International Summit on the Legal Needs of Street Youth

Issue 5: Criminalization of Street Youth

Case Study

“To Serve and Protect”
The policing of young people who are homeless in Toronto

Karen was 16 years-old when she became homeless. She grew up in a town outside of Toronto, and left home after several years of sexual abuse by her uncle. There were no services to support young people in her home town, so she eventually moved to Toronto. She was quite distressed about moving into the city – this is not something she wanted to do, but she really had no choice. She was quite scared, and also depressed because she was moving away from her family, her friends, and other supportive adults in her life. She was feeling very alone.

When she arrived in Toronto, she stayed at a homeless shelter. She tried to make some friends at the shelter to deal with the loneliness. One night she was hanging out with a couple of young people from the shelter. They walked over to the campus of a nearby university to sit and talk. Soon they were approached by a police officer, who asked them what they were doing and then told them to move on. They asked why they had to move, and pointed out they were on public property. The police officer argued back, and then issued them all tickets for loitering. Karen was a bit surprised – she had never actually personally encountered the police in the past. Her new friends told her that this happened all the time, which didn’t make sense to her as they weren’t doing anything wrong. They said the police regularly stopped them because they recognized them and knew they were homeless.

These kinds of incidents continued, and she began to be very wary of the police if she saw them approaching. Unfortunately for Karen, the longer she was on the streets, the worse things became. Her health was declining. She was depressed and feeling very lonely. She was being pressured by a local pimp to turn tricks. The worst thing that happened was that one evening she was sexually assaulted. She was devastated and traumatized. She didn’t go to the police because she was told by friends it wouldn’t matter.
Karen became more and more reluctant to go outside, especially by herself. Unfortunately the rules of the shelter she was staying at dictated that she had to leave during the day; that she couldn’t stay in. The fact she was traumatized by what happened did not make a difference – these were the rules.

When she was outside of the shelter, she would make sure she was always with a group of friends, because she felt unsafe otherwise. Some days they would just sit on the sidewalk and hang out. Occasionally she and her friends would ‘panhandle’ (beg for money) and pool their resources so they could buy food at a local fast food outlet. This led to more encounters with the police and more tickets. The police would issue tickets to them for violating the “Safe Streets Act” (which is an Ontario law targeting aggressive panhandling and squeegeeing). She was amazed at how often she and her friends would get tickets and be asked to move on. They would get tickets for panhandling even when they weren’t doing that at all. She and her friends felt this was just a form of harassment; an effort by the police to get them to move on.

When she would hang out with her friends in the nearby park, the ticketing would continue. In these cases it might be for a Safe Streets Act violation (again, even when they were obviously not panhandling), or for other minor offences such as drinking in public (she and her friends had no private places to drink) or loitering.

What did she do with the tickets? Like most of her friends, she just crumpled them up and threw them away. After all, she had no way of paying them. How could she pay them, she thought? Should she just panhandle more?

Getting the tickets was more than annoying, however. She and her friends were worried. They all knew of other youth who wound up going to jail because their fines had accumulated and they hadn’t paid them. This meant that she was perpetually worried about encountering police, and was always anxious when she saw them.

The good news is that after a year, Karen was able to get off the streets, with the support of an agency that helped her find housing. They were also helping her get a job. She had never had a place of her own, and was very excited to move forward with her life. While she made some good friends on the streets, she didn’t want to be homeless forever. She
had always wanted to go back to school, perhaps become a social worker, and become established. So things were looking good.

She then got an interview for a job – one that would require that she be able to drive. But that was no problem. She had started working on getting her driver’s license before she had left home, and so this would be something she could continue to work on.

Unfortunately three weeks after she had moved in, there was a knock on her door. She opened the door, and a man from a collection agency told her that she owed $5800 dollars in unpaid tickets. She did not realize how many tickets she had received over the past year. It never occurred to her that someone would arrive so soon after she had got a place and ask for repayment (the local municipality regularly ‘sells’ the debt to collection agencies after a fixed period of time where fines are not paid). The person at the door was very intimidating and told her she needed to figure out how to pay and that he would be back.

This devastated Karen. She soon found out that this had affected her credit rating, and that she could not get a credit card. She didn’t know what to do because she had no money, and no clear way of paying off this massive debt. That was a huge amount of money.

Things got worse. She was offered the job she applied for, but in the end had to turn it down when she found out that according to the rule in Ontario she could not get a driver’s license because of her debt.

She now had housing, but lost the opportunity for full time work. She settled on a part time job, and the harassment from the collection agency continued. In the end, she could not sustain her housing because she was not earning enough. She sank into a deep depression.

Two months after getting housed, Karen was once again homeless. In spite of her efforts to get back on her feet, she couldn’t make it. The legacy of her encounters with police undermined her efforts to move forward. Back on the streets, with a large debt that continued to haunt her, she still would feel very wary every time she saw a police officer. She would wonder about the motto of Toronto Police Services – “To Serve and Protect” – and she would ask herself, “To serve and protect whom?”
Issue 5: Criminalization of Street Youth

A. Statement of Issue

Whether runaway or throwaway, once on the street, unaccompanied homeless youth face numerous legal barriers that often complicate their attempts to meet the basic necessities of life on their own and prevent them from reaching out for assistance to state agencies and service providers that could otherwise help them. The model of some nations is to "criminalize" homelessness among youth, making the act of being on the streets without parents, or engaging in "life-sustaining" behavior such as sleeping in public, a criminal act, with detention or fines as penalties.

Status offenses criminalize activities only for youth, such as curfew, truancy, or runaway statutes. Beyond these, many other laws criminalize activities for all homeless persons, but because of their inability to legally work or contract for housing or other goods and services, may have a disparate impact on youth. These include anti-sleeping, sitting, lying, camping, and loitering ordinances, laws criminalizing public urination or defecation, anti-panhandling or other laws criminalizing informal economy jobs, or disparate enforcement of laws such as jaywalking or littering against homeless persons. The potential for being arrested or turned into the child welfare system turns law enforcement into an enemy to be avoided, and can cause homeless youth to hide themselves in dangerous places or accept offers of housing that may make them vulnerable to physical, sexual, or emotional abuse. Once in the criminal justice system, youth can be subject to fines and fees and arrest records that follow them throughout their lives, making it more difficult to obtain housing, employment, or social services that would help them to exit homelessness.

The U.N. Special Rapporteur on Extreme Poverty and Human Rights has stated that “[l]aws which specifically target the particular behaviours and
actions of persons living in poverty amount to discrimination on the basis of economic and social status, and shall be repealed.”¹

Article 20 of the Convention on the Rights of the Child: “A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.”

B. State specific conditions and solutions

North South Wales, Australia

In Australia, there is a significant problem with the criminalisation of children and young people who are homeless or who are in state care. This section will focus on the State of New South Wales (NSW), which covers a wide geographical area and is home to almost one-third of Australia’s population. Specifically, this section deals with the criminalisation of young people who are in the state care system or who are staying in accommodation for homeless people. Although these children may not meet a strict definition of “street youth”, they have much in common with this group as they lack a supportive family structure and are often disengaged from education and employment. They are also at risk of ending up on the street due to a breakdown of their residential placement and lack of alternative accommodation.

In the year 2012/13, there were just over 20,000 children in “out-of-home care” in NSW. A high and increasing proportion of these children are Aboriginal. Over 90% of children in out-of-home care are in family-type environments such as foster care. However, there is a small but significant proportion in residential care homes. In addition, a large number of children and young people in NSW are homeless. Many of these children are in the older (16-18) age bracket, and are not in out-of-home care because their family breakdown has occurred at an age when it is considered too late for the child welfare authorities to intervene. These children (as well as children whose out-of-home care placements have broken down) are often accommodated in homelessness services including youth refuges.

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2 In this paper the term “children” refers to people under 18 years of age. However, this paper will focus on children aged from 10-17. In most Australian jurisdictions, the age of criminal responsibility is 10, and young people are treated as juveniles until they turn 18.

3 The term “out-of-home care” refers to children who are not living with their natural parents (usually following the intervention of the state child welfare authorities).


5 Accurate figures are difficult to come by. On census night in 2011, an estimated 3,632 children under 12 and 2,642 12-to-18-year-olds in NSW were homeless. It must be borne in mind that this was only on one night; the number of children who experience homelessness each year is much greater.
Children in residential care homes, and to a lesser extent in youth refuges, are overly criminalised for a number of reasons, including:⁶

- Problematic behaviour that would be a disciplinary matter in a functional family home often results in police being called and criminal proceedings being taken. Minor property damage, fighting, and verbal threats to staff often result in police intervention, even where no significant injury or harm is caused. In some residential care settings, this appears to be part of a (misguided) strategy to teach children that there are “consequences” to their behaviour. It may also be driven by a perceived need to comply with workplace health and safety laws.

- The inappropriate use of apprehended violence orders (known in other jurisdictions by other terms including as domestic violence orders, intervention orders, restraining orders) as a behaviour management tool instead of for their intended purpose. Apprehended violence orders (AVOs) were originally devised as a means of protecting people (principally women) from violence and stalking by their (predominantly male) spouses or intimate partners. Such orders may now be made in the context of many different types of domestic and personal relationships. The definition of “domestic relationship” in the relevant legislation is very broad and includes situations where a person is living in a residential care setting with paid staff. A threat to a staff member, or damage to property on the premises, would meet the definition of “domestic violence offence” and would trigger the mandatory provisions which require police to apply for an AVO and the court to make such an order if it is applied for. We suggest that these mandatory provisions, while they may be appropriate to more “traditional” domestic violence situations (where there is usually a power imbalance between the perpetrator and the victim, and a reluctance on the part of the victim to pursue legal action), it is an inappropriate way of dealing with children’s behaviour towards carers or other children.

- Where children are charged with criminal offences, bail conditions are sometimes being used inappropriately as a behaviour management tool rather than to address the “unacceptable risks”

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⁶ Some of this materials is from “The Drift from Care to Crime: a Legal Aid NSW Issues Paper”, Legal Aid NSW, 2011
contemplated by the *Bail Act*. Children with welfare needs are often required to submit to bail conditions including residential requirements, curfews, and restrictions on entering certain areas or associating with certain people. Although ostensibly aimed at promoting the child’s welfare and minimising the likelihood of absconding or re-offending, these conditions can be extremely difficult for vulnerable young people to comply with. They are offered very little practical support to comply with these conditions (or to seek a bail variation if they are unable to comply). Breach of these conditions is often met with tough police action, including arresting the child and applying to the court for revocation of bail.

- When a child absconds from a residential care home (which is not uncommon), it is standard procedure for the care provider to report the child to the police as a “missing person”. Police policy requires the young person to be physically sighted by a police officer or other person in authority (such as a government official, school principal, child welfare worker) before they can be removed from the missing persons register. This often results in children being detained in order to verify their identity or to return them to their care placement. This of course creates opportunities for negative interactions between police and young people, especially young people who do not wish to be returned to a particular placement.

**United States**


> While appreciating the steps taken by federal and some state and local authorities to address homelessness, the Committee is concerned about reports of criminalization of people living on the street for everyday activities such as eating, sleeping, sitting in particular areas etc. The Committee notes that such criminalization raises concerns of discrimination and cruel, inhuman, or degrading treatment (arts. 2, 7, 9, 17, and 26).

The State party should engage with state and local authorities to: (a) abolish criminalization of homelessness
laws and policies at state and local levels; (b) ensure close cooperation between all relevant stakeholders including social, health, law enforcement and justice professionals at all levels to intensify efforts to find solutions for the homeless in accordance with human rights standards; and (c) offer incentives for decriminalization and implementation of such solutions, including by providing continued financial support to local authorities implementing alternatives to criminalization and withdrawing funding for local authorities criminalizing the homeless.

Pakistan

An estimated 1.2 to 1.5 million children are on the streets of Pakistan's major cities which include Lahore, Karachi, Rawalpindi, Pashawar, and urban centres. Street children include 'runaway' children who live or work on the street as well as the minority that return to their families at the end of the day with their meager earnings. The major reasons for the large numbers of street children are:

1. Domestic violence
2. Unemployment
3. Natural disasters
4. Poverty
5. Education (low Literacy rate)
6. Corporal punishment
7. Forced begging

The Pakistani government has not bothered to conduct any surveys to collect any data about Street Children. No revised figures regarding street children are available and according to a survey conducted by United Nations Office on Drugs and Crime (UNODC), at least 10 percent of street children in Pakistan have no knowledge of their families.

Advocates in Pakistan are working to achieve the following principles:

- The presence of children on streets warrants special attention from the government, donor agencies and the civil society at large. In this regard, multi-pronged approaches that combine
strong administrative initiatives with legislative measures can help in reducing the number of children on streets.

- Poverty alleviation initiatives aimed at helping the urban poor should be expedited. In this context, special attention should be paid to the parents of street children by providing them with economic opportunities and skills training. Such initiatives may discourage parents from forcing their children to work on streets by improving the overall economic condition of the family.
- Law enforcement agencies should receive special training on dealing with street children. The police officials should be discouraged from violence against street children.
- The existing laws dealing with children on the street should be strengthened with a strong implementation regime. Moreover, enactment of additional laws or amendments in existing laws should be initiated to improve the state of child protection in general.
- Advocacy campaigns and research initiatives dealing with street children should be encouraged at all levels.
- The state should play an active role in disseminating information on street children.
- Parents should not be allowed to force their children to work. All stakeholders including the federal and provincial governments need to come together and first develop education laws which will require parents to admit their children to schools, making it illegal not to do so.
- A proper juvenile system needs to be developed by ratifying the aforementioned laws pertaining to child justice.

At present, there are 1,600 to 2,000 children in Pakistan’s jails with the greatest population being in Punjab. While the Children’s Complaint Office was established in 2009 to develop a child ombudsman system in the country, it has not been all that effective. The Office seeks to resolve complaints from and about children against the maladministration of various government agencies, and it can potentially help the approximately 35 million children who live below the poverty line and cannot afford going to the courts for justice. However, the Office needs further support in order to fulfill its mission.
Kenya

There are no concrete numbers of street children in Kenya. In 1994 UNICEF estimated it at 250,000 but no headcount or study into the numbers has been conducted since then. Many believe that the current estimate it too low.

Children and young people living on the streets range in age from newborn to up to 25 years. We are now seeing second- and third generation children being born into homelessness. Children and young people who are homeless in Kenya are treated with huge stigma and are often viewed as criminals by authorities and members of the public. However, children and young people living on the street are often fleeing trauma, abuse and/or neglect in the home and feel that living on the streets without parental care is a more desirable option. Young people living on the streets are often used as scapegoats for high profile crimes. They are arrested and imprisoned using false evidence and often are imprisoned even without trial. They have no legal representation or advocates. There are several cases of young people living on the streets being placed on death row without trial.

Children and young people are often victims of Round Ups. Round Ups occur at the main ‘bases’ where street children and young people sleep. These round ups happen at night and the objective is to arrest as many children and young people as possible. These Round Ups are often violent from both sides (young people and police), resulting in injury to the children and young people. Staff at Glad’s House have seen children and young people with broken limbs, broken ribs, head injuries, teeth being knocked out after the Round ups.

Round Ups are run on a bigger scale when there are official events in a city. For example when the President visited Mombasa, Rounds Up were conducted over two weeks to remove street children and youth from the city centre; the goal was to ensure the city looked better and that officials could stand up and say “we have no problem with street children here”.

After a Round Up, children and young people up to the age of 18 are placed into a Remand Home on a Care and Protection Order from the courts. Children have no access to legal representation or an advocate during this process. Others are not taken to court but are placed directly
into the Remand Home. Children and young people are sentenced to unknown period of times. Often release is delayed by months because the no one attempts to find parents/family/appropriate adults to which the youth can be released.

Although children and young people are to be placed into a Remand Home on a Care and Protection order, they are actually placed into a Juvenile Justice Institution where they are treated the same as those who have committed crimes. Conditions are poor within the institution and children and young people have little access to basic sanitation, privacy, educational activities or psychosocial support. Sometimes children under the age of 18 are often placed into inappropriate institutions, including adult institutions. This happens as most street children have no identification or birth registration and age tests take the form of teeth counting.

**Honduras**

There are no official estimates of the number of homeless children in Honduras or those that operate in the streets. Casa Alianza Honduras estimates from a study carried out in April 2014 that there were at least 6000 in the two cities of Tegucigalpa and San Pedro Sula; almost one-half of the children were living permanently on the street and the rest were operating from the street by day and sleeping in homes at night.

These children suffer serious stigma, harassment and discrimination, and are frequently viewed as criminals by the authorities, by the law, and by society. Their numbers are rising dramatically. (Casa Alianza estimates that in 2015 the number above has risen to 8000 in the two cities.) This rise is due to the high prevalence of violence in the country. According to UN statistics from 2013, Honduras is the country with the highest homicide rate in the world. The proliferation of gangs and organized crime activity, along with the alarming poverty and lack of basic government support for children’s services, has turned Honduras into a country in flight. According to Honduran government sources, between January 1 and March 31, 2015, 16,514 Hondurans were deported from Mexico, Guatemala and the

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7 Casa Alianza Honduras Study: “Niñez y juventud en las redes del crimen organizado, una aproximación a las principales formas de involucramiento y participación de niñas, niños y jóvenes en grupos delictivos de Tegucigalpa” 2014 page 21.
USA and returned to Honduras,

many thousands of them were unaccompanied minors fleeing from the violence and lack of opportunity in Honduras.

An alarming number of young people are the targets of the rampant violence in Honduras. Casa Alianza has been documenting the murders of youth under the age of 23 since 1998; since that time more than 10,000 youth have been assassinated or arbitrarily executed and more than 10% of those have been committed under the current administration in Honduras. During 2014 alone, 1,031 youth under the age of 23 were assassinated or arbitrarily executed, which is an increase over 2013, with the number of girls and young women executed on the rise.

Honduran governmental and societal concern regarding all children and especially vulnerable children seems to be increasing and there have been some hopeful signs. For example, in September 2013, the government reformed and significant improved the Child and Adolescent Code. On paper, the reformed Code is much more grounded in the rights of children rather than based on the doctrine of children in “irregular circumstances” which was common to many jurisdictions in Central America. But the reality is that the code is simply not implemented in most cases and children who are homeless or abandoned or addicted continue to be looked upon and treated as criminals and dangerous elements of society.

One real problem in Honduras is that the laws that supposedly protect these children are not integrated in any way and are often contradictory. For example, the Anti-Gang Act, which was a reform of the Honduras Penal Code and instituted more than a decade ago, allowed any child who was dressed in like a gang member or who had any tattoo on his/her body to be rounded up and put in jail, resulting in massive roundups of youth. That law is still on the books and although it is not used as frequently as

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9 “Irregular situation” refers to a child’s circumstances including abandonment, dropping out of school, a family’s lack of resources, etc. that may be used to justify application of measures usually reserved for punishment of crimes applicable only under due process.
before, it is still used as the basis for arrest of any youth who evidences any tattoo, even if that tattoo has nothing to do with any gang.

A more current law, the Law Regarding Policing and Civil Society, which was passed approximately four years ago and is still in force, contains discriminatory language that stigmatizes any person, including youth on the street who appear to be “idling”, referring to them “vagos” (Idlers or slackers or commonly understood as riffraff). In Articles 97/99 of the Act “vagos” are defined as “beggars…, ruffians, street prostitutes, addicts, drunkards, …”. As a result, any child who is dirty or ragged or addicted or appears to be idling in a way that is “suspicious” can be picked up by the police. (Art 100).

Children who are begging or selling on the street are also subject to harassment and arrest. Article 117 of the same law cited above prohibits selling anything on the street without a permit and Article 119 prohibits begging without a permit. Prohibited as well is begging using children, the maimed, paralyzed, blind, elderly, sick or those faking an illness or handicap. Since many children in Honduras beg or sell to simply survive, the police all too frequently use threat and physical force and arrest as a means to control them. Instead of seeing children in the street as vulnerable and needing protection, the predominant belief is that society needs protection from them. This includes young female minors who are being prostituted, who are often considered criminals rather than victims.

From this experience, children learn that the police are not there for their protection but rather to harass them; thus, police have earned their fear and contempt. Casa Alianza has participated in training of police in the areas of human rights, trafficking, and other issues relevant to vulnerable youth, but there is little emphasis within the police academy on such training, especially in the last five years.

If a child is picked up by the police and arrested for any kind of a crime, the system also deprives them of liberty in significant ways. Articles 206 and 207 of the Children’s Code in Honduras provide for multiple measures for treating youth offenders when they are arrested -- including return to family, placement in a child treatment center, partial liberty, or jail -- while their crimes are being investigated. But judges overwhelmingly order incarceration in the juvenile detention center even for very minor crimes. Children are then often held in prison for many months despite the fact
that Articles 237 and 238 of the Honduran Children’s Code stipulate that
the minor can be held only for 30 while an investigation is being done, and
60 days at the most for extraordinary circumstances that require more
time. The child is also held in prison during the trial which itself can drag
out for many more months. All the while the child is deprived of liberty.
Honduras does have a juvenile prison for those who are minors, but the
conditions in those prisons are abominable.

Toronto, Canada

In Canada, large scale homelessness emerged as major social and
economic issue in the 1990s. While there had always been
homelessness, the numbers of people experiencing homelessness rose
dramatically in that decade. This was an outcome of a restructuring of the
economy, and policy changes including a withdrawal of the Government of
Canada from investment in housing as well as a reduction in spending on
social services and supports.

One of the results of the increase in homelessness is that it became a
more visible ‘problem’ on the streets of major cities across the country.
The presence of homeless youth on street corners asking passersby for
change, or approaching people in their automobiles began to be framed in
news reports as a public nuisance; it threatened public safety, and the
livelihood of downtown businesses and tourism. Politicians were quick to
chime in as part of this classic “moral panic.” For example, the Mayor of
Toronto suggested that “squeegee kids” – young people who offered to
clean the windscreen of vehicles stopped at traffic lights - were “horrible
and disgusting individuals”. In response, the provincial government
enacted the Ontario Safe Streets Act (SSA) in 1999,\textsuperscript{10} designed to
address panhandling, squeegeeing and other forms of solicitation
undertaken in an “aggressive manner … a manner that is likely to cause a
reasonable person to fear for their safety and security”. Unfortunately, the
language of the Act is rather vague, giving law enforcement officials broad
discretion in its application. Moreover, suggesting enforcement such a law
is justified if the activity causes a person to be fearful can play to

\textsuperscript{10} In 2015, efforts are under way to repeal the Safe Streets Act in Ontario.
prejudices rather than real concerns. The law, while not explicitly mentioning people who are homeless, clearly is intended to target people of that status, and was framed based on similar legislation from the United States that had the intention of criminalizing homelessness, or the activities that people who experience homelessness engage in as a means of survival.

In the ensuing decade, the ticketing of homeless persons became a common practice used by police to get homeless persons to ‘move on’ from public spaces. Yet in spite of two studies that demonstrated the incidence of public begging and squeegeeing declined dramatically, the number of tickets issued began to rise. Between the year 2000 and 2010 the total number of Ontario SSA tickets written up by members of the Toronto Police service increased exponentially, from 710 tickets in 2000, to 3,646 in 2005, and again to 15,224 in 2010, an increase of 2,147%. The total value of the tickets in 2009 was minimally $781,380, and over eleven years more than four million dollars ($4,043,280). This is a large financial burden placed upon homeless people living in extreme poverty, and who have limited means to pay. Many individuals over time accumulate hundreds and even thousands of dollars in fines that they are unable to pay. Involvement in the Criminal Justice System makes it even more challenging for homeless individuals to engage in education, training and/or the labour market.

Issuing fines to people who are homeless is inherently problematic because their experience of poverty leaves them unable to pay. Jailing people who are unable to pay because they are homeless is highly counterproductive, and contributes to the cycle of homelessness/prison/homelessness. It is also a question of rights. The Criminal Code of Canada states that if an offender does not have the ability to pay a fine immediately, they should be allowed a reasonable time to do so.

Unfortunately, encounters between homeless youth and the police go well beyond Ontario Safe Streets Act violations. In fact, police utilize a much broader range of existing laws and practices in their dealings with street youth. A key finding of our research is that homeless youth receive an inordinate amount of attention from police, with 78% reporting some kind of encounter, and of that group 77.5% reporting more than one interaction. While some reported incidents of police stopping to help them (13.6%), the majority considered their encounters to be negative, including “stop
and searches" (59.8%), being asked to “move on” (36.8%), receiving tickets for a range of minor offences (33%), or being arrested (44%). The impact of this level of police contact, surveillance and ticketing can have longer lasting consequences that extend beyond the time the young person was homeless.

“What one can see happening in the long run in cases like this is that when this youth eventually does get housing, education, and a part time job, the collection agency comes knocking, and that’s the city, saying “You owe us”. It is an incredibly destabilizing moment when the young person says, “OK, I’ve got it together, I’ve got a minimum wage job, I can pay my rent, make my bills, and now I’ve got this debt”. Whether its $4,000 dollars, maybe others have $400 debt, it is devastating – too much for someone who is just trying to get back on track and live month to month. And so that has had a big negative impact on some of my clients, and has exacerbated some of their mental health issues.”

---Johanna Macdonald, Lawyer, Street Youth Legal Services, JFCY.

Young people who are homeless perceive the inordinate amount of attention they receive from the police as harassment and due to the fact they are young and homeless. Some street youth report excessive use of force by the police during these encounters.

It is contended that the conflictual relationship between the police and homeless youth reflects a larger battle over individual rights and privileges to use public space.

It is through this lens that homeless persons – and in particular, those who squeegee and panhandle – are considered to embody disorder; a disorder that is seen to be delinquent and criminal, and therefore requiring a law and order response.

The experience of homeless people (in this case street youth) in engaging the police thus raises questions about citizenship and social inclusion, in reference to: a) who does and does not receive fair treatment by the police, and more broadly, b) who has access to, and what activities are permitted in, public spaces (streets, sidewalks, parks) and semi-public
spaces (doorways, shopping malls, unoccupied buildings) in major cities.

The criminalization of homelessness, then, is not merely about policing and policing practice, but reflects a broader concern with making this form of extreme poverty less visible. When our response to homelessness does not adequately support people struggling to avoid homelessness, or conversely help those in crisis move out of homelessness quickly, we are left with a visibly impoverished population.
C. Resources

North South Wales

“The drift of children in care into the juvenile justice system – Turning victims into criminals”, NSW Community Services Commission, December 1996

“Just Solutions – wards and juvenile justice”, NSW Community Services Commission, March 1999. This report found that children in state care were 16 times over-represented in juvenile detention centres, and 6.5 times over-represented on supervision orders. It was also noted that children in DOCS care face special problems at all stages of the juvenile justice system. For example, they are more likely to come into contact with the police, less likely to have an adult support person available to protect them at the police station, more likely to be refused bail (often on “welfare” grounds), and more likely to receive a custodial sentence.

“2009 NSW Young People in Custody Health Survey”, Juvenile Justice/Justice Health, 2009. Among the report’s findings were that, of the young people in NSW juvenile detention centres:

- 60% had a history of child abuse or trauma
- 27% had been removed from their families and placed in care.
- Many were homeless or had unstable accommodation. About 23% of young women and 8% of young men had moved four or more times in the previous six months.

“The Drift from Care to Crime: a Legal Aid NSW Issues Paper”, Legal Aid NSW, 2011

12 No link available
Kenya
Glad’s House is currently working to produce a report and recommendations on the current situation for children and young people living/working on the streets of Mombasa, including their experiences with the criminal justice system. The report will be published later this year.

Honduras
Casa Alianza operates a Human Rights Observatory which produces monthly reports on issues related to vulnerable youth as well as special reports on issues of great importance to children and the defense of their rights. In order to receive their reports you can email them at: observatorio@casa-alianza.org.hn

Toronto, Canada
International Summit on the Legal Needs of Street Youth

Issue 5: Criminalization of Street Youth

Standards

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A. Background

Whether runaway or throwaway, once on the street, unaccompanied homeless youth face numerous legal barriers that often complicate their attempts to meet the basic necessities of life on their own and prevent them from reaching out for assistance to state agencies and service providers that could otherwise help them. The model of some nations is to “criminalize” homelessness among youth, making the act of being on the streets without parents, or engaging in “life-sustaining” behavior such as sleeping in public, a criminal act, with detention or fines as penalties.

Status offenses criminalize activities only for youth, such as curfew, truancy, or runaway statutes. Beyond these, many other laws criminalize activities for all homeless persons, but because of their inability to legally work or contract for housing or other goods and services, may have a disparate impact on youth. These include anti-sleeping, sitting, lying, camping, and loitering ordinances, laws criminalizing public urination or defecation, anti-panhandling or other laws criminalizing informal economy jobs, or disparate enforcement of laws such as jaywalking or littering against homeless persons. The potential for being arrested or turned into the child welfare system turns law enforcement into an enemy to be avoided, and can cause homeless youth to hide themselves in dangerous places or accept offers of housing that may make them vulnerable to physical, sexual, or emotional abuse. Once in the criminal justice system, youth can be subject to fines and fees and arrest records that follow them throughout their lives, making it more difficult to obtain housing, employment, or social services that would help them to exit homelessness.

Article 20 of the Convention on the Rights of the Child: “A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.”

The U.N. Special Rapporteur on Extreme Poverty and Human Rights has stated that “[l]aws which specifically target the particular behaviours and
actions of persons living in poverty amount to discrimination on the basis of economic and social status, and shall be repealed.”

For more background, see the Issue Brief on Criminalization under separate cover.

B. Substantive Standards

1. Street youth shall not be arrested or detained for sleeping in public areas.
   i. See: California, USA Right to Rest Act, CA SB 608 (pending), which states as follows:

      (a) Persons experiencing homelessness shall be permitted to use public space in the same manner as any other person, without discrimination based on their housing status. In addition, the existence of homelessness requires that civil and human rights that are amply protected in the home and in other private places be extended to the public areas in which homeless persons live to ensure the equal rights of all Californians, whether homeless or housed.

      (b) Every person in the state shall have the following basic human and civil rights, that may be exercised without being subject to criminal or civil sanctions or harassment by law enforcement, public or private security personnel, or BID agents:

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2 Available at http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_0601-0650/sb_608_bill_20150227_introduced.html
1) The right to use and to move freely in public spaces, without discrimination and without time limitations that discriminate based upon housing status.

2) The right to rest in public spaces and to protect oneself from the elements, in a nonobstructive manner...

   ii. But see: Boise City, Idaho, USA Code\(^3\) which states: “It shall be unlawful for any person to use any of the streets, sidewalks, parks or public places as a camping place at any time . . . provided that this section shall not prohibit the operation of a sidewalk café pursuant to a permit issued by the City Clerk.”

   iii. But see: Honduras Law Regarding Police and Civil Society Articles 97 and 99 designating and sanctioning as “idlers” anyone who does not “have a known honest way of making a living” including minors.

2. Street youth shall not be arrested or detained for engaging in life sustaining activities.

   i. See: California, USA Right to Rest Act, in B.1. above.

   ii. But see: Other jurisdictions, such as Honolulu, Hawaii, USA have made arrest mandatory for sitting on a public street during business hours.\(^4\)

   iii. But see: Honduras Law Regarding Police and Civil Society Articles 117 and 119 prohibiting begging or ambulatory sales without a municipal permit.

3. Youth shall not be involuntarily detained based solely on lacking parental involvement.

\(^3\) Boise City Code § 9-10-02 (1993)

\(^4\) Ch. 29, Art. ___.Available at http://www.honolulu.gov/rep/site/ocs/roh/ROH_Chapter_29_.pdf
i. See: In New Mexico, USA, although police can take runaway youth into custody, they must explain to the youth why he/she is in custody, and can only bring the young person home, to a foster home, to a relative, or to a community-based shelter. New Mexico law also explicitly limits custody to 48 hours without a court order and states that runaway youth cannot be transported in a police car unless necessary for their immediate safety.\(^5\)

ii. See: Tanzania, The Law of the Child (Juvenile Court Procedure) Rule 29(6), 2014 which states that “A lack of parental care or a fixed abode shall not be a reason to remand the child in custody”. The Rules also allow for release into the care of a fit person/institution or the Commissioner of Social Welfare, in order to avoid the situation in which children are remanded into prison (or juvenile detention facility) simply because they are homeless.

4. **Youth shall not be detained for running away, incorrigibility, or other behavior that would not be illegal for adults.**

   i. See: Georgia, USA statute\(^6\) which states as follows: the term “unruly child” is used to refer to a child who is in need of supervision, treatment, rehabilitation, or has committed a delinquent act, and (a) is subject to compulsory school attendance and is habitually truant without justification, (b) is habitually disobedient of the reasonable and lawful commands of his/her parent, guardian, or other custodian and is ungovernable, (c) has committed a status offense, (d) has run away without just cause, (e) loiters in a public place between midnight and 5:00 a.m., (f) disobeys a court order, or (g) patronizes a bar without

\(^{5}\) N.M. Stat. Ann. § 32A.

\(^{6}\) Ga. Code Ann. § 15-11
parents/guardians/custodians or possesses alcohol. The police can take into custody, without a warrant, any child they believe (a) is delinquent or “unruly,” is suffering from illness, injury, or is in immediate danger from his/her surroundings and that his/her removal is necessary, (b) any child who has run away from home or has been reported as a runaway, or (c) any child violating a curfew, and hold him/her in a facility for unruly children. However, within 12 hours of being taken into custody, the child must be returned to parents/guardians, brought before the court or an intake officer, or released. In no case shall an unruly child be detained in a jail.

5. Police shall not engage in random “round ups” of street youth.
   
i. But see: Honduras Anti Gang Law Article 331-332: Allowing police to arrest any group of 10 youth or more who appear to be members of a gang.

6. Youth without parents, or surviving family, shall be able to sue the government or private entities for compensation for torture or death.

7. Street youth may not be arrested for attempting to earn an income; such as shoe shining, or squeegeeing.
   
i. But see: Honduras: Law Regarding Police and Civil Society Articles 117 and 119 prohibiting begging or ambulatory sales without a municipal permit.

8. The juvenile and criminal justice records of street youth shall be confidential, not shared with entities outside of the courts and justice systems.
9. All residential care providers and youth accommodation services shall be appropriately accredited. Such accreditation shall not be granted unless there is a satisfactory behaviour management policy in place.

   i. See: Children and Young Persons (Care and Protection) Act 1998 in North South Wales (NSW)
      
      (a) Under this Act, a “designated agency” must be accredited by the Office of the Children’s Guardian in order to provide out-of-home care. The accreditation procedures are set out in the regulations which accompany the Act.
      
      (b) The regulations do not specify the precise standards that agencies must meet; instead, these standards are set by the Office of the Children’s Guardian (and must be approved by the relevant Minister). The Office of the Children’s Guardian requires all designated agencies to have an appropriate behaviour management policy for dealing with challenging behaviour by children in their care. However, in practice, these policies are not always adhered to, and staff are not adequately trained to implement them. Consideration could be given to amending the regulations to clearly set out the standards that designated agencies must meet.

10. Police should not be used as a means of dealing with children's challenging behaviour in residential care homes and refuges, except as a last resort where there is a real threat to personal safety. Police should exercise their discretion, and should commence criminal proceedings against children only as a last resort.

   i. See: Young Offenders Act 1997 in North South Wales.
(a) In North South Wales, the exercise of police discretion is consistent with the and in particular the principle in section 7 that “the least restrictive form of sanction is to be applied against a child who is alleged to have committed an offence”.

(b) The accreditation standards and behaviour management policies referred to above in B.8 should provide clear guidance on when it is appropriate for residential care staff to seek police intervention.

11. If police decide to commence criminal proceedings against a child, arrest shall be a last resort. Police must first consider diversionary measures (e.g. warning, caution, youth justice conference). If court proceedings are necessary, they should be commenced by a court attendance notice without the need to arrest the child and require them to enter into a bail undertaking.

i. See: Young Offenders Act 1997 in North South Wales.

(a) The Young Offenders Act 1997 (NSW) section 7 provides that “the least restrictive form of sanction is to be applied against a child who is alleged to have committed an offence”.

(b) For a range of eligible offences covered by the Young Offenders Act, young people are entitled to a warning, police caution or referral to a “youth justice conference” instead of formal court proceedings. Consideration should be given to expanding the range of offences covered by the Act.

(c) Except for a very minor offences which attract an informal warning, a child must admit to the offence in the presence of a responsible adult, in order to be dealt with under the Young Offenders Act. The lack of a responsible adult
is a problem for children who are homeless or in care. Residential care workers who have initiated police action against a child would have a conflict of interest which would prevent them from performing this role. See the section on procedural standards for suggestions as to how this problem could be overcome.

ii. See Law Enforcement (Powers and Responsibilities) Act 2002, section 99 and the Children (Criminal Proceedings) Act 1987, section 8, North South Wales. (a) For both children and adults, the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) section 99 provides that arrest shall be a last resort. Further, section 8 of the Children (Criminal Proceedings) Act 1987 creates a presumption that criminal proceedings against children shall be commenced by court attendance notice (without the need to arrest the child and impose bail conditions).

(b) However, in practice, these provisions are not always observed and young people are often arrested inappropriately or even unlawfully. It is difficult to suggest how the legislation could be further amended to overcome this problem; in the author’s opinion, this is largely a matter of police training and culture.

12. Bail conditions should be imposed on children only as a last resort. Such conditions must be realistic and appropriate.

13. Children should not have apprehended violence orders (aka restraining orders, intervention orders) taken out against them except in exceptional circumstances.
i. See: Crimes (Domestic and Personal Violence) Act 2007 in North South Wales.
   (a) The Crimes (Domestic and Personal Violence) Act 2007 (NSW) sets out the procedures for making apprehended violence orders. The making of an AVO does not amount to a criminal conviction but it places restrictions on a person’s behaviour and it may affect their eligibility for certain types of employment, licences, etc. Breach of an AVO is a criminal offence.
   (b) The Act allows AVOs to be made against children in the same way as adults. While the Act contains special protective measures for children for whose protection an AVO is sought, but contains no such measures for children against whom an AVO is sought.
   (c) The Act also defines “domestic relationship” (and therefore “domestic violence offence”) very broadly, to include situations involving residential homes and alleged offences against staff and co-residents.
   (d) It is suggested that the Act needs to be amended to provide a special regime for apprehended violence orders against children. The starting point should be that such orders are to be applied for and made only in exceptional circumstances.

14. Children who abscond from residential care placements should not automatically be reported to police, or listed by police, as missing persons. A protocol should be entered into between police and out-of-home care providers to ensure that older children (eg those over 12 years of age) who abscond from placements are not reported or recorded as missing persons unless reasonable efforts have first been made to ascertain their whereabouts, and there are reasonable grounds to
believe that their safety is at risk. Further, police should have clear guidelines how to deal with missing persons when they are sighted, so as to minimize the incidents of children being detained.

15. Education should be free and compulsory for all children. (*See also Issue 4: Education and Employment Standards)

i. See Article 25(A) of the Constitution of Pakistan

ii. See: Honduran Constitution Articles 59, 121, 123, 151, and 158 identifying education as an essential function of the State.

iii. See: Honduras Fundamental Law of Education Articles 21-23: Education is free and compulsory for all children from preschool through 9th grade.

iv. See: Honduras Children’s Code Articles 35-45 identifying the right to an education as an essential right of citizens and as an essential obligation of the State. Also provides that education take place in an environment, and with treatment, that promotes motivation.

v. But note: Honduras has the lowest rate of matriculation in Central America. According to UNICEF, there are 2.6 million children of school age in Honduras and only 2.3 million matriculated in 2015. There is also a dramatic shortage of teachers anywhere from 3000-6000.

16. Employment of children should be prohibited except under certain circumstances as proscribed by law. (*See also Issue 4: Education and Employment Standards)

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i. Article 11(3) of constitution of Pakistan.

ii. See: Honduran Children’s Code Article 120 that prohibits child labor of any kind under the age of 14.

iii. But note: Child labor below the age of 14 is rampant in Honduras especially in rural areas where children regularly participate in harvesting of coffee, cotton, sugar cane, and other products.

17. Parents shall be prohibited from forcing their children to work. (*See also Issue 4: Education and Employment Standards)

C. Access to Justice Mechanisms

1. Trained, qualified attorneys shall be immediately assigned to any street youth charged with an offense, and shall provide free representation consistent with that provided to all other youth.

   i. See North South Wales

   (a) The Children (Criminal Proceedings) Act 1987 in North South Wales provides that children have a right to legal representation, and further that the court must ensure that proceedings are adequately explained to the child. Although in practice all children have access to free legal representation from Legal Aid or the Aboriginal Legal Service, there is no legislation which mandates that legal representation be provided to children free of charge.⁸

   (b) Law Enforcement (Powers and Responsibilities) Act 2002 in North South Wales

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⁸ Legal Aid North South Wales funds a “youth hotline” which provides advice on criminal matters for children under 18 years of age. In addition the Aboriginal Legal Service provides a similar service for Aboriginal and Torres Strait Islander people of all ages who are under arrest at police stations.
Wales and the related regulations set out the basic rights of persons under arrest, including the right to contact a lawyer. The regulations provide special protection for “vulnerable persons”, including children and people of Aboriginal and Torres Strait Islander origin. It is effectively mandatory for police to contact the Legal Aid Youth Hotline or the Aboriginal Legal Service Custody Notification Service if a child or an Aboriginal person is in their custody. However, the Legal Aid Hotline does not operate 24/7 and both services are in high demand, so there is no absolute guarantee that a person under arrest will receive legal advice.

ii. See: Honduran Criminal Code Articles 14 and 15 and Honduran Children’s Code: Article 229 providing for the right to defense to anyone accused of a crime, including minors.

iii. But note: In reality, homeless children in Honduras are rarely provided with adequate and professional legal counsel which must be provided by organizations like Casa Alianza and other child-centered NGOs.

2. **Children in state care in care should have access to free, competent and specialised legal advice and advocacy at any time.**

   i. See: North South Wales. There are some specialist legal services for young people, including the Legal Aid and ALS services referred to above, and specialist lawyers at Community Legal Centres such as Marrickville Centre and the Shopfront Youth Legal Centre. However, it is suggested that the Department of Family and Community Services (the government agency responsible for child welfare) be required to fund specialist legal advice and representation for all children in its care. The Department has provided funding for some aspects of legal assistance to children in its care, principally instructing lawyers to advise about children’s entitlement to victims of crime.
compensation. However, this falls far short of providing comprehensive legal assistance to all children in care.

3. **All children in care should be provided with an independent support person while under arrest or participating in any form of police questioning or investigation.**

   i. See: North South Wales. The Law Enforcement (Powers and Responsibilities) Act and Regulations, the Children (Criminal Proceedings) Act and the Young Offenders Act all provide that a young person is entitled to have a responsible adult present when questioned by police, and a support person present during any investigative procedure at a police station. However, such a support person can be difficult to find if the child does not have a parent or carer who can fulfil this role. In some cases a carer will be available but will have a conflict of interest. It is suggested that the NSW Government provide funding to employ and train an adequate number of independent support people. Such persons could be government employees but should be independent of the Department of Family and Community Services or the NGOs which are directly involved in running residential care facilities.

4. **Courts should deal with children who are homeless or in residential care in a manner that takes into account their special circumstances.**

   i. See: North South Wales. Although the Children's Court strives to make its procedures as child-friendly as possible, additional measures are needed for this most vulnerable group. For example, more flexibility about the dates and times when a child is required to attend court, as well as the consequences of not attending court. Bail conditions should be imposed as a last resort only and must be specially crafted to avoid further criminalising young people who have welfare needs. A trial is currently being conducted at Parramatta Children’s Court where children with
special vulnerabilities are dealt with in a "special list", involving more intensive case management by a senior magistrate. Consideration should also be given to providing court-mandated support services to children at an early stage of proceedings, rather than waiting until they have been found guilty and placed under the supervision of a juvenile justice officer.
5. Legal services should be available to street youth to follow up on allegations of torture and other cruel, inhuman, and degrading treatment.

   i. See Honduras: Youth can go to the office of the Human Rights Prosecutor to denounce any violation of human rights
   ii. But note: In practice, they will not be taken seriously unless accompanied by an adult

6. Police shall respond to and serve street youth who are victims of crime as they would any other citizen. Police shall be trained on sensitivity to the needs of particular youth, such as gender identity or disability issues.

7. Governments shall establish “child-sensitive counselling, complaint and reporting mechanisms to which street-connected children can report incidents of violence.”

   i. The United Nations High Commissioner on Human Rights made this recommendation.⁹

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