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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Joint written statement* submitted by Defence for Children International, the World Organisation Against Torture, non governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2011]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Children working and/or living in the street and juvenile justice**

In many countries around the world, children and adolescents who live and/or work in the streets suffer from wide-ranging human rights violations, including in the justice system. Arrests occur often regardless whether or not children have actually committed an offence.

Children working and/or living in the street are not criminals *per se* and they deserve further attention as well as specific care and protection

The children working and/or living in the street have not chosen their condition. Many causes, in particular socio-economic grounds but also family and community violence, push them into this precarious situation. However, instead of granting them the protection they deserve, the society considers them as delinquents and often treats them harshly. Their economic precariousness pushes many of them to find means of subsistence, sometimes through breaking the law. Domestic legislations and policies are often very repressive towards those children who may come easily in contact with the justice system, not only because they infringe the general criminal law, but also when they commit special status offences.¹ Therefore, although technically in conflict with the law, those children are actually victims of unfair legislations that are contrary to relevant international standards² and require urgent reform.

Police violence against street children

Street children are considered by many to be a criminal threat to society. This perception results in them being transposed from 'children' to 'street children' to 'criminals' deserving punishment in the public's mind. The influence of negative public opinions on local and national politics contributes to shaping discriminatory policies and legislation, encourages

** Dynamo International, an NGO without consultative status, also shares the views expressed in this statement.

¹ "Status offences are special because they encompass acts that would not be criminal if they were committed by adults. This means that a status offender's conduct is considered unacceptable not because it is harmful, but solely on the basis of age. Status offences take many different forms in countries, states, and localities around the world - examples include curfew violations, school truancy, running away, begging, anti-social behaviour, gang association, and even simple disobedience or bad behaviour.

Status offenders are neither criminal nor delinquent, yet they are subject to arrest and detention. [...] Status offences are a form of age discrimination and should be eliminated. They violate children's rights because they target what adults consider to be problematic behaviour in youth but acceptable once above the age of majority.. Thus, limits are placed on children's behaviour that are not tolerated by adults. The United Nations Guidelines for the Prevention of Juvenile Delinquency have spoken out against these limits, stating that status offences stigmatise, victimise, and criminalise young people." from CRIN, Global Report on Status Offences, 2009; available on CRIN website: http://www.crin.org/docs/Status_Offenses_doc_2_final.pdf.

² Article 56 of the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), 1990: "In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person."

violence against street children and fosters a culture of impunity. Street children are sometimes subjected to beatings, extortion and sexual abuse by police. In violation of international law, they are arrested randomly and illegally and they are rounded up and held for long periods in police lockups under deplorable physical conditions. Furthermore, the police often fails to protect children from abuse committed by others.

Violations of street children' rights in the justice system

Children should have their cases heard in special juvenile courts, as stated in the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules). In practice, this is often not the case: they are frequently sent to adult courts that do not apply the law according to the age of the child. Although, judges have specialized knowledge of the domestic legislation related to children, they may well not be trained in international human rights standards or sensitized to the specific needs and handling of children.

Street children are often subject to harsh sentences for petty theft, begging, 'vagrancy' or 'prostitution'. Children are often accused of acts that would not be considered as an offence if committed by an adult, like status offences (for example, truancy, running away from home...). They often have no one to plead their case or speak out about conditions they may suffer, both before and during detention, such as extreme overcrowding, malnutrition, physical, mental and sexual abuse, lack of access to medical care or legal advice and little prospect of rehabilitation, education or release.

Conditions of detention

Abuse is rampant in detention: Violence, intimidation, torture, forced confessions, false accusations, exploitation (for example: children having 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 commonplace. Even if children are detained separately from adults they are frequently not adequately separated from child detainees of significantly different ages or criminal statutes. Even where there are separate facilities or sleeping areas for children, children are often still mixed with adult criminals at meal times and during recreation. Girls are especially likely to be held with female adults and inadequately separated from other categories of children because of insufficient facilities for detaining them.

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 the frequent lack of support structures which are necessary to implement many of the alternatives (for example 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 're-education centres'. The objective of these institutions is supposedly to 'reform' or 'rehabilitate' children through education and training, with varying degrees of freedom and access to the outside world. In some cases children are transferred from an approved school or re-education centre to a juvenile prison or adult prison if deemed to be 'incorrigible' by the authorities. After release, without the intervention of NGOs with residential facilities, children end up back on the streets. Often they will have come into contact with more hardened criminals, and are therefore better schooled in the art of committing crime.

Recommendations

With this in mind, Defence for Children International, the World Organization against Torture and Dynamo International:

Urges States to amend national legislation in line with the UN Convention on the Rights of the Child, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other UN guidelines on juvenile justice (including the Riyadh Guidelines, Beijing Rules, and JDLs), to:

- Ensure that all children, including children working or/and living in the street, below the age of 18 are accorded the protection of separate justice provisions and are not treated as adults;
- De-criminalize any status offences such as ‘vagrancy’, ‘loitering’, child prostitution, 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 of the protection of all children, including street children, above and below that age, according to comprehensive implementation of international human rights standards, and with special regard to children who may end up in the custodial system through welfare or administrative rather than criminal provisions;
- Ensure the protection of all children, and street children in particular, regardless of gender, race, ethnicity, sexuality, disability and social, economic or any other status from discriminatory laws and practices (e.g. laws that discriminate girls in relation to sexual behavior).
- Immediately stop the abuse and maltreatment of children working and/or living in the streets 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 programs focusing on prevention, diversion and alternatives to detention.
- 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.
- Ensure that all juvenile justice system personnel (police, social services, probation, lawyers, judiciary, staff in prisons and institutions), receive rigorous training in human rights, children's rights, in particular in relation to street children.
- Set up accessible and child-friendly reporting and complaints independent mechanisms in case of child rights’ violations.
- Take appropriate measures and ensure that any street child victim of a violation of his/her human rights have access and get physical and psychological recovery and social reintegration.

Strongly recommends States to develop, implement and monitor child-centered and child rights-based policies and procedures in the following key areas:

- 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.
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