1. **Overview: From the UN Comment on Children in Street Situations**

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.[1]

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. Children in street situations need to have access through accessible and appropriate channels to accurate, high-quality and child-friendly information relating to: (a) the role and accountability of the State, and complaints mechanisms for redress in relation to human rights violations; (b) protection from violence; (c) sexual and reproductive health, including family planning and prevention of sexually transmitted infections; (d) healthy lifestyles, including diet and physical activity; (e) safe and respectful social and sexual behaviours; (f) prevention of accidents; and (g) the negative impacts of abuse of alcohol, tobacco, drugs and other harmful substances.

Children in street situations are more likely to be targeted, criminalized and end up in the juvenile or adult justice system and less likely to benefit from diversion, alternatives to detention or restorative practices as they are unable to afford bail and may have no responsible adults to vouch for them. Police misconduct, such as harassment (including stealing children’s money and possessions, rounding them up or arbitrarily moving children on, often on the orders of their superiors and/or politicians), corruption, extortion (for money or sex) and physical, psychological or sexual violence are common rights violations that States should criminalize as a matter of urgency. The Committee is concerned about the application of “zero tolerance” policies criminalizing children in street situations and resulting in forced institutionalization. States should support community policing, with an emphasis on protection rather than punishment of children in street situations, and adopt a multicultural police service. States should guarantee all rights to all children, including those in street situations, in the context of a restorative rather than punitive juvenile justice system.[2]
2. Common Issues Concerning Child Rights in the Criminal Justice System

- Children placed in Adult Prisons with inappropriate age assessments
- Homogenisation of children in street situations within the court process - placed in prison for 3 - 6 months and then ordered home.
- Lack of access to legal representation
- Inadequate provision of child friendly cells in police stations, courts and in prisons
- Inadequate infrastructure within institutions - overcrowding, lack of beds, mattresses, no access to clean water, no access to healthcare, no access to education, no access to play, no child protection systems.
- Absence of infrastructure on release: no/inadequate home assessments with family mediation, counselling and risk assessments of the risks at home - often children are ordered to return home by the courts where there is more risks than on the streets.
- Lack of training for all those who come into contact with the child in the criminal justice system concerning child rights
- Lack of a systematic review of laws, policies and procedures impacting on the rights of street children
- Lack of monitoring processes to propel progress
- Lack of research agenda to support the above

3. Four Steps to Implement Child Rights in the Criminal Justice System (adapted from the Canadian Bar Association’s “Child Rights Toolkit”)

STEP ONE

USE THE CONVENTION ON THE RIGHTS OF THE CHILD (CRC) AS A FRAMEWORK
Know what child rights are: keep in mind the four guiding principles (non-discrimination, best interests of the child, life/survival/development, participation); and the three clusters of rights (protection, provision, participation).

STEP TWO

START WITH THE CHILD TO INFORM STATE ACTION
Work outwards to understand the child’s lived reality by considering what is happening for the child, the child’s family and the child’s community; services available to the child; and options for the child to participate.
Consider:
- The child - where resides, age and development, culture (and protocols), indigenous, gender identity, attending school/grade, any disabilities or special vulnerabilities, potential discrimination, activities important to the child, who the child turns to for assistance or support/ other significant persons in the child’s life, what has happened
from the child’s perspective to date (e.g. what is the case about, has the child experienced violence or other trauma, how many times interviewed, number of court dates, type of conflict exposed to, form of participation, information provided to child in a way the child understands.

- The child’s family - who is the child’s family (immediate and extended), where do they reside, nature of the child’s relationship with each family member, what’s happening as it affects the child, what are the family’s economic or other circumstances.
- The child’s community - school, caregivers, friends, neighbours, out-of-school activities, groups, coaches, community leaders, spiritual or religious leaders/guides.
- Services available - which legal process is triggered, what options are available (e.g. mediation (in person or distance), children’s lawyer), what government or community services are available to assist (e.g. Child Advocacy Centre for children who have experienced violence and are moving through the criminal process as a victim or witness), multi-disciplinary assistance (e.g. child specialist or counsellor) Options to participate to inform action/inaction - directly (e.g. court process, mediation, cultural process, judicial/decision-maker interview, consultation); or indirectly (e.g. legal or other representative, assessment, views of the child report.

STEP THREE

TAKE A CHILD RIGHTS-BASED APPROACH IN LAW

Identify the child rights at stake, where they are found in in domestic law and and policy, and undertake a general and contextual legal analysis consistent with the child’s lived reality, considering the child’s particular vulnerabilities.

For examples of child rights-based analysis in case law, see:

- A.M.R.I. v. K.E.R., 2011 ONCA 417 (refugee child’s right to meaningful procedural protections in Hague Convention proceeding including right to be heard and to have legal representation).

STEP FOUR

ADVANCE THE CHILD’S RIGHTS AND WELLBEING

Recognize the child as a participant with independent rights and support the child’s best interests and healthy development in all actions given 1, 2 and 3 above. How you do this, whether as part of the process or the outcome, may depend on your role as child’s lawyer, litigation guardian for the child, amicus curiae, policy maker or adult’s lawyer where actions affect a child. Keep focused on the child in question, create an enabling space where that child
can participate, and use multi-disciplinary professional expertise. See additional information below.

Practice Essentials

- Recognize the child is a participant with his or her own rights in all matters that affect them and treat the child accordingly given his or her evolving development and capacity.
- Keep focused on the child’s rights (best interests is often easier for people to understand but this must be understood to include an opportunity for the capable child to express his or her views and to have those views given due weight in accordance with the child’s age and maturity).
- Provide information to the child about what is happening: their role in the process, or a decision made, in a way that they understand.
- Create an enabling space for the child to participate to inform their best interests: use a trained professional; the child participates voluntarily and is aware of what will happen with their views prior to sharing them; child is not required to share their views more times than necessary.
- Keep involvement of the child neutral such as through joint retainer of experts or child interviewers, or with the Court’s or a mediator’s assistance, to minimize or mitigate conflict if at all possible; consider issues of confidentiality and privilege.
- Make sure the child knows what decisions are made, why, and how their views were considered and given due weight.
- Write pleadings, submissions or orders so they accurately reflect the child’s rights: e.g. Parenting time in family law is the child’s right and not the parents’ so state, “Child A’s parenting time with parent Y will be . . . “ as opposed to “Parent Y will have parenting time with Child A . . . ”.
- Work with multi-disciplinary professionals on matters concerning children (e.g. criminal proceedings where a child has been a victim or witness of crime requires involvement of legal, law enforcement, medical, child protection and counselling professionals and others such as indigenous communities; skilled mental health professional in family law matters, as applicable).
- Support the child’s protective factors (e.g. strong connections to school, family, community)

4. Draft Principles for State Implementation

States should:

- Establish and implement a research agenda regarding the implementation of child rights in the criminal justice system. “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)

- 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 (Pg 7, 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)

[1] See 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.