Submission for the preparation of a General Comment on article 21 (right to peaceful assembly) of the International Covenant on Civil and Political Rights.

11 March 2019

Introduction
Consortium for Street Children is an international network of over 100 organisations, researchers and practitioners working to defend the rights of children in street situations. The organisations Bahay Tuluyan, Chance for Childhood, Child in Need Institute (CINI), Fondation Apprentis d’Auteuil, Fondation Apprentis d’Auteuil International, Glad’s House, Save Street Children Uganda (SASCU), StreetInvest and Toybox contributed their perspectives on peaceful assembly for this submission.

This submission aims to provide perspectives on the right to peaceful assembly as it applies to children in street situations. The following issues are addressed:

- Understanding ‘peaceful assembly’ as a key feature of living in street situations
- Infringements of the right to peaceful assembly
  - Harassment, violence and round-ups
  - Status offences
  - Anti-social behaviour and nuisance measures

Understanding ‘peaceful assembly’ in street situations
While children in street situations have the same rights as other children to rest, play and relax (Convention on the Rights of the Child, Article 31), and the same right to survival and development (Convention on the Rights of the Child, Article 6), it is in public spaces that they come together, create networks and form friendships. They rely on access to public spaces to satisfy their rights, including the right to peaceful assembly.

During the consultation process for the UN Committee on the Rights of the Child’s General Comment No. 21 (2017) on Children in Street Situations, children and young people expressed a need for governments to understand “the complex realities of association (friendships, groups and gangs) for children in street situations, and not to see all groups of street children as negative.”1 General Comment No. 21 went on to recognise that public spaces are integral to the lives of children in street situations; paragraphs 36-40 on association and peaceful assembly are of particular relevance to this submission. The UN Committee on the Rights of the Child

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1 UN Committee on the Rights of the Child, General Comment No.21 on Children in Street Situations, 21 June 2017, UN Doc. CRC/C/GC/21, accessible here; Chapter IV.1. Henceforth “GC No.21”.
advises that “States should ensure that [children in street situations’] access to political and public space in which to associate and peacefully assemble is not denied in a discriminatory way.”

With respect to the relationship between the rights to association and peaceful assembly, General Comment No.21 interprets the right to association in conjunction with other rights protected under the Convention on the Rights of the Child as “spending time with others in public spaces”. It does not give a separate interpretation of peaceful assembly. From the perspective of children in street situations, peaceful assembly and associating together in the streets (articles 21 and 22 ICCPR respectively) are closely intertwined, as children associate in public spaces for multiple interrelated purposes which may not always be broken down into discrete activities or ‘ideas’. Practically speaking, there may not always be a clearly discernible point at which association becomes assembly or vice versa, as both rights will typically be exercised together in public spaces.

We therefore recommend that the General Comment on Peaceful Assembly should:

- Recognise the close connection between association and assembly for communities with a unique relationship to public spaces, such as children in street situations;
- Require States to ensure that any restrictions upon the exercise of the right to peaceful assembly do not render the right to peacefully assemble inaccessible for children in street situations.

Infringements of the right to peaceful assembly

Harassment, Violence and Police Round Ups

The right of children in street situations to peacefully assemble in public spaces is often denied as a result of harassment, violence and police round-ups. Because they are highly stigmatised, children in street situations are more likely to be the targets of arbitrary arrests and detention. Children have reported being immediately labelled as offenders and detained without investigation just for being visible in public spaces or for being in the vicinity of a crime scene. As well as taking place periodically due to the systemic nature of the practice, mass round-ups (sometimes described as “street sweeps” or “clearing operations”) have been documented as occurring in advance of major public events, such as political, sporting and religious events.

Children and young adults in street situations from around the world shared their experiences of such rights violations during the consultation process for General Comment No.21 and also for a joint submission to the UN Global Study on Children Deprived of Liberty by Consortium for Street Children, CWISH Nepal, StreetInvest, S.A.L.V.E. International, Toybox and CINI:

2 GC No.21, para. 36.
3 GC No.21, para 38.
“[A] boy from Pakistan reported that it was very difficult for street children to stay in groups on the streets due to the perception that they were a terrorist risk or were making terrorist plans. He reported an incident in which a shopkeeper reported 10 street children who were outside the shop to the police, accusing them of planning for a terrorist attack. When the police came, the street children were afraid and ran away. The police fired shots and killed two of the children.”⁵ [Brazil]

“Police will beat them up for no reason, just for getting together as a group or because of the way they dress. They say they’re criminals.”⁶ [Mexico]

“We children, staying at the station, are time and again removed during VIP movement. The police use force and coercion to remove us and sometimes, we are also beaten up.”⁷ [India]

“They don’t see street-connected children as human beings. Whenever they do their roundups they usually boast that they are cleaning the city by removing the rubbish out of town. They should respect us. We are also human beings.”⁸ [Kenya]

General Comment No.21 condemns such practices as direct discrimination and a severe violation of the rights of children in street situations, including the right to peaceful assembly.⁹ The Committee on the Rights of the Child requires States to abolish any provisions allowing or supporting the round-up or arbitrary removal of children and their families from the streets or public spaces with immediate effect.¹⁰ Policing and public order measures are only permissible from a human rights perspective where they are taken on the basis of the law, entail individual rather than collective assessment, comply with the principle of proportionality and represent the least intrusive option.¹¹

Further, the Committee states that additional implementation measures are required to protect the right to peaceful assembly for children in street situations: police and security forces must receive specialised training to build their capacity to deal with public order situations in a way that

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⁷ Quote from a focus group discussion with CINI Kolkata. See Consortium for Street Children et al, Joint submission to the UN Global Study on Children Deprived of Liberty (19 September 2018), available here.
⁸ Glad’s House, General Comment Consultation (10th, 11th and 23rd March 2016). Available here.
⁹ GC No.21, para 26 and 39.
¹⁰ GC No.21, para 14.
¹¹ GC No.21, para 39.
upholds the rights of children in street situations, and sanctions should be imposed on those who violate the right to peaceful assembly.\textsuperscript{12}

We therefore recommend that the General Comment on Peaceful Assembly should:

- Urge States not to restrict or interfere with the right of children in street situations to peaceful assembly through discriminatory measures such as harassment, violence and round-ups;
- Urge States to abolish any provisions allowing or supporting the round-up or arbitrary removal of children and their families from the streets or public spaces with immediate effect;
- Require States to provide specialised training for police and security forces on how to uphold the rights of children in street situations and engage with them in a positive way;
- Require States to establish accountability mechanisms to discipline authorities if they violate the rights of children in street situations.

**Status Offences**

Status offences are offences which discriminate against street children either because the offences apply to children but not adults, such as curfews, running away from home and truancy, or because they disproportionately affect people living and working on the street, such as begging, loitering and vagrancy. Status offences provide a legal justification for the arrest of those living and working in public spaces, and are often cited as the basis for police round-ups. They discriminate against children in street situations and violate their right to peaceful assembly.\textsuperscript{13}

During the consultation process for General Comment 21, street-connected youth and children gave examples of how status offences are used against them:

“In Slovakia, if you are a minor and are stopped by the police, they take you into custody.”\textsuperscript{14} [Slovakia]

“Two boys from Mumbai, 16 and 18 years of age respectively, gave detailed accounts of how homeless rag-picking children were arrested by the police and kept in custody. They

\textsuperscript{12} GC No.21, para 40.

\textsuperscript{13} Though it is important to note that round-ups tend to fail to follow due process in any other respect: commonly reported characteristics of round-ups include violence and harassment during arrests; prolonged detention with adults in inadequate facilities; and failure to follow specific laws for the protection of children.

\textsuperscript{14} Dynamo International and Consortium for Street Children, Europe Consultation Report for the UN Committee on the Rights of the Child’s General Comment on Children in Street Situations, April 2016, p.8. Available \textit{here}. 
said this was because police get hauled by their seniors for letting children live on stations and being seen by people."\(^{15}\) [India]

Status offences were also recently condemned by the African Commission on Human and People’s Rights in their *Principles on the Decriminalisation of Petty Offences*:

“The enforcement of petty offences has the effect of punishing, segregating, controlling and undermining the dignity of persons on the basis of their status. They also infringe upon the autonomy of persons by restricting their performance of life-sustaining activities in public spaces, particularly for those living in poverty. The enforcement of these laws perpetuates the stigmatisation of poverty by mandating a criminal-justice response to what are socio-economic and sustainable development issues.”\(^{16}\)

General Comment No.21 and the ACHPR Principles require States to decriminalise status offences and other survival behaviours, instead taking a holistic approach to ensuring that people living in poverty and in street situations are able to access their rights.\(^{17}\) General Comment No.21 also requires that any curfews imposed are legitimate, proportional and non-discriminatory.\(^{18}\)

These are necessary preconditions for protecting the right to peaceful assembly.

Therefore, we recommend that the General Comment on Peaceful Assembly should:

- Require States to decriminalise status offences and other survival behaviours of children in street situations;
- Require States to ensure that any curfew imposed is legitimate, proportional and non-discriminatory;
- Require States to ensure that children in street situations have easy access to legal and other appropriate assistance and that they are supported to access complaint mechanisms when their right to peaceful assembly is violated.

**Anti-Social Behaviour and Nuisance Measures**

Anti-social behaviour is a term which encompasses a range of behaviours from minor nuisances to criminal activity. Legal measures for counteracting anti-social behaviour range from sub- or quasi-criminal measures, such as by-laws and civil orders with potentially criminal sanctions, to status offences contained within national legislation, as discussed above. By-laws (local government laws imposed within a defined area) do not undergo the same scrutiny as national legislation and enable local authorities to bypass criminal justice safeguards against arbitrariness

\(^{15}\) Plan India and Consortium for Street Children, South Asia Consultation Report for the UN Committee on the Rights of the Child’s General Comment on Children in Street Situations, 4-6 April 2016, p.17. Available [here](#).

\(^{16}\) ACHPR Principles on the Decriminalisation of Petty Offences, p.12, para 7, available [here](#).

\(^{17}\) GC No.21, paras 27 and 32.

\(^{18}\) GC No.21, para 27.
and unfairness. Penalties for breach of a by-law can include (but are not limited to) community service orders, on-the-spot fines and short terms of imprisonment.

It has been argued that anxiety around youth behaviours which are viewed as rude, loutish and disrespectful have moral roots and are predominantly the fears of those from wealthier socio-economic backgrounds. A public survey conducted in the UK found that being rowdy, sleeping rough and “teenagers hanging around” were considered to be anti-social behaviours. However, many ‘nuisance’ behaviours would be classified as merely disruptive rather than harmful, raising the question of whether a criminalising or penalising response is necessary or proportionate. While the preservation of public safety is a legitimate aim of the justice system, children in street situations are associated with criminality simply because of their presence in public spaces. They are often stereotyped as delinquents, and punitive responses are applied as a result by local authorities. Indeed, the perception of children in street situations as delinquents is the primary cause for their entry into the juvenile justice system:

“Our street is always filled with people, some are seen working, and the little ones play around while their mothers are busy cooking dinner. Young boys like us gather together to play cards, carrom or watch videos on our mobile phones. Many a times, the police have forced us to stay away from the streets even when we did nothing other than playing some harmless games. Youths are looked down upon as nuisances who are always up to no good. … Government should make strict rules for the children in street situations so that they aren’t treated as nuisances by anyone. They must get equal respect from others.”

“IT is not easy for street-connected children to be with their friends in town: you are always suspects and can be arrested any time.”

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22 StreetInvest contribution to the joint submission to the UN Global Study on Children Deprived of Liberty (19 September 2018), Annex 1, page 16, available here.
23 Quote from a focus group discussion with CINI Kolkata. See Consortium for Street Children et al, Joint submission to the UN Global Study on Children Deprived of Liberty (19 September 2018), available here.
24 Quote from a focus group discussion with Glad’s House. See Consortium for Street Children et al, Joint submission to the UN Global Study on Children Deprived of Liberty (19 September 2018), available here.
Limitations on peaceful assembly may only be imposed where they are necessary in a democratic society, which has previously been interpreted as more than “useful” or “convenient”, instead requiring a “pressing social need” for the interference. Though the grounds of public order and public morals are broad in scope, we submit that public order measures restricting the activities of children in street situations because they are perceived as an annoyance or mere disruption to others are not sufficient to meet this threshold of necessity. Furthermore, the social stigma around young people assembling in public places increases the risk that measures to counteract anti-social behaviour will be applied in a disproportionate and discriminatory way against them, particularly those from lower socio-economic backgrounds.

General Comment No.21 advises States to review their local-level laws and regulations to ensure that they are not discriminatory in nature or in application against children in street situations. However, the impact of these laws is not limited to children, but affects all individuals and communities who exercise their rights in public spaces and who are affected disproportionately by such laws and regulations.

We therefore recommend that the General Comment on Peaceful Assembly should:

- Recognise the limiting effect that anti-social behaviour and nuisance laws can have upon the right to peaceful assembly and related rights;
- Require States to review their local-level laws and regulations to ensure that they are not discriminatory in nature or in application against those who live in street situations;
- Ask States to assess whether anti-social behaviour and nuisance laws and regulations meet the tests for necessity and proportionality, with particular attention paid to the rights of children in street situations.

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25 OSCE/Office for Democratic Institutions and Human Rights (ODIHR), Key Guiding Principles of Freedom of Association with an Emphasis on Non-Governmental Organizations, para 5.
26 GC No.21, para 40.
Consortium for Street Children authored this submission with the input of its network members. Queries in relation to the submission can be directed to advocacy@streetchildren.org.

With sincere thanks to the network members who contributed to this submission for giving their time and expertise: