**Response to the Questionnaire on Decriminalization of homelessness and extreme poverty to inform the Special Rapporteur on the right to adequate housing and the Special Rapporteur on extreme poverty and human rights**

**Response to the Questionnaire on Decriminalization of Homelessness and Extreme Poverty to Inform the Special Rapporteur on the Right to Adequate Housing and the Special Rapporteur on Extreme Poverty and Human Rights**

Submitted by Child in Need Institute (CINI)

(<https://www.cini-india.org/>)

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**Introduction**

Asian Development Bank has flagged that Asia is urbanizing very rapidly and the urbanization rate is much faster than the rest of the world. More than half of the world’s megacities, and city clusters are developing in the Asian continent. Following the trend, India is observing a fast centripetal force toward urban centres and experiencing a sharp increase in rural-to-urban human movements. Children in street situations and their families are the result of rural-to-urban movements and the result of the climate crisis. The Climate crisis also pushes more children and their families to live on the streets in the cities.

Child in Need Institute (CINI), a non-profit organisation working in the eastern parts of India since 1974 has a rich body of experience working with children in street situations and their families in Kolkata, one of the largest and most populated metropolitan cities in Asia. By fulfilling the right to survival, development, protection, and participation of all children including children in street situations, CINI aims to turn children’s rights into development practice. For almost 50 years, CINI has worked on finding comprehensive, structured responses to issues affecting children in street situations as well as other vulnerable children by developing, testing, and implementing a methodology that addresses the issues faced by them through the application of a comprehensive framework (CINI Method). As a result, all our programmes are implemented through the lens of the human rights principles of participation and inclusion, accountability and rule of law, interrelatedness/convergence, and prevention.

Years of working in urban, rural, disaster-prone, and tribal communities of India have contributed to CINI’s experiences with disaster-induced displacement that results in emergency evacuations, permanent displacements, unplanned migration, and migration especially from rural to urban areas - both nationally and across borders. These unplanned shifts affect the legal status of displaced persons, causing homelessness and adding multiple layers of exclusions within the destination locations. CINI believes that children are those who suffer the most from the consequences of family displacement. The rights of children to a conducive environment and well-being are grossly violated when families are displaced. Children often lose family members, endure family separation, lose their possessions, are excluded from basic services, including health and education, and experience trauma and depression. No mechanisms are designed to ensure the social protection of these children at the destination location due to policy and administrative challenges. The result of such crises may continue over the entire lifespan of the child who may end up in early marriage, child labour, or teenage pregnancy, situations of violence against children which are paradoxically resorted to as coping mechanisms.

This submission aims to provide an overview of the laws and policies impacting the lives of children in street situations, in relation to their homelessness and survival mechanisms such as begging and loitering. The information provided in this report is based upon the extensive experience developed by CINI over more than three decades on the rights of children in street situations (in addition to the overall work done by the organisation with extremely vulnerable children over 50 years of its operations in India). It also draws on CINI’s Child Led Vulnerability and Service Mapping (V&SM) research study conducted in 2019-2021 by and with children in street situations. Children were trained on quantitative and qualitative research methodologies and they highlighted their experience of complex vulnerabilities on the streets in relation to their provision, protection and participation rights enshrined in the UNCRC, and the extent to which services are available and accessible to them to address those complex vulnerabilities.

**Laws or Regulations**

India has a federal system with powers distributed between the central government and State governments. As a result, some of the laws and regulations in India are centrally implemented, and applied to all states; while some laws and regulations are implemented by states and applied to those specific states only. Based upon the principles of equal opportunity, equitable distribution of wealth, and public responsibility for citizens unable to avail themselves of the minimal provisions for a good life, India is also a welfare state, as reflected in the Directive Principles of State Policy, enshrined in Part IV of the Indian Constitution. Most of the central or state government's policies, programmes and laws are universalised to ensure equal access for all populations. As a signatory state party to the UN CRC, India is legally committed to fully realise the rights of all children. The Indian Constitution, which reflects this obligation and acknowledges the value of children as the “nation’s prime asset,” recognises children as rights-holders with distinctive rights to provision and protection. The right of every child to protection, provision and participation is reflected in numerous policies of the country, along with the laws and programmes that are implemented by the Indian Government (Ministry of Women and Child Development, 2011).

India is fast transitioning from a mainly rural to an urban country. The country’s urban planning system is currently at a growing stage, putting efforts at coping with the demands of rapid urbanisation and growing technological advancements. While homelessness is a phenomenon that occurs in both rural and urban areas due to similar reasons such as disaster, climate change, loss of livelihoods etc., the concentration of the homeless population is most significantly visible in urban spaces. At a growing stage in the urban planning process, the Government of India has been devising inclusive urban developmental programmes for the inclusion of the most excluded populations. The flagship programmes in India for marginalised populations are inclusive, ensuring the healthcare, nutrition, education, and rehabilitation of the poorest of the poor.

While in India, no central government law prohibits or regulates vagrancy, some states have enacted anti-begging laws that criminalize begging and related activities. Vagrancy is a term that refers to the condition of being homeless, jobless, or wandering without a lawful means of support. The laws implemented vary from state to state, and though they talk about the detention and rehabilitation of beggars, the Government has adopted several schemes for the rehabilitation of the same. These laws are not devised with a punitive approach but with a rehabilitative approach. It is also noteworthy that the rehabilitation of the homeless is largely dependent on the resources available, which is often a grave issue, especially in urban spaces.

The legal framework in India devised specifically for the vagrants is described in the following section:

* Article 19 (1) of the Constitution of India states that every person has the freedom to assemble in a public space so long as it does not affect other people’s rightful enjoyment of their rights and liberty. Thus, most of the laws related to the detention or rehabilitation of vagrants, beggars or the homeless are conditional on a person being declared as a public nuisance, causing harm or inconvenience to the general public, or encroaching into public spaces.
* Section 144 of the Indian Railway Act, 1989 criminalises hawking and begging with a punishment of up to one year of imprisonment and/or a fine.
* Section 268 of the Indian Penal Code (IPC) allows criminalising persons found begging, but only if they are perceived to be a public nuisance.
* The European Vagrancy Act of 1869, was the first law to prohibit begging in India by the colonial British government.
* The Bengal Vagrancy Act, of 1943, The Bombay Beggars Act, of 1945, and The Madras Prevention of Begging Act, of 1945, were enacted before independence to prevent begging and vagrancy in India. The Bengal Vagrancy Act, 1943, Section 2(9) defines a “vagrant” as “a person found 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”. A person arrested and declared by a Special Magistrate to be a vagrant can be detained in a receiving centre until s/he can be sent to a vagrant’s home, which is an institution provided by the State Government for the permanent detention of vagrants.
* The Bombay Prevention of Begging Act, 1959, criminalizes the act of begging and allows the authorities to detain and rehabilitate anyone who is found begging in public places. This act has been adopted by 22 states and Union Territories in India.
* The Bombay Municipal Corporation Act, empowers the municipal authorities to remove any encroachment on the footpaths or pavements over which the public has the right of passage or access. This law was upheld by the Supreme Court of India in a landmark case with Ahmedabad Municipal Corporation, where the court ruled that the encroachers have no right to alternative settlement before their ejectment and that their removal does not violate the principle of natural justice or their fundamental rights under Article 19(1)(e) and Article 21 of the Constitution of India.[[1]](#footnote-1)
* The Legal aid services in India provide legal assistance and representation to beggars who are arrested or detained under these laws. However, they have faced many problems and obstacles in their work, such as a lack of resources, awareness, cooperation, and support from the authorities, judiciary, media, and civil society. They have also encountered difficulties in accessing and communicating with the beggars who are often kept in isolated and inhumane conditions in the institutions.[[2]](#footnote-2)

Children in street situations are variably tolerated and most often perceived as a nuisance. Community members may thus alert authorities and complain about children in street situations occupying public spaces, thus leading to their removal and displacement. In the participatory Vulnerability and Service Mapping (V&SM) research conducted in 2019-2021 by CINI and StreetInvest with support from Wellcome Trust, one of the children participating in the research expressed the following thoughts during the focus group discussions:

*“Everyone asks us to leave the streets and go somewhere else, but no one gives us a space where we can stay and be safe, without being separated from our families. Where are we supposed to go, then?”*

These words encapsulate the main issue. It should be noted, however, that the laws and policies devised by the Government of India are not based on a punitive approach towards begging or other forms of dependency on the streets, especially among children. In principle, policies are devised with a rehabilitative approach for children in street situations and provide various forms of support and services from the government for such children.

Legal Framework to decriminalise survival behaviours of children in street situations:

1. Juvenile Justice (Care and Protection of Children) Act (2015):

* Under Section 2 of the Juvenile Justice (Care and Protection of Children) Act (2015) which applies to any child under the age of 18 years, children in street situations must be treated as “children in need of care and protection”, and not criminalised.
* Section 6 of the Juvenile Justice Act also establishes that cases involving children in conflict with the law should be exclusively dealt with by the Juvenile court. In other words, a child is not to be treated as an adult.
* Further, Section 76 of the Juvenile Justice Act makes it a crime to employ a juvenile or a child for begging, punishable with imprisonment of up to five years or a fine of a significant amount.

1. Police Regulations:

* The General Guidelines by the Delhi Special Police Unit for Women and Children set out specific rules for police officers to interact with children in conflict or contact with the law:
  + Avoid wearing a uniform when talking to a child;
  + Avoid taking the child to police custody, and in general avoid keeping him/her in the police station between sunset and sunrise. A child who is released on bail cannot be asked to report and sign at the police station. If a child is not released from custody because he/she is charged with a serious offence, he or she should be placed in an observation home and have a right to free legal aid. The police officer should inform the child and his/her parent or guardian of such a right.
  + In every case where a child cannot be taken to the competent authority (Welfare Committee/Juvenile Justice Board), the child should be placed in a certified children’s home, fit institution, or observation home.
  + Ensure the respectful dignity of the child, making sure that he/she is not beaten, abused or mistreated.
  + Avoid forcing or threatening a child to obtain a statement or confession – such statements cannot be used in judicial proceedings
  + Respect the privacy of the child, by not filing dossiers or collecting fingerprints of the child, and ensuring that names or photographs of children are not published in the media.

Thus, it must be noted that under the most recent child protection laws, begging and similar behaviours, when coming from a child, are not considered criminal behaviours requiring punishment or correction, but should rather be treated as a warning sign that the child needs care and protection. These provisions should prevail on the current criminal framework, such that allowing to penalise a child for survival behaviours must be considered illegal. However, it is not clear to what extent they are so interpreted and applied in practice.

This indicates even though the law would not allow treating children in street situations as criminals in these cases, there are times in which children are treated as offenders when they engage in survival behaviours, and therefore the procedures that apply to them do not follow the child protection framework but rather the juvenile justice system. Further, the very age of criminal responsibility aggravates this issue, as it makes it legal to criminalise children as young as 12.

**Measures and Services Available from the Governments**

The right of every child to protection, provision and participation is reflected in numerous policies of India, along with the laws and programmes that are implemented by the Indian Government (Ministry of Women and Child Development, 2011). Most of these policies, programmes and laws are universalised to ensure equal access for all groups of children. Within the scope of the Juvenile Justice (Care and Protection of Children) Act, 2015, there are various categories of vulnerable children, to which children in street situations can belong but not restricted to section 2 (14). According to the Act, all street children can be and have been categorized as “children in need of care and protection.”

The Ministry of Women and Child Development has implemented a national scheme “Mission Vatsalya” erstwhile Child Protection Services (CPS) Scheme, since 2009-10 for the “welfare and rehabilitation of children in difficult substance”. The services available under this scheme include institutional and non-institutional care services.

1. Institutional Service
   1. Child Care Institutions for Children in Need of Care and Protection
      1. Children’s Home for rehabilitation of children in need of care and protection for their care, treatment, education, training, development, and rehabilitation. Separate homes based on age, gender/transgender or special needs of children could be established/ supported by the State/District.
      2. Open Shelters registered by the state government to look after runaway children, missing children, trafficked children, working children, children in street situations, child beggars, child substance abusers, children affected by any natural disaster, children living in unauthorized areas/slums, children of migrant population, children of socially marginalized groups, and any other vulnerable group of children for the short term based on the need assessment of the district.
      3. Specialized Adoption Agencies (SAA) are recognized by the state government to look after children below six years of age based on the need assessment of the district about orphans, abandoned, and surrendered children. The SAA facilitates adoption of the children who are legally free for adoption. SAAs may also be established near or within jail premises, to provide care and protection to young children of incarcerated parents.
   2. Child Care Institutions for Children in Conflict with Law
      1. Observation Homes are supported/established for temporary reception, care and rehabilitation of any child alleged to conflict with the law, during the pendency of any inquiry under the Juvenile Justice (Care and Protection of Children) Act, 2015.
      2. Special homes are established for providing long-term rehabilitation and protection of children who are found to have committed an offence and placed thereby by an order of the JJB.
      3. Place of Safety to host children between the ages of 16 to 18 years who are accused of or convicted of committing a heinous offence in conflict with law. The JJ Act 2015 states that the State Government may arrange to place children in conflict with the law referred to it by the Board, in a ‘Place of Safety’, which has been declared fit by the State Government for such purpose, and may order such child to be kept under protective custody, at such place and on such conditions, as it deems proper.
2. Non-institutional Care Service
   1. Sponsorship: financial support may be extended to vulnerable children living with extended families/biological relatives to support their education, nutrition, and health needs.
   2. Foster Care: the responsibility of the child is undertaken by an unrelated family for care protection and rehabilitation of the child. Financial support is provided to biologically unrelated Foster Parents to nurture the child.
   3. Adoption: finding families for the children found legally free for adoption. Specialized Adoption Agencies (SAA) will facilitate the adoption programme.
   4. After Care: The children who are leaving a Child Care Institution on completion of 18 years of age may be provided with financial support to facilitate the child’s re-integration into mainstream society. Such support may be given from the age of 18 years up to 21 years, extendable up to 23 years of age to help her/him become self-dependent.

The National Urban Livelihood Mission is a programme by the Government of India that provides various forms of support to the urban excluded populations, of which some of the components are shelter for urban homeless, institutional development, capacity building and training on skills, support to street vendors etc.

To address the health concerns of the urban excluded population, the National Urban Health Mission is a programme by the Government of India that aims to meet the healthcare needs of the urban population with a focus on the urban poor, by making available to them essential primary healthcare services and reducing their out-of-pocket expenses for treatment. It focuses on the most excluded and vulnerable populations, including children in street situations, slum dwellers and other marginalized groups like rickshaw pullers, street vendors, railway and bus station porters, homeless people, and construction site workers.

In addition to the above-mentioned services, there is also a wide array of support mechanisms available from the government for the most vulnerable communities of the country or a state, including food security schemes, conditional cash transfer schemes, widow pension schemes etc. All these programmes are universal and rights-based, thus focusing on rehabilitation and support to street-connected children; depending on the availability of resources.

However, the participatory Vulnerability Assessment and Service Mapping Research conducted in 2019-21 by CINI and StreetInvest with support from Wellcome Trust revealed that the major obstacle for children in street situations to access those forms of support or services is the lack of birth certification or legal documents. Despite birth registration being universal and compulsory in India as per the Registration of Births and Death Act, of 1969, the research revealed that between 8-10% of children in street situations reported not having any form of legal ID. Birth registration plays a critical role in securing legal identity documents necessary to access services and support. Yet, a quarter of children in street situations surveyed did not have a birth certificate. Aadhar, a document providing proof of identity as well as confirmation of residential address as an Indian citizen, is mandatory to access food security schemes, health insurance and financial benefits from the Government. Apart from Aadhar, a PAN card serves as an important form of ID, but most children in street situations children do not have it. Movement from one place to another is a major feature of life for children in street situations, as a result of which their addresses change often. Many provisions in India are dependent upon a citizen’s residential status, and proof of address plays an important role in fulfilling entitlements.

Another underlying factor contributing to the barriers faced by children in street situations in terms of accessibility to support mechanisms is the absence of data on the count of children in street situations. The service provisions are designed based on population which is mostly captured through the national Census, or area-based counting by Municipal authorities. Being mobile and having no permanent residential addresses, children in street situations often fall out of the purview of any Census.

**Recommendations**

Recommendations from CINI based on our first-hand experience of working with children in street situations and children from other vulnerable communities for almost fifty years:

1. City Planning, Policy and D**ata on Children in Street Situations**: City-level policies and child-friendly, inclusive urban planning addressing the issues affecting children in street situations are required. The count of population that serves as a reference point for urban planning or regional planning by any Government needs to include reliable data on children in street situations.

2**. Universal Programmes**: Accessibility to universal inclusive services is a crucial component in ensuring an enabling environment for children in street situations. Children in street situations should be enabled to access universal services such as healthcare, nutrition, food security and education irrespective of their movement from one place to another; within a country. To ensure this, solutions must be devised to address barriers to accessibility such as lack of birth certification and residential proof; to ensure universal accessibility to services.

3. Adopt an **Integrated Approach**: Support mechanisms and services need to be implemented through an integrated, holistic approach, to promote convergence among the different programmes directed towards children in street situations and other vulnerable communities.

4. **Participation of Children in Street Situations in Reporting Mechanisms**: Children in street situations need to be included in submissions to national and international human rights mechanisms related to the state of children’s rights in terms of housing and poverty. When reporting on the status of children’s rights to the UN CRC or other human rights mechanisms, governments need to make sure that submissions adequately reflect the status of children in street situations in their countries. The reporting process should be child-friendly and participatory in line with Article 12 of the UN CRC, so that street-connected children themselves can contribute to it.

**CINI’s Promising Practices for Decriminalisation of Homelessness**

While CINI started its urban programming with clusters of children living around the garbage dumps of one of the busiest railway stations in eastern India, gradually the initial intervention grew and took the shape of a comprehensive programme that sought to address multiple issues faced by children in street situations. With increasing experience working with children in street situations, CINI started to bring about preventive, rights-based intervention programmes with them, focusing on their inclusion, agency, and empowerment, to combat the negative perceptions about children in street situations. One of the major focuses of the programme is on the inclusion of children in street situations within social development programmes available from the government, and participatory governance in the urban local bodies. The programme is implemented following an inclusive approach, making the city of Kolkata friendly to children through strong outreach services, informing on child rights and social entitlements, referral linkage, and capacity building of street champions i.e., peer leaders. The Government of India also has provisions of outreach services for the most marginalised and vulnerable populations, and national programmes of healthcare, nutrition and short-term care services of the government include the scope of collaborating with NGOs for joint outreach and mobilisation of the vulnerable communities to increase the accessibility of services from the government. CINI works in close collaboration with the Urban Governance systems and related duty-bearers to ensure the inclusion of children in street situations in all government programmes and services designed for marginalised and vulnerable populations.

While most of CINI’s projects and programmes work at the system level, community level, and macro level, the organisation focuses strongly on child participation and children’s centrality. In Kolkata, a group of more than 50 Street Champions (aged 11-–18) have been supported to be peer leaders by CINI since September 2019. The Street Champions are children living or working on streets, who have been trained as peer leaders taking responsibility to interact with local, national, and international duty bearers. At the local level, government officials such as the Mayor of the City as well as Urban Local Bodies positively encourage those child leaders to report the issues to them through various interactions and discussions about solutions that are localised and sustainable. At the international level, the street champions have highlighted the global concerns of migrant children’s rights to entitlements, issues related to homelessness and climate change, and the participation of children in developmental planning and reporting processes. The international platforms where those issues were highlighted were the Human Rights Council of the United Nations, the United Nations Office of the Special Representative of the Secretary-General on Violence Against Children and the United Nations Committee on Economic, Social and Cultural Rights (CESCR).

In addition to advocacy at different platforms, street champions also take several actions within their communities to bring changes in terms of health, nutrition, education, and protection of other children. After the outbreak of COVID-19, the Street Champions ensured the COVID-19 vaccination of more than 500 of their peers who did not have any identification documents, counselled them to reduce their hesitancy against uptake of vaccines, and assisted them to the vaccination centres. From advocating the local government to open more public toilets for street-connected families to running a campaign against child marriage where all male members of the street communities take an oath and sign on a paper with the promise of preventing early marriage of children in their families – the street champions possess strong aspirations to change their present situations of multi-dimensional poverty towards a better tomorrow for themselves, their families, and their communities.

1. Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan, Supreme Court of India, Oct 11, 1996 [↑](#footnote-ref-1)
2. International Journal of the Sociology of Law Volume: 11 Issue: 3 Dated: (August 1983) [↑](#footnote-ref-2)