“Police (police sweeps; specialized training for the police)”

1. Overview

From the UN Comment on Children in Street Situations.
“Children engage in a range of activities in public spaces, including work, socialization, recreation/leisure, shelter, sleeping, cooking, washing and engaging in substance abuse or sexual activity. Children may engage in such activities voluntarily, through lack of viable choices or through coercion or force by other children or adults. Children may conduct these activities alone or in the company of family members, friends, acquaintances, gang members, or exploitative peers, older children and/or adults.” (pg 4, Section 6)

“States must respect and ensure the rights set forth in the Convention for each child within their jurisdiction without discrimination of any kind. However, discrimination is one of the prime causes of children ending up in street situations. Children are then discriminated against on the basis of their connections with the street, that is, on the grounds of their social origin, property, birth or other status, resulting in lifelong negative consequences.” (pg 9, Section 25)

Policing, and the criminalization of children and youth who are street involved.

The criminalization of homelessness can be defined as the use of laws and practices (policing, justice system) to restrict the rights, activities and movements of children and youth who are homeless in public spaces. Key here is that that children and youth who occupy public spaces (because they lack private ones) and whose poverty is highly visible are subject to extra attention by the police and the criminal justice system not so much for what they do, but for who they are and where they are. Key mechanisms for the criminalization of children and youth homelessness include:

1. Enactment of new laws and statutes that are intended to curtail or restrict the activities of people who are homeless.
2. Disproportionate and discriminatory enforcement of existing laws and ordinances.
3. Increased surveillance and policing of public and semi-public spaces by police and private security.
4. Rounding up of groups of young people (not just individuals) based on status and perception that they are street involved.
5. Increased incarceration of children and youth
6. Manipulation of the physical environment to restrict its usage by people who are homeless

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1 For children in street situations with their families, this general comment focuses on the children as the main rights-holders. Where children in street situations have children of their own, the best interests of each generation of children must be a primary consideration.

2. Key articles of the Convention that are relevant to policing of children in street situations, and the criminalization of homelessness.

Article 2 on non-discrimination

**Non-discrimination on the grounds of social origin, property, birth or other status**

25. States must respect and ensure the rights set forth in the Convention for each child within their jurisdiction without discrimination of any kind. However, discrimination is one of the prime causes of children ending up in street situations. Children are then discriminated against on the basis of their connections with the street, that is, on the grounds of their social origin, property, birth or other status, resulting in lifelong negative consequences.

**Systemic discrimination**

26. Discrimination may be direct or indirect. Direct discrimination includes disproportionate policy approaches to “tackle homelessness” that apply repressive efforts to prevent begging, loitering, vagrancy, running away or survival behaviours, for example, the criminalization of status offences, street sweeps or “round-ups”, and targeted violence, harassment and extortion by police. (pg 10, section 21)

Eliminating Discrimination

27. Discrimination should be eliminated formally, by ensuring that a State’s constitution, laws and policies do not discriminate on the grounds of street situation, and substantively, by paying sufficient attention to children in street situations as a group who have suffered persistent prejudice and who require affirmative action.

“Public fear of crime committed by children in street situations is often media-fuelled and disproportionate to reality. The media should be actively encouraged to use accurate data and evidence and conform to child protection standards to safeguard children’s dignity, physical security and psychological integrity.”

Civil and political space

37. Association and peaceful assembly are essential for children in street situations to claim their rights, for example, through working children’s unions and child-led associations. However, the Committee has regularly expressed concern in its concluding observations regarding the lack of political space afforded to children to speak out. This is particularly constrained for children in street situations, who often lack connections with a trustworthy adult who may be required.

Article 6 on the right to life, survival and development

Right to life

29. Children in street situations are at risk of, inter alia: extrajudicial killings by State agents; murder by adults or peers, including murder linked to so-called vigilante justice, and association with/targeting by criminal individuals and gangs, and when the State does not prevent such crimes; exposure to potentially life-threatening conditions associated with hazardous forms of child labour, traffic accidents, substance abuse, commercial sexual exploitation and unsafe sexual practices; and death due to lack of access to adequate nutrition, health care and shelter. The right to life should not be interpreted narrowly. It concerns individuals’ entitlement to be free from acts and omissions intended or expected to cause their unnatural or premature death, and to enjoy a life with dignity. Public spaces
Article 12 on the right to be heard

33. Children in street situations face particular barriers in being heard, and the Committee encourages States to make proactive efforts to overcome those barriers. States and intergovernmental organizations should provide — and support civil society organizations in providing — children in street situations with a supportive and enabling environment to: be heard in judicial and administrative proceedings; carry out their own initiatives; and fully participate at the community and national levels in policy and programme conceptualization, design, implementation, coordination, monitoring, review and communication, including through the media.

B. Civil rights and freedoms

Article 15 on the right to freedom of association and peaceful assembly

Civil and political space

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Public spaces

38. In addition to association and peaceful assembly in the context of civil and political rights, the Committee emphasizes the importance of respecting the choice of children in street situations to associate together in public spaces, without threat to public order, to satisfy their survival and development rights (art. 6), for rest, play and leisure (art. 31), to create networks and organize their social life, and as a key feature of their lives in general.

Restrictions on article 15

39. In accordance with article 15 (2), policing or other measures relating to public order are only permissible where such measures are taken on the basis of the law, entail individual rather than collective assessment, comply with the principle of proportionality and represent the least intrusive option. Such measures should not be applied on a group or collective basis. This means that harassment, violence, round-ups and street sweeps of children in street situations, including in the context of major political, public or sporting events, or other interventions that restrict or interfere with their rights to association and peaceful assembly, contravene article 15 (2).

Implementation measures

40. States should not harass or arbitrarily remove children in street situations from where they associate and peacefully assemble in public spaces. Sanctions should be imposed on those who violate this right. Specialized training is required to build the capacity of police and security forces to deal with public order situations in a way that upholds respect for the rights of children in street situations. Local government by-laws should be reviewed to ensure compliance with article 15 (2).

States should support positive measures, such as: empowering children in street situations through child rights education and the development of life skills; preparing stakeholders to accept the views of these children in decision-making as expressed through association and assembly; and promoting the participation of these children in recreation, leisure, sports, artistic and cultural activities alongside other children in the community. Legislation should not require children in street situations’ associations or peaceful assemblies to be formally registered to incur protection under article 15.
3. Draft Strategies for Implementation

In carrying out their duties, police departments and individual police should refrain from actions that ‘criminalize street involvement” through practices that are discriminatory and in violation of international law.

**States should:**

- **Ensure that legislation, policies and practices relating to policing do not result in the harassment, arrest, issuing of fines, and sweeps of children and youth because of their status of being street involved.** “States should not harass or arbitrarily remove children in street situations from where they associate and peacefully assemble in public spaces. Sanctions should be imposed on those who violate this right. Specialized (pg 15, Section 40) “In accordance with article 15 (2), policing or other measures relating to public order are only permissible where such measures are taken on the basis of the law, entail individual rather than collective assessment, comply with the principle of proportionality and represent the least intrusive option. Such measures should not be applied on a group or collective basis.”

- **Establish and implement a research agenda regarding the policing of street children and youth in public spaces.** “States should collect information about such children in their country to decide how to uphold their rights.” (p.6, Section 13) “In partnership with academia, civil society and the private sector, States should develop systematic, rights-respecting, participatory mechanisms to collect data and share disaggregated information about children in street situations. States must ensure that the collection and use of such information does not stigmatize or harm these children.” (Pg 9, Section 23)

- **Conduct Legislative and Policy Reviews to assess whether the State is in compliance with international covenants on the rights of the child.** “States should assess how policies and laws can be improved to reflect the recommendations of the present general comment. States should, with immediate effect remove provisions that directly or indirectly discriminate on the grounds of the street situation of children or their parents or family; abolish any provisions allowing or supporting the round-up or arbitrary removal of children and their families from the streets or public spaces; abolish where appropriate offences that criminalize and disproportionately affect children in street situations, such as begging, breach of curfews, loitering, vagrancy and running away from home; and abolish offences that criminalize children for being a victim of commercial sexual exploitation, and so-called moral offences, such as sex outside of marriage”. (p6, Section 14)

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3See general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, para. 18. Originally developed in relation to unaccompanied and separated children who have crossed an international border, in the present general comment the Committee extends this interpretation to all children in street situations.
• Establish clear policy and legal definitions of homeless and street involved children to guide policy, programs, practices and interventions. (p6, Section 14)

• Invest in training and education of police, lawyers, judges and others who come in to contact with children and youth on the rights of children and the local context of children in street situations (Pg7, Section 18)

• Ensure children and youth who are street involved have access to services and supports. “States should take action to secure the ability of children in street situations to gain access to basic services such as health and education, and to justice, culture, sport and information. States should ensure their child protection systems provide for specialized services on the street, involving trained social workers with good knowledge of local street connections and who can help children reconnect with family, local community services and wider society.” (pg 8, Section 19)

• Put in place clear monitoring and accountability mechanisms. “21. The effective implementation of legislation, policies and services relies on clear monitoring and accountability mechanisms that are transparent and robustly enforced. States should support the involvement of children in street situations, including in social accountability mechanisms, such as coalitions of State and non-State actors, committees or working groups that monitor public policy, focusing on children in street situations. Independent national human rights institutions for promoting and monitoring implementation of the Convention,11 such as children’s rights ombudspersons, must be easily accessible to children in street situations.” (pg. 8, Section 21)

• Ensure street involved children and youth who are victims or survivors of human rights violations have the right to effective legal and other remedies, including legal representation. “22. Children in street situations who have been victims or are survivors of human rights violations have the right to effective legal and other remedies, including legal representation. This includes access to individual complaints mechanisms, by children themselves and/or represented by adults, and to judicial and non-judicial redress mechanisms at the local and national levels, including independent human rights institutions. When domestic remedies are exhausted, access to applicable international human rights mechanisms should be available, including the procedure set up by the Optional Protocol to the Convention on a communications procedure. Reparation measures can include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition of rights violations.” (Pg 8, Section 22)

• Ensure that mechanisms to include street involved children and youth in development of policy and practices and ensure that their voices are heard. “The right of children in street situations to have access to, seek and impart information about their rights is crucial if those rights are to be understood and realized in practice. Context-specific, accessible child rights education will help to
overcome barriers to participation so their voices can be heard.” (Pg 15, Section 42)

A child rights approach ensures respect for the dignity, life, survival, well-being, health, development, participation and non-discrimination of the child as a rights holder.