



Promoting fair and effective criminal justice

6 April 2016

Submission by Penal Reform International to the Committee on the Rights of the Child to inform the General Comment on Children in Street Situations

This submission was prepared by Penal Reform International (PRI) and focuses specifically on issues relating to children in street situations who come into conflict with the law (Articles 37 and 40 of the UN Convention on the Rights of the Child read in conjunction with the four General Principles). It first looks at some of the most salient issues affecting children in street situations who come into conflict with the law and then addresses the fourth question suggested by the Committee regarding provision of support to children in street situations.

The nexus between children in street situations and criminal justice systems

PRI has over 25 years working on issues of criminal justice and penal reform in many different contexts. Based on this experience it is clear that, in developed and developing economies alike, children in street situations face particular risks in relation to the justice system: they are more likely than most children to come into conflict with the law in the first place and once in the system they are less able to protect themselves from violations of their rights because of the discrimination they face and because they so often lack adult support.

They are more likely to come into conflict with the law because their day to day conduct is often criminalised. Children in street situations may commit crimes such as petty theft, begging, exchanging sex for money, drug-dealing or selling tissues as a means of survival. They may be arrested for offences related to the fact they spend much of their time outside of school or the home, for example for loitering, truancy or vagrancy. Above all, they are a potent and visible reminder that society has failed a vulnerable group of children and as such it can be in the interests of authorities to render them invisible by physically removing them from the street. Often they are arrested unlawfully for conduct that does not meet the threshold of a criminal offence in domestic law. Furthermore, there is often a public fear of crime committed by children in street situations that is fuelled by the media and disproportionate to the reality.

Children in street situations usually come from the most deprived and marginalised communities and often from minority groups and face a catalogue of discriminatory practice from the justice system as a consequence. They are often at risk of violence in detention especially during the early phases of any criminal investigation. They may not have the financial resources or a stable address required to obtain bail and can be held in pre-trial detention for long periods of time. They frequently do not have access to a lawyer whether

because of lack of funds or because the crimes they are arrested for are viewed as too trivial to merit one.

They are not always listened to during trial proceedings and other fair trial rights are inadequate such as: access to information and evidence, effective participation on equal terms with the prosecution, reasoned decisions and adherence to the minimum age of criminal responsibility. In short, there is a whole range of rights violations that they experience on a regular basis including: discriminatory laws that allow them to be prosecuted; being targeted for arrest by police in efforts to 'clean up' certain areas; the conditions and treatment they face in detention; and their access to a fair trial.

Some recommendations for states to support children in street situations in conflict with the law (or at risk of coming into conflict with the law)

- *Address public misconceptions about children in street situations*

In many countries much of the blurring of the boundaries between children in need of protection and children in conflict with the law arises because of widespread public misconceptions about children in street situations being inherently 'criminal'. These misconceptions should be addressed by states through training of all those working in the justice system for children and in particular police as well as responsible dissemination of relevant and reliable data and information. The media should be actively encouraged to rely on accurate data and evidence when portraying children in street situations.

- *Abolish offences that disproportionately affect girls and boys in street situations*

The importance of preventing children in street situations from coming into conflict with the law cannot be over-emphasised (this submission does not also deal with the fundamental question of preventing children from migrating to the street in the first place). Offences such as loitering, begging and selling soft tissues by the roadside focus disproportionately on regulating the actions of children in street situations. These offences should be abolished and the related conduct should be addressed instead through multi-agency child protection mechanisms that include referral systems and prevention measures. States should review legislation and remove so-called moral offences that discriminate against girls in street situations in particular such as running away from their family or having sex outside of marriage.

- *Strengthen child protection systems*

Criminal justice systems fill - often reluctantly - the vacuum left by inadequate child protection and welfare systems. Children in need of care and protection should not be processed through criminal justice systems simply because they are living and working on the street and are in 'the wrong place at the wrong time'. It is essential that criminal justice systems work in close collaboration with well-resourced child protection systems so that children can be referred to the right agencies and are the target of multi-disciplinary interventions. In practice this means that children in street situations who do offend need to have individualised and meaningful contact with social work professionals who, in the absence of any other social or family support, can: be advocates for their rights, prevent them from re-offending and enable them to pursue a 'constructive role in society' in the future. In turn, social work professionals themselves need to operate in an enabling

environment where they are trained, resourced, respected, mentored and supported and properly remunerated.

- *Divert children in street situations away from formal justice systems*

A singularly important measure for responding to children in street situations who offend is to give police, prosecutors and judges the discretionary power to divert them away from the formal justice system provided they freely admit to having committed the offence(s) and agree voluntarily to participate. These powers should be regulated and reviewed to ensure that discretion is always being applied in the child's best interests and where possible the assessment of a child's suitability for diversion should include a social worker, probation officer or community member. Diversionary measures such as mediation or community service should be community-based and, where appropriate, make use of restorative processes. There are significant challenges in using these measures with children who have few community ties or a stable residence but it is important that diversion is as accessible to children in street situations as to other children in conflict with the law so states need to invest in diversionary measures which provide children in street situations with support from communities.

PRI has supported the development of juvenile police departments in Jordan which focus on diverting children away from the formal system towards mediation and conflict resolution. One of the lessons learned from this experience is the importance of building public support and confidence in diversionary measures for children. States should invest in communication materials and strategies to increase public awareness of diversion as an effective means to combat offending by all children, including children in street situations.

Efforts must be made to ensure that diversion measures are gender-sensitive in line with the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('Bangkok Rules'). Girls in street situations may face problems that are unique to, or are disproportionately affected by, their gender and these demand a nuanced response. They may be pregnant or have caretaking responsibilities for other children that need to be taken into account when determining suitable diversion measures. Many girls in street situations have experienced sexual abuse and violence and any background of victimisation should be addressed as part of the diversion process for example by referrals to civil society organisations for counselling. They may have had unequal access to educational, vocational and employment opportunities that should also be taken into account.

For diversion at the police stage, experience in Jordan and elsewhere has shown that extensive training is needed to build the confidence of the police in determining when it should be used. Diversion needs to be integrated clearly into the police mandate to ensure sustainability and ownership and to emphasise that it is not the preserve of civil society or welfare agencies but is part of their policing responsibility. Good practice in child protection should be included in police service and disciplinary codes, strategic directives and plans, performance standards, operations and service guidelines.

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