

Plan International, Inc. written statement:

The rights of children living and/or working on the street: A multidimensional solution to a multidimensional problem.

According to estimates, there are tens of millions of children working and/or living on the street and it is widely believed that the number is increasing¹. Having an exact number is difficult as children living and/or working on the street are not a clearly defined, homogenous population and there is a lack of consensus on the definition. The underlying reasons are complex, multidimensional, context- and gender-specific and of personal nature. These include, for instance, social exclusion, intolerance and discrimination, the HIV pandemic, conflict, war and displacement, disasters and climate change, coming into contact with the law, and violence against children. Poverty lies behind most of these structural causes and needs to be addressed if real change is to take place.²

Despite the various reasons and the difficulty of establishing with certainty the exact number of these children, it is evident that a situation in which a child has to live and/or work on a street violates her human rights and leads her to face to extreme marginalization. However, so far the Millennium Development Goals which have dominated the development agenda have been silent about children's rights, care and protection - this has been suggested to be one of the reasons that has impeded the achievement of the MDGs³. We must now recognize that there is an urgent need to take immediate action to strengthen national and international mechanisms and programmes for the defence and protection of this vulnerable group of children.

International human rights law

The Convention on the Rights of the Child (CRC) and its Optional Protocols are the main international legal instruments of relevance to the situation of children working and/or living on the street⁴ and they include several crucial provisions: right to non-discrimination, the freedom of expression, registration immediately after birth, the right to health, best interest of the child, right to life survival and development⁵. There are also several other international instruments that are also of particular importance for the protection of children working and/or living on the street, including those dealing with child labour⁶, child trafficking⁷, juvenile justice⁸ and the alternative care of children⁹ (GCPS).

Despite the above mentioned instruments, international human rights law does not yet have the means to protect children working and/or living on the street. They have not been seen as a group entitled to a complementary set of rights that would better respond to their specific conditions and protect them by conferring them a special status. However, it is crucial that their specific lifestyle are taken into consideration and special provisions need to be made to conciliate their legal status as minors with their developed capacity evidenced in autonomous decision making and actions, thereby achieving a unique combination of freedom and protection.¹⁰ There is thus a need to include non-discrimination measures and economic, social and cultural rights suitable for this socially excluded and vulnerable group of children, for instance, the recognition of children's need to work, the right to housing, social insurance and freedom of movement¹¹.

¹ UNICEF, State of the World's Children 2006: Excluded and invisible. New York: Unicef.

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³ Delap, E. (2010). Protect for the Future. Putting Children's Protection and Care at the Heart of achieving the MDGs. EveryChild.

⁴ Global Child Protection Services (GCPS). "Street involved children: Paper to inform Plan's participation in the Human Rights Council Annual Day on the Rights of the Child". January 2011.

⁵ Pare, Mona. "Why have street children disappeared? – The role of international human rights law in protecting vulnerable groups." *The international Journal of Children's Rights* 11: 1-32, 2003. p. 17.

⁶ The ILO instruments are: the Worst Forms of Child Labour Convention (No. 182), the Minimum Age Convention (No. 138), the ILO Forced Labour Convention (No. 29)

⁷ The United Nations Convention against Transnational Organized Crime (CTOC) and the supplementary Human Trafficking Protocol

⁸ There are several international instruments governing State law and practice in relation to juvenile justice, however, only the CRC is binding.

⁹ The UN Guidelines on the Alternative Care of Children

¹⁰ Pare, (*ibid*), p.10, 23

¹¹ Pare, (*ibid*) p. 1,6, 10, 17, 23

National law, policy and practice in preventing marginalisation

Most at risk are those girls and boys who have not been registered at birth, are out of school, work in exploitative and hazardous conditions, who experience violence or children on the move¹². In most of the cases they are deprived of choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights, and lack chances to develop their capabilities, to reach their full potential and to participate as full members of the society¹³.

It is important to pay attention to the way domestic legislation defines children working and/or living on the street, how the legislation is enforced and how these children are treated in real life.¹⁴ This requires the establishment of an environment in which poor and marginalized families are able to attain a standard of living that allows them to provide adequate care and protection to their children, and in which children and youth are able to fulfil their potential through safe, appropriate educational and work opportunities. Especially the protection of mothers has an important role to the well-being of children and it has been suggested that women's and girl's lack of rights in ownership of land, inheritance and the dissolution of marriage serve to place children at greater risk to having to live and/or work on the street¹⁵.

Role of families and children in their own protection

Though States bear the responsibility for protecting all children and ensuring their rights, children must also be allowed the right to participate in all issues affecting their lives. It has been recognized that a 'welfare' approach to protecting girls and boys on the street is not effective and fails to help children to consider their situation and what the best alternatives might be¹⁶.

In finding the appropriate solutions for each boy and girl, it is important to look at each child's individual situation. The key to resolving the situation often depends on addressing the family's problems and involving it actively in the process of finding the best solution for each child whether discussing family reintegration, improvement of living conditions on the street¹⁷ or identifying and providing more suitable forms of alternative care¹⁸. Children themselves are in the best position to determine those relationships which are harmful and those which provide protection.¹⁹

Most importantly, children working and/or living on the street need to be recognized as capable and resilient individuals and social actors whose evolving capacities need to be considered in all holistic assistance and protection measures. Regardless of whether the legal guardians of the child are present or whether the child is in possession of any identification documents, their rights need to be realized in all circumstances and their access to shelter, health care, education and other basic services needs to be secured.²⁰

Recommendations

As the causes of street involvement are complex, prevention is challenging a multi-disciplinary approach is needed and should involve children, families, communities, government, civil society and the private sector, as well as the coordination of international actor and of international law.

In light of these factors, Plan International proposes the following measures:

To the international community:

- To develop guidelines addressing non-discrimination and children working and/or living on the street in order to formally recognise these children's vulnerability as a particular group and to provide more detailed guidance on how to develop integral protection systems that suit their needs

¹² Global Child Protection Services (GCPS). "Street involved children: Paper to inform Plan's participation in the Human Rights Council Annual Day on the Rights of the Child". January 2011.

¹³ Plan, "Promoting child rights to end child poverty", Programme Guide 2010.

¹⁴ Global Child Protection Services (*ibid*), 2011.

¹⁵ Speak, Suzanne. "Relationship Between Children's Homelessness in Developing Countries and the Failure of Women's Rights Legislation." *Housing, Theory and Society*, Vol. 22, No. 3, 129-146, 2005. p. 144.

¹⁶ Plan. *Because I am a Girl Report: "The state of the World's Girls 2010. Digital and Urban Frontiers: Girls in a Changing Landscape."* p. 81

¹⁷ Schwinger, Michael. "Empowering families as an alternative to foster care for street children in Brazil". *Development in Practice*. Vol 17, No 6, November 2007, 800-806. p. 802

¹⁸ UN Guidelines for the Alternative Care of Children. 24 February 2010. A/RES/64/142.

¹⁹ Global Child Protection Services (*ibid*), 2011. p. 46

²⁰ Pare, (*ibid*), p 15, 17, 22

- To strengthen international commitment, cooperation and mutual assistance in preventing and protecting children working and/or living on the street

To States' Parties:

- Eliminate all forms of discrimination and unequal access to, and enjoyment of, the rights contained in the UN CRC and its Optional Protocols
- Develop flexible, inclusive and non-violent education systems to better address the needs of children living and/or working on the street and to offer second chances to those who have dropped out.
- Raise the profile of child protection and the rights of marginalised groups of children through increased funding and by developing children's budgets.
- Develop holistic strategies that integrate prevention, protection and restitution measures and link these to community responses to child protection
- Provide assistance to children in leaving the streets when they choose to do so and integrate children's participation at all levels
- Adopt, amend and review national laws to prevent violations of human rights, including those of children working and/or living on the street, and implement the laws, inter alia, in the fields of juvenile justice, child labour, child protection, alternative care of children, and in social, educational and public health programmes
- Develop comprehensive national poverty reduction programmes which ensure the enjoyment of the highest attainable standard of living for all individuals, including women and girls, in both rural and urban areas, including land tenure, inheritance, dissolution of marriage and housing rights.
- Ensure the right to all children to be registered at birth and that the procedure is simple, expeditious, free of charge and accessible to all without discrimination in order for the children working and/or living on the street to have a legal identity and be fully recognised as persons under the jurisdiction of the State.

Jointly with CSOs:

- Adopt a gender-sensitive approach to protecting children working and/or living on the street and establish and sustain gender-sensitive services
- Develop and enhance programmes to support parents and other caregivers, taking into consideration the need to develop targeted programmes for families particularly at risk
- Systematically listen to children working and/or living on the street and give due weight to their opinions when designing and delivering prevention programmes and interventions for their protection
- Address stereotypes and misconceptions about children working and/or living on the street as criminals and vagrants, which enforces their exclusion and prevents them from exercising their rights