



# **Criminalised lives: the impact of the criminalisation of homelessness and extreme poverty on children in street situations**

A joint submission to the Special Rapporteur on the right to adequate housing and the Special Rapporteur on extreme poverty and human rights, in response to the Call for Input on the decriminalisation of homelessness and extreme poverty  
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## 1. Introduction

This is a submission prepared by the Consortium for Street Children (CSC), with input provided by the following network member organisations:

- BabaWatoto Organization, Dar es Salaam, Tanzania, <http://www.babawatotocentre.org/>
- Dhaka Ahsania Mission, Dhaka, Bangladesh, <http://www.ahsaniamission.org.bd/>
- Grambangla Unnayan Committee (GUC), Barisal, Bangladesh, <https://grambanglabd.org/>
- Kigwe Social Economic Development & Training (KISEDET), Dodoma, Tanzania, <https://www.kisedet.org/>
- Legal Awareness Watch Pakistan (LAW), Lahore, Pakistan, <https://legalawarenesswatch.com/>
- Street Children Local Economic and Education Development Organisation (LEEDO), Dhaka, Bangladesh (<https://leedobd.org/>).

**CSC is the only global alliance dedicated to raising the voices of street-connected children.**<sup>1</sup> With over 200 members, CSC creates powerful links between organisations, activists and policy makers around the world who are addressing the needs and rights of street children, conducting research to share learning, as well as advocating for street-connected children on local, national and international levels.

We believe that we have an important perspective on the decriminalisation of homelessness and extreme poverty, as these are crucial issues for children in street situations. No child should have to live on the streets or work there in order to survive. However, this remains the case for children worldwide. Children should not be criminalised because they have nowhere else to sleep, nor for needing to eat, nor for earning a living. Criminalising homelessness and survival behaviour associated with extreme poverty essentially **criminalises the existence of children in street situations**, punishing them for the vulnerable situation in which they find themselves.

As recognised in paragraph 26 of the Committee on the Rights of the Child’s General Comment Number 21 (hereafter ‘General Comment no.21’), disproportionate laws and policies to tackle homelessness which prevent begging, loitering or vagrancy constitute direct discrimination against children in street situations, in turn making them “more vulnerable to violence, abuse, exploitation, sexually transmitted infections, including HIV and their health and development are put at greater risk.”<sup>2</sup> General Comment no.21 provides an excellent overview of the rights issues affecting children in street situations more broadly, and we recommend that the Special Rapporteurs review this document in preparing their report.

This submission aims to provide a statistical and global overview of the laws and policies which negatively affect children in street situations by criminalising homelessness and related survival behaviours, such as begging and loitering. To highlight the real-world impact of such punitive laws and policies, this submission will additionally provide three country profiles, focusing on the countries in

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<sup>1</sup> This submission uses the term “children in street situations” or “street children” to describe children who a) depend on the streets to live or work, either on their own, or with other children or family members; and b) have a strong connection to public spaces (e.g. streets, markets, parks, bus or train stations) and for whom the street plays a vital role in their everyday lives and identities. This wider group includes children who do not live or work on the street but regularly accompany other children or family members in the streets.

<sup>2</sup> CSC, ‘Rights of Children in Street Situations: General Comment No.21 (2017) on children in Street Situations’, Paragraph 26 [https://www.streetchildren.org/wp-content/uploads/gravity\\_forms/1-07fc61ac163e50acc82d83eee9ebb5c2/2017/09/UN-General-Comment-Glossy-plus-Annex.pdf](https://www.streetchildren.org/wp-content/uploads/gravity_forms/1-07fc61ac163e50acc82d83eee9ebb5c2/2017/09/UN-General-Comment-Glossy-plus-Annex.pdf)

which CSC and its partners operate in. Overall, we hope that the Special Rapporteurs find the information in this report helpful, particularly the final set of **four general recommendations** at the end of this submission.

## 1.1 Methodology

The information compiled in this report is based upon the extensive experience of CSC and its network on the rights of children in street situations. This derives from the following sources: (1) CSC's Legal Atlas on Street Children, (2) rights analysis undertaken by CSC based on existing knowledge and relevant international standards, and (3) country-specific information through collaborative work with partners, including on specific projects.<sup>3</sup>

### 1.1.1 Country-specific information

The material on Bangladesh was gathered as part of a Legislative and Policy analysis (undertaken in April 2021) of the situation of children in street situations in Bangladesh, as part of a three-year, Commonwealth Foundation funded project in the country. This analysis, which uses General Comment no. 21 as a benchmark against which to assess the situation in Bangladesh, has been supplemented by information gathered during a survey of over 100 children in street situations in Dhaka and Barisal conducted by project partner Grambangla Unnuyan Committee. The input of the project's two other partners, Dhaka Assania Mission and the Local Economic and Education Development Organisation, has been invaluable in compiling this information, especially regarding the impacts of legislation and policy on the lives of children.

The information on Pakistan derives from a research survey that was conducted by Legal Awareness Watch Pakistan (LAW), a member of CSC's network.<sup>4</sup> Between April 2020 and June 2021, LAW undertook a study into 20 prisons in Pakistan (10 prisons from Punjab and 10 from Sindh) to identify the number of children that had been imprisoned whilst facing criminal charges, or who had been convicted of severe punishment. During this 15-month project, LAW's volunteers visited prisons and police stations, analysed official State reports and observed trials at district level criminal trial courts. LAW's research study was also complimented by the information that they collected from their volunteers in other cities of Pakistan.

The section on Tanzania has emerged from a three-year FCDO-funded project in the country, in which CSC was a core partner alongside Railway Children Africa. The project, which ran from 2019- 2021, worked across six of the largest urban areas in Tanzania – Arusha, Dar es Salaam, Dodoma, Iringa, Mbeya and Mwanza – and aimed to realise the provisions of General Comment no. 21 for Tanzanian children in street situations. A Legislative and Policy Review (undertaken in early 2020) was again complemented by extensive surveying of children, and key informant interviews with relevant stakeholders, including national and local government officials, and police officers.

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<sup>3</sup> The Legal Atlas is a project by CSC. This is explained in detail in Section 2.1 and 2.2.

<sup>4</sup> This work was undertaken by LAW with the support of overseas donors.

## 2. Global overview of the criminalisation of homelessness and extreme poverty for children

### 2.1. The Legal Atlas

The Legal Atlas for Street Children is a free, online database which provides accessible information on laws and policies around the world in terms of their impact on children in street situations.<sup>5</sup> Legal landscapes can be complex and difficult to navigate for children in street situations and the organisations that work with them. The Legal Atlas, managed by CSC and funded by Baker McKenzie LLP, aims to provide key information on laws and policies which affect children in street situations directly into the hands of those advocating for their rights, as well as street-connected children themselves.

#### 2.1.1 Introduction to the Legal Atlas

Utilising the legal research expertise of Baker McKenzie LLP and their corporate partners, the Legal Atlas provides information on (1) status offences (i.e., whether children are criminalised for begging, vagrancy, loitering, truancy or similar activities), (2) police roundups (i.e., whether it is illegal for police to round up street children) and (3) legal identity (i.e., whether a child can obtain retroactive or replace birth registration documents).<sup>6</sup>

The information contained within the Legal Atlas is accurate at the time of publishing and is updated as soon as possible once new information becomes available.

CSC hopes that the Legal Atlas is a useful resource to those who access it. In 2021, there were 51,113 unique visitors to the Legal Atlas. This included 713 research centres and universities from 86 different countries, as well as 26 national and regional governments from 20 countries (including 2 prime minister offices). **Ensuring that the laws and policies affecting street-connected children are easily accessible to researchers and decision makers is essential to ensure that good progress is made.** CSC is therefore encouraged by the positive data analysis of those who visited the resource in 2021.

The Legal Atlas can be accessed using the following link, and we hope that the Special Rapporteurs will find the information contained within it useful: <https://www.streetchildren.org/legal-atlas/map/>.

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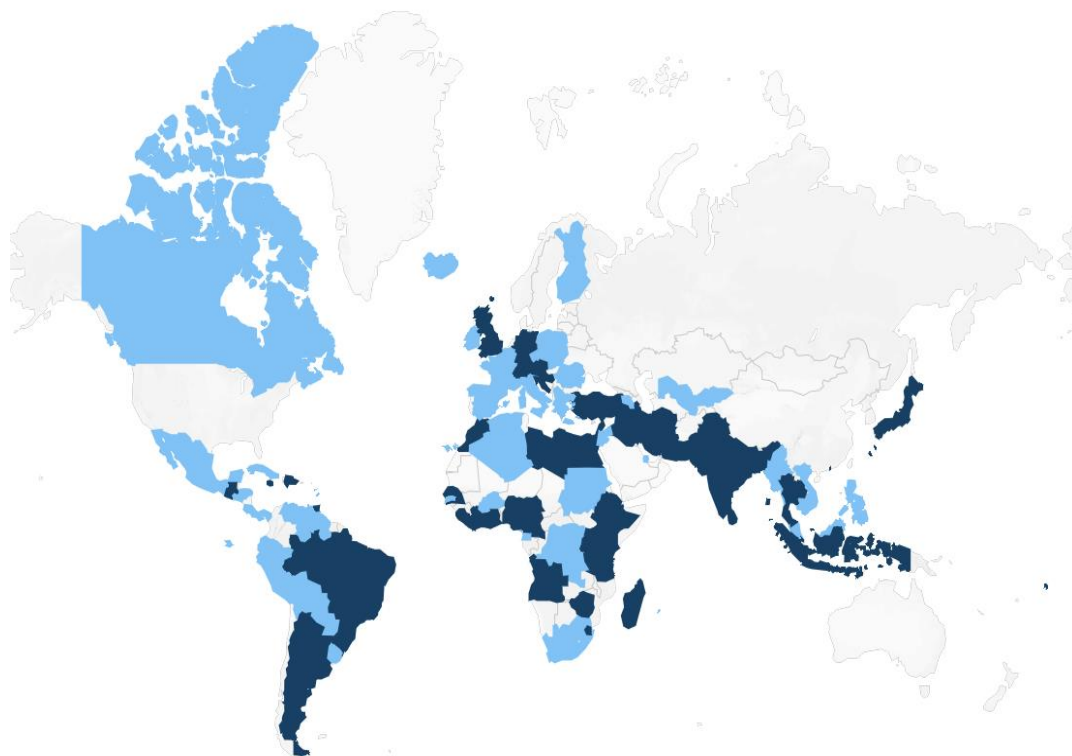
<sup>5</sup> The Legal Atlas can be accessed via the following link: <https://www.streetchildren.org/legal-atlas/map/>

<sup>6</sup> General Comment No.21 was utilised as a guide for determining which information would be included in the Legal Atlas.

### 2.1.2 Evidence arising from the Legal Atlas

As of January 2022, the following information was published on the Legal Atlas:

- The laws and policies which affect street-connected children in **82 countries**.<sup>7</sup>
- The laws in **41 countries which criminalise children for vagrancy, loitering, truancy or similar activities**.<sup>8</sup>
- The laws and policies in **8 additional countries** which do not explicitly criminalise children for vagrancy, loitering, truancy or other similar activities, but which **negatively impact** street-connected children in such circumstances.



*Figure 1: An overview of the 82 countries published on the Legal Atlas in January 2022 which criminalise children for vagrancy, loitering, truancy or similar activities. Countries in dark blue criminalise children for such activities. Countries in light blue do not.*

Overall, the Legal Atlas indicates that **a large proportion of countries currently penalise children for vagrancy, loitering, truancy or similar activities**.

The rest of this submission will provide an insight into the impact of such laws and policies on children in street situations.

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<sup>7</sup> The details of specific laws and policies can be found on the Legal Atlas.

<sup>8</sup> Angola, Argentina, Austria, Bahrain, Bangladesh, Brazil, Cameroon, Cote D'Ivoire, Croatia, Egypt, Eswatini, Ethiopia, Germany, Ghana, Guatemala, India, Indonesia, Iran, Iraq, Israel, Kenya, Liberia, Libya, Madagascar, Morocco, Nepal, Nigeria, Pakistan, Rwanda, Samoa, Senegal, Sierra Leone, Sri Lanka, Switzerland, Tanzania, Thailand, Trinidad and Tobago, Turkey, Uganda, United Kingdom and Zimbabwe.

## 2.2. Key human rights concerns

The real-world impact of the laws and policies which criminalise children in street situations for their existence are significant and far-reaching. Laws and policies which criminalise both street-connected children's existence, and their survival behaviours, are a source of significant harm to children as they punish children for their status, and for simply trying to survive. Too often, the criminal justice system is employed as a solution to a complex social problem. The criminalisation of children in street situations for survival behaviours and status offences constitutes a direct violation of their **right to life, survival and development**, and is an affront to their fundamental human dignity.<sup>9</sup>

### 2.2.1 The impact of punitive laws on children in street situations

There are several types of law which criminalise children for status offences, as well as for survival behaviours. As previously mentioned, children are frequently criminalised simply for being on the streets: laws on vagrancy, loitering, truancy and similar activities exist worldwide, often colonial legacies. Laws which criminalise begging also negatively impact children in street situations. When living on the streets, begging is often a necessary survival mechanism; criminalising such behaviour is therefore penalising children for trying to survive. Laws which criminalise vagrancy and begging **caused additional harm during the Covid-19 pandemic** as street-connected children could not abide to the "stay-at-home" orders if they had no home, or if shelters were closed. For further details on this, we wish to refer the Special Rapporteurs to CSC's 2021 Report on the Impact of Covid-19 on Street-Connected Children, and hope that they find this information valuable.<sup>10</sup>

Children in street situations are also particularly vulnerable to police round-ups. In many States, police officers are given broad powers to clear children from the streets under the guise of "maintaining public order" or related rationale. Round-ups are especially frequent when major political, public or sports events occur. For more details on this, and country-specific information, we suggest that the Special Rapporteurs consult CSC's Legal Atlas, which can be accessed through this link: <https://www.streetchildren.org/legal-atlas/map/>.<sup>11</sup>

Status offences remain a matter of significant concern and are a key issue for children in street situations. Status offences are behaviours which are not typically criminalised but are considered a law violation only because of a child's age. We wish particularly to highlight the fact that many children in street situations find themselves in situations of sexual exploitation, or choose to engage in consensual sexual activity with other children due to the nature of their lives on the streets. The criminalisation of this behaviour, in the form of '**status offences**', is troubling both because such behaviours are not considered crimes if committed by adults, and additionally because – as recognised in GC21 – such legislation disproportionately impacts children in street situations, constituting direct

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<sup>9</sup> General Comment No.21, paragraph 32.

<sup>10</sup> CSC's 2021 report, 'Covid-19 and street-connected children: impacts, responses and opportunities': <https://www.streetchildren.org/resources/covid-19-and-street-connected-children-impacts-responses-and-opportunities/>

<sup>11</sup> Some suggestions of countries across different regions for the Special Rapporteurs to explore on the Legal Atlas include Brazil, Cambodia, India and Romania.

discrimination against them.<sup>12</sup> The UN Committee on the Rights of the Child has repeatedly urged States to remove status offences from their statutes.<sup>13</sup>

In addition, we note the intersecting relationship between the criminalisation of homelessness and survival behaviours, and the **institutionalisation of children in street situations**. In many contexts, children in street situations are removed from the streets as a result of ‘zero tolerance’ policies from States towards homelessness and related behaviours. Where these children are not criminalised, they are often placed into institutional care which is inadequate for their needs. Child rights experts, including the UN Committee on the Rights of the Child, are broadly agreed that institutionalisation should be avoided, except in specific circumstances where it is deemed to be in the best interests of the child.<sup>14</sup> It is imperative that children in street situations are consulted in decision-making which affects their lives, in accordance with their right under Article 12 of the Convention on the Rights of the Child, including decisions about their living situation.

### 2.2.2 The link between criminalisation and discrimination

The UN Committee on the Rights of the Child has clearly expressed the view that disproportionate laws and policies to tackle homelessness which prevent begging, loitering or vagrancy constitute direct discrimination against children in street situations.<sup>15</sup> In conjunction to this, street-connected children are often inherently perceived as criminals due to their living situation. The criminalisation of behaviours essential to these children’s survival only exacerbates this, furthering the notion that all street children must be criminals, which in turn generates mistrust and fear between children on the streets and communities around them. We therefore observe **a cycle of stigma** against children in street situations, both caused and perpetuated by legislation which criminalises their homelessness and poverty and furthered by the actions of those enforcing this legislation, such as police officers, and those who are informed by it, such as the media.

The continued criminalisation of children in street situations for their street connections and survival behaviours further represents **a clear deviation from the Committee on the Rights of the Child’s guidance** that prevention and early intervention are key, and that “a systemic approach to prevention also includes closing pathways into the child justice system through the decriminalization of minor offences such as school absence, running away, begging or trespassing, which often are the result of poverty, homelessness or family violence.”<sup>16</sup> Rather than criminalisation, welfare and child protection approaches should be taken to respond to the needs of children in street situations.

### 2.2.3 The negative impact of entering the criminal justice system

Once criminalised, street-connected children face significant challenges. The negative impacts upon children who enter the criminal justice systems are well-documented: as recognised by the UN

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<sup>12</sup> See UN Committee on the Rights of the Child, General Comment no. 21 on children in street situations (2017)

<sup>13</sup> See UN Committee on the Rights of the Child, General Comment no. 24 on children’s rights in the child justice system (2019, CRC/C/GC/24), para. 12.

<sup>14</sup> See Resolution adopted by the General Assembly on 18 December 2019, A/RES/74/133, paragraphs 22, 26 and 35(f) and (g), [https://bettercarenetwork.org/sites/default/files/2020-01/A\\_RES\\_74\\_133\\_E.pdf](https://bettercarenetwork.org/sites/default/files/2020-01/A_RES_74_133_E.pdf).

<sup>15</sup> General Comment No. 21, paragraph 26.

<sup>16</sup> General Comment No. 24 (2019) on children’s rights in the child justice system, paragraph 12.



Committee on the Rights of the Child, **“exposure to the criminal justice system has been demonstrated to cause harm to children, limiting their chances of becoming responsible adults.”**<sup>17</sup>

For children in street situations, these challenges are frequently compounded by the fact that they are more likely to face **extreme difficulties in accessing legal aid, legal representation, or indeed any input from responsible adults**. In addition, access to legal documentation can further complicate matters for children in street situations: with many street-connected children lacking documentation, such as birth certificates, children face issues of being unable to prove their age, or in some circumstances access free legal support. The UN Committee on the Rights of the Child recommends that States adopt “innovative and flexible solutions, such as providing informal identity cards, linked to civil society personnel/addresses, allowing children in the meantime to gain access to basic services and protection in the justice system.”<sup>18</sup> There are also high rates of illiteracy among children in street situations, which can make it extremely difficult for them to understand the legal processes they are experiencing: it is essential that material be provided in child-friendly manner, and that oral explanation is provided to all children as a matter of course. Consequently, children in street situations are potentially more likely to be convicted of the crimes of which they are accused due to their position of heightened vulnerability.

With robust child-friendly justice systems few and far between, engagement in systems which are not suitable for them often **exacerbates children’s existing trauma, distress and confusion**. We also know that the criminalisation of survival behaviours can push children to seek alternatives to begging, driving them deeper underground and into contact with more dangerous and exploitative activities to survive, including **sexual exploitation**.<sup>19</sup>

#### 2.2.4. The disproportionate vulnerability to other human rights violations

The above issues become even more concerning when considering the context of the lives of street-connected children. It is well acknowledged that children in street situations face numerous human rights violations simply as a result of their connection with their streets.<sup>20</sup> For instance, street-connected children face “unique barriers in accessing education” as they are unable to enrol in formal education due to their lack of legal identification or lack of a permanent address of a parent/guardian.<sup>21</sup> Even if children surpass these barriers and access education, they are likely to suffer from stigmatisation and lack of support through physical and sexual abuse, exploitation, and neglect.<sup>22</sup>

Furthermore, despite children in street situations being disproportionately vulnerable to physical and mental health issues,<sup>23</sup> they face direct discrimination from health care professionals, as well as indirect discrimination (for instance, due to a lack of identity documents).<sup>24</sup> It is additionally significant

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<sup>17</sup> See the UN Committee on the Rights of the Child’s General Comment no.24 (2019) on children’s rights in the child justice system for more detailed guidance on this subject: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en)

<sup>18</sup> General Comment No. 21, paragraph 41.

<sup>19</sup> General Comment no.21, paragraph 59.

<sup>20</sup> See UN Committee on the Rights of the Child General Comment no. 21 for a full analysis of this.

<sup>21</sup> CSC, ‘Realising street children’s right to education’, 2019, <https://www.streetchildren.org/news-and-updates/realising-streetchildrens-right-to-education/>.

<sup>22</sup> Sarah Thomas de Benítez, ‘State of the World’s Street Children: Violence’ (London: Consortium for Street Children, 2007).

<sup>23</sup> Paragraph 53, General Comment No.21.

<sup>24</sup> Paragraph 26, General Comment No.21.

that children in street situations often turn to the streets to flee violence in their homes yet may frequently meet further violence during their lives on the street.<sup>25</sup>

The challenges and discrimination faced by the criminalisation of homelessness and related activities are therefore particularly problematic for this vulnerable group of children, exacerbating the stigma and human rights violations that they face on a daily basis.

To further highlight the adverse, real-life impacts of such laws and policies on children in street situations, this report will now focus on some case studies, to highlight some of the most pertinent learnings and stories from some of the countries which CSC and its network members operate in.

### 3. County profiles

#### 3.1. Country profile: Bangladesh

As explained in the methodology, CSC, Grambangla Unnayan Committee, Dhaka Ahsania Mission, and the Local Economic and Education Development Organisation are engaged in a three-year project to promote the rights of street children in Bangladesh. As part of this, a Legislative and Policy Review was developed against the background of COVID-19 in early 2021. While the final report is still being finalised, several sections contained within it will be of relevance to the Special Rapporteurs, including on access to an adequate standard of living and social services. We will share the finalised report with the Special Rapporteurs offices once it is complete.

##### 3.1.1. Key challenges

With a minimum age of criminal responsibility of just 9 years,<sup>26</sup> many children in street situations in Bangladesh currently risk being penalised under the broad definition of “vagrant” contained in the **Vagrant and Shelterless Persons (Rehabilitation) Act of 2011**.<sup>27</sup> As part of this Act, a Police Officer, District Magistrate or Special Magistrate can arrest a person that appears to be a vagrant and bring them before a Special Magistrate within 24 hours of arrest.<sup>28</sup> Children found to be habitually living or working on the street can also be found guilty of public nuisance,<sup>29</sup> with the Metropolitan Police

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<sup>25</sup> Paragraph 57, General Comment No. 21.

<sup>26</sup> Section 82, Bangladesh Penal Code 1860: <http://bdlaws.minlaw.gov.bd/act-11.html>. In addition, as per Section 83 of the Bangladesh Penal Code, children aged between 9 and 12 years of age are also exempt from responsibility, unless they have reached the necessary maturity to understand the nature and consequences of their actions.

<sup>27</sup> A vagrant is anyone who “remaining in any public place has no specific place for shelter, specifically at night, asking for alms in any public place, or wandering about or remaining in any public place in such condition or manner as makes it likely that such person exists by asking for alms but does not include a person collecting money or asking for food or gifts for a prescribed purpose”. The Vagrant and Shelterless Person (Rehabilitation) Act of 2011, available at <http://www.clcbd.org/document/799.html> (Bengali only)

<sup>28</sup> See Section 9 of the Vagrant and Shelterless Persons (Rehabilitation) Act 2011. The Special Magistrate will then determine whether such person is a vagrant and can order them to be detained at a vagrant shelter home for a maximum of 2 years, Section 10 (3)(b) of the Act. If a detainee escapes from his home, they can be imprisoned for up to 3 months, as per Section 22(1)

<sup>29</sup> See Section 268 of the Penal Code of 1860, available at <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46812525.pdf>

Ordinances of Dhaka, Chittagong, Khulna, Barisal and Sylhet additionally providing specific provisions which penalise begging and loitering.<sup>30</sup>

The effects of these punitive laws on children in street situations are severe. As explained in Section 2.2 of this report, with limited family support, and with legal representation or legal aid unlikely, street-connected children risk facing jail simply for trying to survive. Furthermore, as previously explained, street-connected children face far-reaching negative impacts upon entering the legal system.

### 3.1.2. Recommendations

Firstly, to protect the right of non-discrimination for children in street situations in Bangladesh, the **decriminalisation of offences which disproportionately impact street children** is strongly recommended; this should be replaced with legislation that promotes child-sensitive protection and rehabilitation. In addition, it is essential that Bangladesh **establish one clear age of criminal responsibility, which is at least 14 years** (as recommended by the UN Committee on the Rights of the Child). Moreover, when street-connected children face discriminatory treatment on the basis of a protected characteristic, recourse in law should be provided.

Secondly, to promote the right to participation for street-connected children, they should be **included in decision-making which affects them**; their participation should be encouraged through the development of procedures for government authorities which outline clear guidance on how to safely and actively engage street children. An independent National Commission for Children, which focuses on children's rights, would also be welcomed; this body should be given an explicit mandate to support street-connected children, and the ability to deal with complaints from, and on behalf, of children in a child-friendly and effective manner. With legislation criminalising homelessness and related survival behaviours having severe impacts on the rights and wellbeing of children in street situations, it is imperative that their voices be heard in developing rights-respecting alternative.

## **3.2. Pakistan**

As explained in the methodology, the information regarding the situation in Pakistan derives from a research study conducted by Legal Awareness Watch Pakistan (LAW), a member of CSC's network, as well as information received by LAW from their sources and volunteers across various cities in Pakistan.

### 3.2.1. Key challenges

Children in street situations are often arrested by police across Pakistan for vagrancy, begging and other survival behaviours, such as selling face masks on roads. This occurs under both Chapter VIII of the Criminal Code of Procedure (1898) (CRPC)<sup>31</sup> and under "preventive detention". Chapter VIII of the CRPC contains a list of "offences against the public tranquillity" which are likely to affect children in

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<sup>30</sup> See the Dhaka Metropolitan Police Ordinance of 1976, Section 81, available at <http://bdlaws.minlaw.gov.bd/act-511.html?hl=1>; The Chittagong Metropolitan Police Ordinance of 1978, Section 83, available at <http://bdlaws.minlaw.gov.bd/act-578.html?hl=1>; The Khulna Metropolitan Police Ordinance of 1985, Section 84, available at <http://bdlaws.minlaw.gov.bd/act-692.html?hl=1>; The Barisal Metropolitan Police Ordinance, Chapter 7, Section 2; The Sylhet Metropolitan Police Ordinance, Chapter 7, Section 2.

<sup>31</sup> <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>

street situations.<sup>32</sup> Given that Pakistan has a **minimum age of criminal responsibility of 10 years**, these offences could potentially impact many street-connected children.<sup>33</sup> In addition, “preventive detention” enables the police and other security agencies to arrest any person, without a warrant, ‘any persons acting in a manner prejudicial to the integrity, security or defence of Pakistan’.<sup>34</sup> These wide measures could therefore permit the arrest of children in street situations under several circumstances.

This detention is a matter of significant concern: in addition to the challenges associated with living on the streets and the negative impact of entering the criminal justice system, children in Pakistan experience severe conditions whilst in the custody of police or other law enforcing agencies. Throughout their research study, LAW observed that children are frequently subjected to **torture, sexually abused, and expected to partake in humiliating tasks** such as washing police uniforms and cleaning for those in higher ranks.<sup>35</sup>

### 3.2.2. LAW Research study: the extent of criminalisation of children in Punjab and Sindh

A general lack of data makes it difficult to ascertain the number of children who are arrested, and thus discern the extent of the issue. Nevertheless, LAW’s study sheds some light on the extent of the issue in Pakistan. Across the 15-months of their research study, LAW counted the number of children behind bars in 10 prisons across Punjab and 10 prisons across Sindh. **The study identified 129 children who were facing criminal charges or who were convicted of severe punishment.** This included street-connected children who had inadvertently gotten involved with a criminal case through their peers, or most commonly, via an adult.

LAW’s study additionally found **many examples where children had no legal representation**, in violation of Section 3 of the Juvenile Justice System Act (JJSA) 2018.<sup>36</sup> This included 14-year-old “A” who remained in prison whilst their father and relatives refused to provide them with support as they stood trial for charges of murder. Another example is 16-year-old “B” who has been in prison for over a year – without a trial – for a charge of necrophilia; B’s father refused to engage any legal practitioner for support with the trial. More examples and further details can be found at [www.legalawarenesswatch.com](http://www.legalawarenesswatch.com).

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<sup>32</sup> Several offences within Chapter VIII could impact street-connected children. For example, the offence of “unlawful assembly” (Section 141) is committed when a group of five or more persons are gathered with the intention of “resisting the execution of the law” or “to commit any mischief”, amongst many other intentions. Street-connected children could be found liable for this offence. The full details of the offences contained within Chapter VIII can be found here <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>.

<sup>33</sup> By passing the Criminal Law (Second Amendment) Act 2016, Pakistan amended sections 82 and 83 of the Penal Code 1860 and therefore increased the minimum age of criminal responsibility from 7 years of age to 10 years. However, for children between 10 to 14 years of age, judges have the discretion to consider whether the alleged offender has the necessary level of maturity to be considered criminally liable for their actions. A full list of the amendments made can be found here: [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=B9F8BEB490838F38C12581AD002EC982&action=openDocument&xp\\_countrySelected=PK&xp\\_topicSelected=GVAL-992BU6&from=state&SessionID=DL15WYX0S1#:~:text=On%2018%20March%202016%2C%20the%20seduction%20and%20child%20pornography%20respectively](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=B9F8BEB490838F38C12581AD002EC982&action=openDocument&xp_countrySelected=PK&xp_topicSelected=GVAL-992BU6&from=state&SessionID=DL15WYX0S1#:~:text=On%2018%20March%202016%2C%20the%20seduction%20and%20child%20pornography%20respectively) .

<sup>34</sup> See Article 10(4) of the 1973 Constitution of Pakistan for more details on preventive detention: <http://www.pakistani.org/pakistan/constitution/>

<sup>35</sup> This information is based from the personal accounts of LAW volunteers when visiting prisons and police stations in Punjab and Sindh, as part of their research survey.

<sup>36</sup> The Pakistan Juvenile Justice System Act 2018 is available at <http://sparcpk.org/images/Pubs-Thumb/Salient%20Features%20of%20Juvenile%20Justice%20System%20Act%202018.pdf>.

### 3.2.3. Case study: Punjab

Punjab is the largest province in Pakistan and is seen as the “trend setter” for the rest of the country: we will therefore examine the situation in Punjab in more detail.

Under the Punjab Destitute and Neglected Children Act 2004 (PDNC), there are several “special offences” relating to street-connected children<sup>37</sup>: employing a child for begging (Section 36), employing or inciting a child to sell goods with intention of begging (Section 36A), employing or inciting a child for rag picking (36B) and inciting a child to beg or borrow (Section 39). Whilst the children themselves are not criminalised for such acts, they are nonetheless likely to be taken into custody under the above cited provision.

As per Section 24 of the Punjab Destitute and Neglected Children Act 2004, a child protection officer “may take into custody a destitute and neglected child”. A “destitute and neglected child” is defined in Section 3(k) of the Act, and includes a child who is found begging, or “without having a home, or settled place of abode without any ostensible means of subsistence”. This therefore provides child protection officers with very wide powers, and children in street situations are therefore at risk of being taken into custody simply for their way of life.

**In 2018-2019, the Child Protection and Welfare Bureau (CPWB) placed 5,561 children into custody** due to their involvement with the aforementioned “special offences”.<sup>38</sup> The impact of this widespread use of custody is significant, as exemplified through the example of 15-year-old “C”: At approximately 11am on the 9<sup>th</sup> December 2021, C was taken into custody by the CPWB for allegedly selling face masks in the suburb of Datta Darbar. C had been living with their paternal uncle since they were 3 years old, following the death of their father and the second marriage of their mother. However, without inquiring about his whereabouts or situation, the CWPB took C into custody, refusing to return them to their uncle.

Like “C”, many street-connected children risk being placed into custody due to the criminalisation of vagrancy and begging, something which is evidently not in the best interests of the child in question, or in the public interest. It therefore imperative that such laws are repealed, as a matter of urgency.

### 3.2.4. Recommendations

It is imperative that all laws which criminalise homelessness and related survival behaviours are repealed as a matter of urgency. In Pakistan, children should not be arrested under the Chapter VII of the Criminal Code of Procedure (1898) or under “preventive detention” simply because they are street-connected children: this criminalises children in street situations for their mere existence and constitutes a violation of their rights.

Whilst the minimum age of criminal responsibility in Pakistan has been raised from 7 years to 10 years in 2016 through the Criminal Law (Second Amendment) Act 2016, this is still not in line with the Committee of the Rights of the Child’s recommendation of at least 14 years.<sup>39</sup> It is therefore

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<sup>37</sup> The Punjab Destitute and Neglected Children Act 2004 can be found at <http://punjablaws.gov.pk/laws/472.html>.

<sup>38</sup> This is an autonomous body established in 2004 under the Punjab Destitute and Neglected Children Act 2004.

<sup>39</sup> See [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=B9F8BEB490838F38C12581AD002EC982&action=openDocument&xp\\_countrySelected=PK&xp\\_topicSelected=GVAL-992BU6&from=state&SessionID=DL15WYX0S1#:~:text=On%2018%20March%202016%2C%20the,seduction%20and%20child%20pornography%20respectively.](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=B9F8BEB490838F38C12581AD002EC982&action=openDocument&xp_countrySelected=PK&xp_topicSelected=GVAL-992BU6&from=state&SessionID=DL15WYX0S1#:~:text=On%2018%20March%202016%2C%20the,seduction%20and%20child%20pornography%20respectively.)

recommended that Pakistan further raises their minimum age of criminal responsibility. Where children are imprisoned, they should be subjected to adequate conditions, in line with paragraph 95 of General Comment no. 24 (2019) on children’s rights in the child justice system.<sup>40</sup>

In Punjab, it is further recommended that children are not placed into custody by the Child Protection and Welfare Bureau for being homeless or partaking in related survival behaviour: removing a child from the street simply due to the nature of their life is clearly not in the child’s best interest and should therefore be avoided.

### 3.3. Tanzania

As noted above, CSC and partners recently completed a three-year UKAID-funded project on the rights of children in street situations in the six largest urban areas in Tanzania. During the project, an analysis of Tanzanian law and policy’s coherence with General Comment no. 21 was undertaken. To complement the desk review, 22 face-to-focus groups and three individual interviews were held with children and young people who were either current, or formerly, in street situations; in addition, 18 face-to-face interviews and focus groups were conducted with government officials and NGO family workers in the same locations.<sup>41</sup> In addition, at the project’s conclusion, children in the six project cities took part in the preparation of a Children’s Report to the UN Committee on the Rights of the Child, highlighting their hopes, dreams, and the issues that are most important to them. The following information is therefore drawn from the combination of these findings.

#### 3.3.1. Key challenges

There are several concerns with Tanzanian legislation and policy as it stands. Firstly, whilst the 2013-2017 Tanzania Child Justice Five Year Strategy for Progressive Reform<sup>42</sup> stated that children should not be held criminally liable for ‘**status offences**’, there has been no progress on this issue. The Strategy has also yet to be reformulated since its expiry in 2017. Accordingly, children in street situations currently face prosecution under the Townships (Removal of Undesirable Persons) Ordinance 1944 for ‘vagrancy, loitering and similar activities’.

In addition to the Ordinance being incompatible with General Comment No.21, Tanzania is also a signatory to the African Convention on Human and People’s Rights which recommends the decriminalisation of such laws in the Principles on the Decriminalisation of Petty Offences: “The criminalisation of petty offences contributes to discrimination and marginalisation by criminalising poverty, homelessness and unemployment, and impact the poorest and most marginalised persons in our communities.”<sup>43</sup>

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<sup>40</sup> See

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsqlkirKQZLK2M58RF%2F5F0vEnG3QGKUxFivhToQfjGxYjV05tUAlgpOwHQJSPdJXCiixFSrDRwow8HeKLLh8cgOw1SN6vJ%2Bf0RPR9UMtGkA4>.

<sup>41</sup> An Alternative Report submitted on the occasion of Tanzania’s third Universal Periodic Review, prepared by the project partners, forms JS18 in the civil society contribution pack and can be read at [https://www.upr-info.org/sites/default/files/document/tanzania\\_united\\_republic\\_of/session\\_39\\_-\\_may\\_2021/js18\\_upr39\\_tza\\_e\\_main.pdf](https://www.upr-info.org/sites/default/files/document/tanzania_united_republic_of/session_39_-_may_2021/js18_upr39_tza_e_main.pdf).

<sup>42</sup> The Tanzania Child Justice Five Year Strategy for Progressive Reform can be found here <https://coraminternational.org/wp-content/uploads/ChildJusticeStrategy-EnglishWEB.pdf>

<sup>43</sup> African Commission on Human and People’s Rights, Principles on the Decriminalisation of Petty Offences, available at: <https://www.achpr.org/legalinstruments/detail?id=2>

Furthermore, given that begging is often essential to the survival of children in street situations, it is concerning that the **age of criminal responsibility in Tanzania remains at just 10 years of age**: the UN Committee on the Rights of the Child recommends that it 14 years of age, at the very least.<sup>44</sup> Whilst a child found begging in Tanzania will be deemed a “child in need of care or protection”,<sup>45</sup> in reality, arrests and ‘roundups’ of children on the streets will regularly occur when there are important visitors, or international event taking place.

### 3.3.2. The voices of children in street situations in Tanzania

We wish to highlight some of the perspectives of children which were shared during the consultations held with them as part of this project in Arusha, Dar es Salaam, Dodoma, Iringa, Mbeya and Mwanza. During these consultations, children raised a range of issues which affect them in their lives: among the issues raised, **children explicitly named ‘police roundups and being accused of crimes we didn’t commit’ as a key, repeated concern.**

The below images show the reflections of some children in Arusha in which they explore their hopes and dreams for the future, and the challenges which are in their way. For these children to have a chance to meet these ambitions, they **must receive supported, rights-based interventions**, rather than being penalised for their mere existence and survival behaviour. Many of the challenges these three children describe are directly related to the criminalisation of their existence, indeed the harassment and stigma faced by these children from their communities is frequently linked to the notion that children in street situations are inherently criminal, which in turn renders them vulnerable to exploitation.

#### Child 8



Picture no.8 indicates the participant's future Island (Goal) is to have the following.

- A nice house
- A nice car
- Being a businessman

But he has been facing the following challenges:

- Being harassed by the family members.
- Physical abuse from home.
- Sleeping on the street.
- No access of being heard at home by the parents basing on the scholastic materials.

<sup>44</sup> General Comment No.24 (2019) on children's rights in the child justice in the child justice system, <https://bettercarenetwork.org/sites/default/files/2019-10/G1927557%20%282%29.pdf>

<sup>45</sup> Section 16(g) of the Tanzania Law of the Child Act 2009, [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=86527&p\\_country=TZA&p\\_count=286&p\\_classification=04&p\\_classcount=11](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=86527&p_country=TZA&p_count=286&p_classification=04&p_classcount=11)

## Child 6



Picture no 6 indicates that the participant's future Island (goal) is to own the following;

- A nice car
- A good housing
- Being a professional footballer.
- Being a military soldier.

But the one is facing the following challenges;

- Being chased away by the parent from home.
- Sleeping on the street which hinders him to study.
- Being harassed and insulted by the community members as a street child.
- Being abused by the landlord as your parents are living under severe poverty.

## Child 10



Picture no.10, indicates that the participant's future Island ( goals ) is to have the following aspects;

- A good house
- A nice car
- Being a businessman- selling clothes
- Being a pilot
- A professional footballer.

But he has been facing the following challenges:

- Being exploited by the community members.
- Being beaten by family members.
- Being punished by means of corporal punishment.
- Being chased away by the parent from home.

### 3.3.3. Recommendations

Firstly, it is imperative that the Townships (Removal of Undesirable Persons) Ordinance 1944 be **repealed**, alongside other laws which criminalise loitering, vagrancy and similar offences. A direction should also be issued to the police which clearly states that children in street situations should not be rounded up, arrested, or removed from the streets, as this is **a violation of their rights**.

It is also recommended that Tanzania conducts an **in-depth study** into the extent of the issues affecting street-connected children within the country, as well as the root causes of the vulnerabilities of such children. It is also important that a national strategy for children in street situations is developed and implemented as soon as practicable.



## 4. General recommendations

A significant number of countries currently criminalise children in street situations for vagrancy, begging and related activities: this is a matter of serious concern to the organisations sharing this information. The harm that such laws and policies create for children in street situations, including serious rights violations, cannot be underestimated; indeed, such laws frequently seem to constitute the **criminalisation of these children's very existence**. We wish, therefore, to draw the following four recommendations from the information examined in this submission, which we hope will be of use to the Special Rapporteurs offices:

1. Laws which criminalise vagrancy, homelessness and related activities, including survival, behaviours should be **repealed** as a matter of urgency.
2. States should consider developing and implementing **holistic and cross-cutting national strategies** on children in street situations, in line with the guidance provided in the UN Committee on the Rights of the Child's General Comment no. 21 on children in street situations. As per this guidance, such a strategy should not be the sole preserve of one ministry, but should be a collective endeavour reflecting the diversity of government actors with responsibility towards children in street situations.
3. Where children in street situations do come into contact with the justice system, it must be **child-friendly and able to respond to their specific needs**, in-line with the guidance of the UN Committee on the Rights of the Child's General Comment no. 24 on children's rights in the child justice system.
4. Children in street situations should be **meaningfully involved in all processes and decision-making which affects them**, including in developing suitable alternatives to existing legislation, in accordance with Article 12 of the UN Convention on the Rights of the Child.