as early as possible and receive special attention	X			X		X			
Provision of adequate counselling to families as a preventive measure to curtail inflow of children into the street; / Employ more child guidance-counsellors at all levels of education to provide first hand counselling services to children in schools	X			X		X		X	X
Encourage child-friendly alternatives such as fostering and adoption in appropriate cases for children who have no family. <i>Provide children who lack accommodation with shelter, and particularly if they do not wish to live with step-parents</i>	X			X		X			

Recreation facilities and support centers should be provided in communities for prevention of youth crime	X			X		X	X			X
The police need to build stronger relationships with local communities	X	X				X	X			
Incorporation into primary school curricula of life skills education which includes non-violent conflict resolution techniques such as peer mediation	X					X		X		
State welfare departments and local governments should establish street outreaches through which they can monitor and prevent the entry of children into the streets	X			X		X				
<i>NGOs, civil society organisation and voluntary bodies should build the capacity of children through training to reach other street children through peer influence and counselling. Children should participate in peer counselling programmes designed particularly for children already on the street.</i>	X					X				
<i>Protect children from harmful employment, prostitution, neglect and abuses of all kinds.</i>	X	X	X	X		X				
ARREST / PRE-TRIAL DETENTION / REMAND										
Arrests must be made lawfully and not as the result of discrimination or for the purposes of harassment, extortion, 'street clearing', for status offences, 'vagrancy' or of victims of commercial sexual exploitation etc. <i>Children should not be accused falsely; prove the case first</i>	X	X	X							
Children in need of care and protection must not be processed through the criminal justice system but dealt with by the social welfare department. This requires good communication between the services and adequate resourcing of social welfare departments	X	X	X	X		X				
Wherever possible, children in conflict with the law should be diverted from the formal criminal justice system thus avoiding arrest and detention in favour of child-friendly restorative alternatives (mediation, warnings, community service, diversion to a civil society organisation etc.)	X	X	X	X	X	X			X	X

<p>If arrest is unavoidable, there must be an absolute prohibition on bribery, extortion and the use of physical, psychological and sexual violence, including verbal abuse and humiliation; use of restraints only as a last resort; humane transportation to police station etc. <i>Avoid transporting children in car boot; Train police to become child friendly; Do not use torture, threats or instilling fear to extract false evidence from the children- such evidence should not be acceptable in court of law; Do not take valuables from children when they are being arrested or once they are arrested. During arrest and interrogation, pictures should not be taken, particularly those wherein the children are made to pose in humiliating and degrading manner depicting their alleged crimes; Police officers found to have violated children's rights should be dismissed and punished.</i></p>	X	X	X		X				X	
<p>If arrest is not avoidable, due process must be followed at all times including: children should be informed of their rights; parents / guardians and the social welfare department should be promptly informed of the arrest; no evidence should be taken from a child in the absence of a parent, guardian or social worker; ensure proper documentation and record-keeping – especially with regard to the child's age; emphasis on speedy processing (child should be brought before a juvenile magistrate within 48 hours of arrest – within 24 hours if possible); access to free legal assistance; the right for the child to be heard etc. <i>Police should investigate the case of the alleged crime properly; Investigations should be done in the presence of a guardian or, in their absence, a service provider should be present. Authorities must follow the right process in arresting children and the proper procedures in investigation. This naturally includes the non-maltreatment or abuse of children and the safeguarding of their fundamental rights</i></p>	X	X	X	X	X	X				
<p>Establish children's desks at police stations staffed by specially trained and sensitive personnel to facilitate diversion or process children in a child-friendly way</p>	X	X	X	X	X	X				
<p>Children should not be detained in police cells prior to appearance before a juvenile magistrate except as a last resort. If this is unavoidable, human rights standards must be met, e.g. <i>There should be separate cells for children - children should not share cells with adults; Provide good and enough food to the children at the police cell; Ensure that the cells are clean and ventilated and not overcrowded; Separate those who are ill from the rest and provide them with medical attention; Police officers who seek sexual favours from girls for whatever reasons should be charged</i></p>	X	X	X	X	X	X				

<i>in a court of law; Use of buckets should end - construct toilets at police cells; Prisoners should be allowed and enabled to take a bath.</i>										
Remand: Before remanding a juvenile, the court should satisfy itself that satisfactory screening has taken place and that all diversion options have been exhausted. A pre-trial inquiry should be incorporated in the procedure of dealing with juveniles. Where possible, children should await trial with their parents, guardians or other supporters. Prison / remand home authorities should check the validity of remand warrants and authenticity of signatures on them. There must be clear time limits (as short as possible) set on the period that a child can be kept on remand (<i>reduce the number of days for remanding children.</i>). Courts should ensure that these limitations are adhered to and followed. Conditions on remand must be in keeping with human rights standards	X	X	X	X	X	X				
DIVERSION										
Diversion programmes should be offered by social welfare, NGO's, retired teachers, nurses or other suitable community players and should take into account the needs of the victim, the offender and the community and should be restorative in approach	X	X	X	X	X	X	X			X
An assessment of every case should be aimed at diverting all cases where possible to community-based pre-trial diversion programmes; The assessment should include the prosecutor, a probation office or social worker, and parents, guardians or community members. <i>Detaining children particularly for minor offences is cruel, and should be removed as an option. Foster homes rather than institutional homes are beneficial, and should be made available to street children in conflict with the law</i>	X	X	X	X	X	X	X	X	X	X
Efforts must be made through targeted programmes on mentoring and relationship building to ensure that street children in particular have access to the range of diversion options available, even in the absence of stable 'family' ties	X			X		X	X			X
Establish whether community-based informal and traditional justice mechanisms exist and if so, whether they are in conformity with international human rights standards and might therefore have a role in diversion	X	X	X	X	X	X		X		

Undertake research on the extent to which children's rights are protected in both the formal and any informal systems; Examine the potential for interaction between formal and non-formal systems in order to develop policy recommendations that capitalise on opportunities for incorporating the principles of reconciliation and restitution into the formal justice system.	X					X		X		X
Provide stakeholders (police, parents, community, social welfare officers, courts, judicial officers, etc) with training in new skills required for diversion and also to standard procedural safeguards for child protection	X	X	X	X	X	X				X
TRIAL / HEARING										
<i>All children should be provided with legal representation when they appear in court</i>	X	X	X	X	X	X				
Separate courts for children should be established staffed by specially trained personnel. Where the establishment of a separate building is not possible, hearings involving children should take place in a separate room on a separate day, but still with specially trained personnel	X		X	X						
Court procedures should be child-friendly. <i>(The creation of a child-sensitive environment in the courtroom, Questions should be asked slowly and clearly in a language understood by the child, no black robes, hearings held in camera, magistrates should be friendly and patient to the children etc.)</i>	X		X							
<i>Magistrates should ensure the children's right to participate in their own defence. Prosecutors should follow the processes during hearings, with the children given the chance to speak or be heard.</i>	X		X							
Juvenile magistrates, lawyers and other court officials should receive special training on child rights and restorative justice (especially on the importance of diversion and alternatives to detention). <i>Judges in particular are asked to order lighter sentences for children. In the handing down of the sentence, the age of the child at the time of the commission should be considered and not the present age of the accused.</i>	X		X			X				

<i>Prosecutors and judges should facilitate a speedy trial.</i>	X		X							
Ensure adequate remuneration of juvenile judges and lawyers to provide incentive to work in this field / reduce motivation for corruption	X		X							
Children should be supported throughout the court process by social workers or counsellors	X		X	X		X				
Magistrates should explore options to reduce time spent by children on remand / in pre-trial detention – e.g. through using ‘mobile courts’ / convening court in prisons / remand homes where this would result in cases being dealt with more speedily	X		X			X				
<i>Magistrates should ensure that cases are conclusively investigated before passing judgment</i>	X		X							
DETENTION (In cases only where all diversion options and alternatives to detention have been exhausted)										
Immediately end torture and violence in police cells, detention centres, remand homes, approved schools, prisons etc. This is paramount, but cannot be addressed without examining the levels of staffing, training of staff, and employee conditions. Staff found guilty of torture or mistreatment should be brought to justice. <i>Punish staff who seek sexual favours from the children.</i>	X	X	X	X	X	X	X		X	
Strict regulations concerning non-violent and non-humiliating discipline must be drawn up and monitored. <i>Teachers to stop administering heavy punishment on children. Discipline of children generally should be consistent with child’s rights and dignity.</i> Under no circumstances should isolation be used as a punitive measure. Children should be informed of the internal rules of the facilities to which they are committed and their rights and obligations immediately upon entry. The rules of the institution should be made available to children upon request and posted in highly visible places	X				X					
Ensure that conditions in detention comply with international standards with regards to separation on the grounds of age and convicted status, hygiene, sanitation, space, ventilation, food, clothing, adequate sleeping materials etc <i>Provides remand homes with basic facilities e.g. mattresses, blankets, sanitary facilities, and other social amenities. Make the compound clean. Ensure proper</i>	X	X		X	X	X	X	X	X	

<i>diet; Repair toilets and construct new ones where they are not adequate or do not exist at all; Provide the homes with enough utensils. Provide children with at least two pairs of uniform; Provide mattresses, blankets, sheets, shoes and clothes to the children. Provide good and sufficient food at the remand home. Improve the facilities at the remand homes and make them child friendly</i>										
Resources must be immediately allocated to the recruitment and training of an adequate number of teachers, trainers, health and social workers, and psychologists for individualised rehabilitation of children. / Provide adequate professional in-centre counselling and other therapy, tailored towards long-term positive development in institutionalised children	X			X	X	X				X
Government must allocate adequate budgetary funds for the welfare of children who are institutionalised	X			X	X					
<i>Children's opinions should be incorporated in the running of the homes</i>	X				X	X				
Where detention is unavoidable, encourage greater contact between the child and their family and friends when it is in the child's best interest, and wherever possible locate children in facilities closest to their homes. <i>(Give children permission to visit their relatives/guardians)</i>	X				X	X				
Increase access for child detainees to education, rehabilitation, skills development (including life skills), drug rehabilitation, and sporting and recreational activities	X				X	X				
Vocational skills taught to children in rehabilitation should be relevant, of good quality, competitive and linked to market needs, to ensure that children are well adjusted and have a chance to find employment in the future	X				X	X				
Ensure safe, adequate transport between detention facilities and court to avoid delay in processing of cases. <i>(Government should provide transport buses for homes)</i>	X				X					
Ensure specialist comprehensive initial and in-service training on child rights, including non-violent communication and discipline skills for all staff in institutions. <i>Personnel for children's services should be people who are trained and love children and not just people who are looking for a job to do</i>	X			X	X	X			X	X

Maintain a transparent policy throughout the system with regard to official records for communication, monitoring and evaluation purposes	X	X	X	X	X		X	X		
Consider establishing a 'Board of Visitors' system made up of independent members of the community, civil society organizations and professionals to routinely carry out unannounced inspection visits to children's detention centres, police cells and prisons	X				X	X	X			
A child detained in any state or private facility should be interviewed at regular pre-determined intervals by trained and qualified government staff; their rehabilitative progress should be assessed, and their prospects for release should be discussed fully with them	X			X	X	X				
REINTEGRATION										
Sensitise the public on the human rights of street children in order to combat dehumanisation and discrimination and to promote reintegration into the community	X					X	X	X	X	X
NGOs and civil society (including the family, community and religious bodies) should actively partner with government to take an active role in the reintegration process	X					X	X			
Government should prohibit through legislation, and enforce, the prohibition of all discrimination against ex-child detainees whether or not in regard to employment or admission of any kind	X					X				
<i>Teach children their rights and how to fight for them</i>	X					X	X		X	X