

Joint submission to UN Special Rapporteurs on the right to adequate housing, and extreme poverty and human rights

On the decriminalisation of homelessness and extreme poverty

15 September 2023



Background to contributors

1. Consortium for Street Children (CSC) is a global network supporting children in street situations (CiSS) and working to instigate systemic change through advocacy, research and innovative programming. CSC works closely with non-governmental organisations to promote the rights of CiSS at international, national and subnational levels, including through engagement with United Nations human rights architecture.
2. The CLARISSA consortium (CLARISSA) is constituted by in-country and global partners operating in Bangladesh and Nepal. CLARISSA is a participatory research programme working with children to co-develop innovative and context-appropriate ways to increase options for children to avoid engagement in hazardous, exploitative labour in Bangladesh and Nepal.
3. Toybox has, for over 30 years, been working alongside street-connected children in Latin America, Asia and Africa. Toybox supports marginalised and vulnerable children to obtain birth registration documentation, education, access to vocational courses and facilitates their economic empowerment through local partners.
4. We Yone Child Foundation (“WYCF”) strives to improve the lives of vulnerable children and their families by providing quality education and self-empowerment opportunities. The organisation works in extremely poor slum and rural communities in Sierra Leone, running primary schools delivering education to over 1,000 children, and provides scholarships for students to continue their education including community outreach initiatives focusing on child protection, female empowerment and basic health and hygiene training. School clubs and local community counselling sessions focus on teenage pregnancy, sexual violence and ending child marriage.
5. The Toronto Centre of Excellence (TCE) on Youth Homelessness Prevention at York University is a Geneva UN Charter Centre that functions as an ‘international megaphone’ for mobilizing and adapting Canadian and international innovations, leadership, and knowledge on youth homelessness prevention and sustainable exits from homelessness. The TCE was established in 2021 and is a partnership between the Canadian Observatory on Homelessness, A Way Home Canada, and Making the Shift Youth Homelessness Social Innovation Lab.
6. Children Women in Social Service and Human Rights (CWISH) is a national level non-governmental organization operating in Nepal established in 1993 with the aim of advocating for the empowerment of children, women and marginalized communities and the protection and promotion of human rights. CWISH is guided by human rights principles and rights-based approaches. It values dignity and the rights of everyone. CWISH has a range of expertise in Participatory Action Research, Policy Research, Qualitative and Quantitative research for an evidence-based advocacy in its area of work.
7. Paroj Banerjee, is a lecturer and Co-Programme Leader of MSc Development Administration and Planning at the Bartlett Development Planning Unit. Her research focuses on ongoing and emerging trajectories of urban dispossession and subaltern responses to structural injustice. Paroj’s research and pedagogic approach to scholarship and practice, critiques Western ontologies of poverty and agency and unsettles key assumptions about urban inhabitation, public policy, and planning. Paroj has years of policy advocacy experience in her previous roles in international NGOs such as Action Aid and positions in government departments, such

as Planning Commission of India. She has been the recipient of several grants through which she works in collaboration with a range of actors involving academics, activists, policy makers, NGOs, planners to grassroots communities to impact change. She is core member of faculty at the Bartlett Development Planning Unit at University College London (UCL). The Development Planning Unit conducts world-leading research and postgraduate teaching that helps to build the capacity of national governments, local authorities, NGOs, aid agencies and businesses working towards socially just and sustainable development in the global south.

8. This report was produced by CSC from its work supporting a challenging to colonial-era loitering laws in Sierra Leone, as well as through inputs and research received from partners and network members. CSC is of ECOSOC Special Consultative Status since 1997.

Introduction: criminalisation and discrimination of CiSS

9. United Nations Committee on the Rights of the Child (ComRC) General Comment No. 21 (2017) defines CiSS as:

[C]hildren who depend on the streets to live and/or work, whether alone, with peers or with family; and...a wider population of children who have formed strong connections with public spaces and for whom the street plays a vital role in their everyday lives and identities. This wider population includes children who periodically, but not always, live and/or work on the streets and children who do not live or work on the streets but who regularly accompany their peers, siblings or family in the streets. Concerning children in street situations, “being in public spaces” is understood to include spending a significant amount of time on streets or in street markets, public parks, public community spaces, squares and bus and train stations.¹

10. This definition makes clear that while CiSS may be street homeless, not all are. However, this is not to underestimate the risks posed to CiSS by living circumstances which, while not always constituting street homelessness, are often precarious and may as a result fall within the definition of homelessness considered in its wider sense, such as that put forward by the Special Rapporteur on the right to adequate housing:

Experiencing homelessness means not having stable, safe and adequate housing, nor the means and ability of obtaining it. It should be noted that international agencies, governments, researchers or civil society have adopted different definitions of homelessness depending on language, socioeconomic conditions, cultural norms, the groups affected and the purpose for which homelessness is being defined. The experience of homelessness is not fully captured without a richer definition that goes beyond the deprivation of physical shelter. Reducing the matter to putting a roof over one’s head, would fail to take into account the loss of social connection — the feeling of “belonging nowhere” — and the social exclusion experienced by persons living in homelessness.²

11. Additionally, others have argued that homelessness as a term can be dehumanising for many who consider the street or public spaces as their home, and that the differentiation between private and public spaces is an arbitrary, colonial import, with most cities in the world having

¹ UN Committee on the Rights of the Child, *General comment no.21 (2017) on children in street situations*, 21 June 2017, para. 4, available at: <https://bureau-client-media.ams3.digitaloceanspaces.com/street-children-website-TJ5d7s/wp-content/uploads/2017/07/15140332/General-Comment-No.-21-2017-on-children-in-street-situations.pdf>.

² UN Special Rapporteur on the right to adequate housing, *Homeless and human rights*, is available at: <https://www.ohchr.org/en/special-procedures/sr-housing/homelessness-and-human-rights#homelessness>.

informal inhabitation as a dominant feature. Therefore 'unhoused' may be a more useful category to identify the spatial and social needs of urban communities who do not inhabit conventional houses".³

12. From the above, two preliminary conclusions may be drawn. The first is that, compared to other children, CiSS spend more time on the street or in public places for work, sleep or socialising, and so laws that regulate a person's presence on the street, or which make criminalisation more likely if a person is on the street, disproportionately impact CiSS in a manner amounting to discrimination. The second is that, compared to other children, CiSS rely more on the street and public places for their survival, and so laws preventing access to the street or public places, or that stringently patrol the distinction between public and private spaces, disproportionately impact CiSS in a manner amounting to discrimination, whether such measures are periodic or permanent, direct or indirect. Additionally, the treatment of CiSS by society at large must also be borne in mind, with many facing a higher degree of stigma from wider society, which operates in tandem with the formal discrimination faced as a result of criminalisation measures.⁴
13. This submission explores the principles of international human rights law engaged when states' criminalise activity associated with homelessness and street-connectedness, particularly as they apply to CiSS. The submission also looks to highlight the prevalence of such laws and "paternalistic" policies.

The discriminatory criminalisation of CiSS: Sierra Leone in focus

14. CSC is currently supporting by way of third-party intervention in the ECOWAS Court of Justice a challenge to the colonial-era loitering laws pertaining in Sierra Leone.⁵ The challenge highlights the discriminatory nature of laws that criminalise activity engaged in by children and adults to survive on the streets and create a culture of impunity for those using the law as a pretext to commit human rights abuses. Reports received by CSC also suggest that the laws are used as a pretext to exploit CiSS sexually and financially.

The Loitering Laws

15. Under section 70 of the Sierra Leone Child Right Act,⁶ children aged 14 and over are deemed criminally responsible. The following laws (the Loitering Laws) are currently in force in Sierra Leone:
 - a. Section 7 of the *Public Order Act 1965*⁷ makes it an offence to loiter 'under any piazza, or in the open air, and not have any visible means of subsistence, and not giving a good account of himself'. The offence is punishable by up to one month's imprisonment. "Loitering", "means of subsistence" and "good account" are not further defined in the act.

³ Banerjee, Paroj. 2022, 'Making-Home from Below: Domesticating Footpath and Resisting "Homelessness" in Mumbai', *Antipode*, vol. 55, Issue 1, pp.5-26, is available at <https://onlinelibrary.wiley.com/doi/full/10.1111/anti.12889>.

⁴ Banerjee, Paroj. 'Abandon the *Slum*? Toward an Alternative Recognition of Urban Informal Dwelling', *Journal of Urban History*, vol. 49, Issue 3, is available at <https://journals.sagepub.com/doi/full/10.1177/00961442221127311>.

⁵ AdvocAid, *Press Release: Court case filed against Sierra Leone to overturn discriminatory loitering laws*, 4 May 2022, available at <https://advocaidsl.org/press-release-court-case-filed-against-sierra-leone-to-overturn-discriminatory-loitering-laws/>.

⁶ The Child Right Act 2007, available at: <http://www.sierra-leone.org/Laws/2007-7p.pdf> [accessed on 5 October 2022].

⁷ The Public Order Act 1965, available at:

https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=28567&p_country=SLE&p_count=166#:~:text=Sets%20for%20penalties%20for%20persons,conduct%2C%20street%20noises%20and%20trespass.

- b. Section 13(1)(e) of the Criminal Procedure Act 1965⁸ grants the police power to arrest without a warrant ‘any person whom he finds between the hours of six in the evening and six in the morning lying or loitering in any street, highway, yard, compound or other place, and not giving a satisfactory account of himself’. “Loitering” and “satisfactory account” are not further defined in the act.
- c. Section 31 of the Summary Conviction Offences Ordinance 1906⁹ makes it an offence to loiter ‘under any piazza, or in the open air, and not having any visible means of subsistence, and not giving a good account of himself’. The offence is punishable by up to one month’s imprisonment. “Loitering”, “visible means of subsistence” and “good account” are not further defined in the ordinance.

The right to non-discrimination

16. Article 7 of the UN Universal Declaration of Human Rights (UDHR) declares ‘all are equal before the law...[and] all are entitled to equal protection against any discrimination’.¹⁰ These are legal rights enshrined in articles 2 and 24 of ICCPR, the latter stating that ‘every child shall have, without discrimination as to [*inter alia*] social origin, property or birth, the right to such measures of protection as are required by his status as a minor’.¹¹ The Human Rights Committee defines discrimination as:

*[A]ny distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.*¹²

17. Article 2(2) of CRC further codifies States Parties’ obligations vis-à-vis non-discrimination and children:

*States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.*¹³

18. General Comment 21 frames the above duties as they apply to CiSS, highlighting that CiSS often face discrimination ‘on the basis of their connections with the street, that is, on the grounds of their social origin, property, birth or other status, resulting in lifelong negative consequences.’¹⁴ With discrimination understood through this lens, it is clear that the terms of the Loitering Laws *prima facie* discriminate against CiSS. This is because the laws place CiSS at greater risk of arrest, detention and punishment as a direct result of their social origin, which necessitates their strong connection to the street. Greater time spent on the street means

⁸ The Criminal Procedures Act 1965, available at <http://www.sierra-leone.org/Laws/1965-32.pdf>.

⁹ The Summary Conviction Offences Ordinance 1906, available at: <http://www.sierra-leone.org/Laws/Cap%2037.pdf>.

¹⁰ Universal Declaration of Human Rights, 10 December 1948, General Assembly resolution 217 A, available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

¹¹ International Covenant on Civil and Political Rights, 16 December 1966, General Assembly resolution 2200A (XXI), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

¹² Human Rights Committee, *General Comment No.18: Non-discrimination*, 10 November 1989, available at: <https://www.refworld.org/docid/453883fa8.html>.

¹³ UN Convention on the Rights of the Child 1989, is available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

¹⁴ UN Committee on the Rights of the Child, *General comment no.21 (2017) on children in street situations*, *supra* note 1, para. 25.

CiSS are more likely to be found in “open air”, “under any piazza”, on a “street” or on a “highway”. Addressing this risk directly, ComRC was at pains to reinforce to States the direct discrimination experienced by CiSS as a result of loitering laws generally:

*Direct discrimination includes disproportionate policy approaches to “tackle homelessness” that apply repressive efforts to prevent begging, loitering, vagrancy, running away or survival behaviours, for example, the criminalization of status offences, street sweeps “round-ups”, and targeted violence, harassment and extortion by police.*¹⁵

19. ComRC also raises concerns around ‘the application of “zero tolerance” policies criminalizing children in street situations resulting in forced institutionalization, and recommends:

*States should support community policing, with an emphasis on protection rather than punishment of children in street situations, and adopt a multicultural police service. States should guarantee all rights to all children, including those in street situations, in the contact of a restorative rather than punitive juvenile justice system.*¹⁶

20. Further, while restorative justice is to be preferred over punitive justice, in General Comment 10, ComRC reinforces to States the discrimination faced by CiSS who come into conflict with the law more generally. In doing so, ComRC raised concerns at the prevalence of legal codes that criminalise vagrancy and other acts connected to the socio-economic status of children, which could include laws targeting persons “without means of subsistence”, and the need to re-focus efforts away from juvenile justice systems towards alternative measures.¹⁷ In the General Comment, ComRC recommends to States as follows:

*[B]ehaviour such as vagrancy, roaming the streets or runaways should be dealt with through the implementation of child protective measures, including effective support for parents and/or other caregivers and measures which address the root causes of this behaviour.*¹⁸

21. In General Comment 21, ComRC pointed to the risk of discrimination faced by CiSS as a result of attitudes towards them:

*Children in street situations have highlighted the discrimination and negative attitudes by the public they face as a specific concern, and asked for there to be awareness-raising and educational measures to counter them...*¹⁹

22. The Loitering Laws provide a wide discretion to arresting officers, leaving the terms “loitering,” “no visible means of subsistence” and “satisfactory/good account” undefined. Operating under such a wide discretion increases the risk of arresting officers making arrest decisions under the Loitering Laws on the basis of prevalent negative attitudes towards CiSS and their social origins. Failing to prevent the risk of such contravenes the government of Sierra Leone’s obligations under article 2 of CRC, namely ‘to take all appropriate measures to ensure that the child is protected against all forms of discrimination’.²⁰

¹⁵ *Id.*, para. 26.

¹⁶ *Id.*, para. 60.

¹⁷ UN Committee on the Rights of the Child, *General Comment No. 24 (2019) on Children’s rights in the child justice system*, 18 September 2019, para. 10, available at: <https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRC/GC24/GeneralComment24.pdf>.

¹⁸ *Id.*, para. 11.

¹⁹ UN Committee on the Rights of the Child, *General comment no.21 (2017) on children in street situations*, *supra* note 1, para. 26.

²⁰ UN Convention on the Rights of the Child, *supra* note 13.

23. Reports confirm that these negative attitudes towards CiSS lead to a higher risk of arrest, detention and prosecution under the Loitering Laws. While the UN Global Study on Children Deprived of Liberty recognises that ‘statistics on children subject to police detention have to be treated with caution, since detention of children for ‘anti-social behaviour’ (working on the street, begging or loitering) is less likely to be recorded...’ accounts from organisations based in Sierra Leone suggest CiSS are arrested under Loitering Laws precisely because of attitudes towards them and their status as CiSS.²¹ Stigmatisation on the basis of status by authorities is a common experience of CiSS:

*In most cases, street-connected children report contact with the police and authorities as resulting from discrimination against them on the grounds of their street status, or for status offences such as vagrancy. They highlight that they are persistently treated as criminals, where their guilt rather than innocence is presumed.*²²

24. Thus, the application of Loitering Laws, as well as the laws themselves, contravene the the government of Sierra Leone’s duty to ‘respect and ensure the rights set forth in the...Convention to each child within their jurisdiction without discrimination of any kind’²³ by unreasonably interfering with CiSS’ rights to equality before the law (article 2)²⁴ and the right to be presumed innocent until proven guilty (article 40)²⁵ on the basis of their social origins. In so doing, parallels may be drawn between the situation of CiSS in Sierra Leone and those in Guatemala, which the Inter-American Court of Human Rights, in finding against the state defendant, defined as one of “double aggression” since the defendant had breached CiSS’ rights in failing to prevent their presence on the street and then by failing to uphold their rights whilst on the streets.²⁶

The right to freedom of movement and associated rights

25. Under article 13 of UDHR²⁷ and article 12 of ICCPR,²⁸ the state of Sierra Leone is dutybound to uphold the right to freedom of movement, the latter provision guaranteeing also the freedom to choose a place of residence. Article 18 of the Constitution of Sierra Leone also makes similar provision.²⁹ Reports from organisations working in Sierra Leone suggest that CiSS’ right to freedom of movement is infringed through the application of the Loitering Laws:

*At Waterloo [in Sierra Leone], street children experience deprivations of their liberty when the police discover their hide out, their place of congregation and relaxation, and start to chase them out of those places for loitering. They succeed in arresting a few and keep them in detention. Hence their freedom of movement and freedom of association may be hindered.*³⁰

²¹ CodWela cited in Street Invest, Consortium for Street Children, Cini, S.A.L.V.E, CWISH and Toybox, *Submission to the UN Global Study on Children Deprived of Liberty*, 19 September 2018, pp. 6 and 7, available at: <https://bureau-client-media.ams3.digitaloceanspaces.com/street-children-website-TJ5d7s/wp-content/uploads/2018/10/15135851/Joint-submission-for-the-UN-Global-Study.pdf>.

²² *Id.*, p.6.

²³ UN Convention on the Rights of the Child, *supra* note 13.

²⁴ *Id.*

²⁵ *Id.*

²⁶ The Inter-American Court of Human Rights, *Villagran-Morales et al. v Guatemala*, 19 November 1999, judgement is available in English at https://www.corteidh.or.cr/docs/casos/articulos/seriec_63_ing.pdf.

²⁷ Universal Declaration of Human Rights, 10 December 1948, *supra* note 10.

²⁸ International Covenant on Civil and Political Rights, 16 December 1966, *supra* note 11.

²⁹ The Constitution of Sierra Leone 1991 is available in English at <http://www.sierra-leone.org/Laws/constitution1991.pdf>.

³⁰ CodWela cited in Street Invest, Consortium for Street Children, Cini, S.A.L.V.E, CWISH and Toybox, *Submission to the UN Global Study on Children Deprived of Liberty*, *supra* note 21, paras. 7-8.

26. While the right to freedom of movement is a qualified right and may be reasonably curtailed under article 12 ICCPR, CiSS' reliance on freedom of movement, along with the associated rights under CRC (article 15, the right to freedom of association and peaceful assembly; article 6, the right to survival and development; and article 31, the right to rest, leisure and play) makes the interference necessitated by the Loitering Laws unreasonable, as made clear in General Comment 21:

[T]he Committee emphasizes the importance of respecting the choice of children in street situations to associate together in public spaces, without threat to public order, to satisfy their survival and development rights (art.6), for rest, play and leisure (art.31), to create networks and organize their social life, and as a key feature of their lives in general. For children in street situations, this type of gathering together is part of living...For children not in street situations, this cooperative coexistence with others mainly takes place in settings like the family household or school. For children in street situations, it takes place in public spaces.³¹

Prevalence of status offences in other jurisdictions

27. CSC maintains the Legal Atlas for Street Children,³² which documents the prevalence of status offences criminalising or penalising children's access to the street for their survival (including through laws against begging, loitering and vagrancy). Countries in every habitable continent of the world retain discriminatory laws that criminalise or penalise CiSS. What follows is an illustration of the laws and policies that prevail.

India

28. Section 144 of the Indian Railway Act 1989³³ prohibits hawking and begging on a railway carriage or on any part of a railway without a government licence and attracts a sentence of up to one year's imprisonment. Further, section 268 of the Indian Penal Code³⁴ states that a person is guilty of a public nuisance if they cause injury, danger or annoyance to the public, which may be applied where persons found begging are perceived to be a public nuisance. In the city of Bombay, under the Bombay Prevention of Beggary Act 1959, if a child has previously been detained in a certified institution and is found begging, they may be sentenced to detention for up to three years.³⁵ If convicted for a second time, they will be sentenced to detention for a period of 10 years. Most states in India have adopted the Bombay Prevention of Begging Act of 1959 and have variations on legal liability if caught begging. In the existing provisions of various state legislations, terms like 'wandering in public' or 'no visible means of subsistence,' etc make homeless, street-connected children vulnerable to being picked up by law enforcing agencies. The age of criminal responsibility in India is seven.³⁶

³¹ UN Committee on the Rights of the Child, *General comment no.21 (2017) on children in street situations*, *supra* note 1, para. 38.

³² Consortium for Street Children, *The Legal Atlas for Street Children*, is available at <https://www.streetchildren.org/legal-atlas/map/>.

³³ The Indian Railway Act 1989 is available in English at https://indianrailways.gov.in/railwayboard/uploads/codesmanual/Railway_Act.PDF.

³⁴ The Indian Penal Code is available in English at <https://www.advocatekhaj.com/library/bareacts/indianpenalcode/268.php?Title=Indian%20Penal%20Code,%201860&STitle=Public%20nuisance%20Public%20nuisance>.

³⁵ Section 5 of the Bombay Begging Prevention Act 1959 is available in English at: <https://www.childlineindia.org.in/CP-CR-Downloads/Bombay%20prevention%20beggin%20act%201959.pdf>.

³⁶ Sections 82 and 83 of the Indian Penal Code, *supra* note 34.

29. Over 20 states in India use laws that criminalise and incarcerate people, particularly the poor connected to street situations and public spaces. The Prevention of Beggary Act³⁷ for instance is one such legal act that has been used by authorities and has had severe adverse and discriminatory impacts. The arbitrariness of the Act is rooted in its language which states that anyone who "looks" a certain way could be considered a beggar and hence subjected to the Act's provisions. The Act also authorises detention of people in public spaces based on certain behavioural traits. These vagrancy control laws and ideals of urban planning have their roots in colonial acts regulating vagrancy and public space and they continue until the present day. These laws violate provisions within the Indian Constitution³⁸ as they go against the due process of rights and are in violation of Articles 19(1)(a) and 21 of the Indian Constitution. Under this law a person can be detained indefinitely. Although currently repealed, the ideological principles of acts like Criminal Tribes Act 1871 which originated during colonial rule in India with 'civilising' intent continue to shape contemporary public space governance.
30. In 2016, many welcomed the introduction of the Persons in Destitution (Protection, Care and Rehabilitation) Model Bill, however it was not pursued after the pre-legislative consultation meeting. The state, both at the centre and federal levels, have failed to take concrete actions of decriminalising begging which have had profound impacts on street connected children and adults linked to them. Arbitrary detention of children have forcefully separated them from their families and their environments of nurture.³⁹

Nepal

31. In Nepal, there have been recent efforts to criminalise street hawking. Street businesses occupy 3.87 percent of informal sector enterprises and employ 1.4 percent of the labour force. Data shows there are more than 10,000 vendors across the Kathmandu Valley.⁴⁰ Families earning through street vending are often marginalized and living in urban poverty with limited income. Kathmandu Metropolitan City often uses forces to remove them from the street, taking their goods and pushing them further into the poverty.⁴¹ These street vendors also include children who live under a fear of being displaced and loss of income.⁴²

France

32. In France, local authorities may introduce anti-begging measures so long as they are of determined duration within a specific location. For example, the municipality of Prades prohibited begging in the city centre during summer months between Tuesday and Sunday,

³⁷ The Prevention of Beggary Act 1960 is available at https://www.indiacode.nic.in/bitstream/123456789/9661/1/prevention_of_beggary_act%2C_1960.pdf.

³⁸ The Constitution of India as of May 2022 is available at <https://legislative.gov.in/constitution-of-india/>.

³⁹ See also: Raghavan, Vijay; Tarique, Mohammed. 'Penalising Poverty: The Case of the Bombay Prevention of Begging Act 1959', *Economic & Political Weekly*, vol.53, issue 22, 2018, available at <https://www.epw.in/journal/2018/22/perspectives/penalising-poverty.html#:~:text=The%20unconstitutional%20Bombay%20Prevention%20of,the%20poor%20for%20being%20poor.> See also: The Indian Express, 'Beggary Law Continues primarily because of the collective apathy of the society', 12 September 2023, is available at <https://indianexpress.com/article/cities/mumbai/beggary-law-continues-primarily-because-of-the-collective-apathy-of-the-society-mohammad-tarique-7930994/>.

⁴⁰ The Kathmandu Post, *Kathmandu wants local administration to roll back decision to allow footpath vending*, 2020, is available www.kathmandupost.com/valley/2020/09/11/kathmandu-wants-local-administration-to-roll-back-decision-to-allow-footpath-vending.

⁴¹ Nepal Live Today, *Unheard plights of street vendors in Kathmandu*, 2023, is available at <https://www.nepallivetoday.com/2023/01/25/unheard-plights-of-street-vendors-in-kathmandu/>,

⁴² CLARISSA, *Romani's Life Story*, is available at <https://clarissa.global/resource/romanis-life-story/>.

from 9 am to 8 pm.⁴³ Additionally, Article R3116-8⁴⁴ of the French Transport Code prohibits begging in bus stations, which is punishable by way of fine.⁴⁵ Under Article 122-8 of the Criminal Code, there is no threshold for a minor's criminal liability, which is decided on the basis of a judge's assessment of a child's cognitive ability to act with "discernment".⁴⁶

Canada

33. In Canada, many acts related to homelessness are greatly controlled, restricted and penalized by law enforcement. Various regions in the country have implemented measures aimed at limiting the rights of homeless individuals and their ability to use public spaces and engage with others. This policing and utilization of law enforcement as primary components of the response to homelessness is what is known as the "criminalization of homelessness." It can further be defined as the "use of laws and practices to restrict the activities and movements of people who are homeless, *often* with the outcome being fines and / or incarceration".⁴⁷ However, it is important to note that not all forms of criminalizing homelessness are based on legislation or necessarily involve criminal offences. Other examples include increased surveillance of spaces by police and private security, unwarranted searches and harassment of people experiencing homelessness, and the use of Crime Prevention Through Environmental Design (CPTED) such as designing park benches and planters in a manner that prohibits loitering or the ability to lay down.⁴⁸
34. In 2019, the federal crime of vagrancy was officially removed from the The Criminal Code of Canada. However, many other quasi-criminal provincial laws and municipal by-laws restrict the rights of homeless people and these individuals for related life-sustaining activities. Given that the age of criminal responsibility in Canada is 12⁴⁹ and that youth aged 16 and over can be tried for many provincial offences as adults, youth involvement with law enforcement has serious potential to trap individuals in a cycle of extreme poverty and homelessness.
35. In Canada, "panhandling", or begging, is prohibited in several states. In Ontario, the Safe Streets Act 1999⁵⁰ makes "aggressive" solicitation illegal and those in breach of the law face a fine up to \$500 on first conviction. For each subsequent conviction, a fine of no more than \$1,000 and imprisonment, or both, can be enforced. In British Columbia, the Safe Streets Act 2004⁵¹ also prohibits aggressive panhandling, with those in contravention subject to a fine or imprisonment. It is important to note that both provincial definitions of "aggressive" leave room for interpretation and bias in ticketing realities.
36. Beyond the Safe Streets Acts, provincial legislation, such as Ontario's Trespass to Property Act,⁵² are used as a means of clearing tents and homeless encampments from private and city-owned property. Despite residing in an encampment being a last resort for many of these

⁴³ Council of State, 5th and 7th subsections, 9 July 2003, 229618, is available in English and French at: <https://www.legifrance.gouv.fr/affichJuriAdmin.do?idTexte=CETATEXT000008183112>.

⁴⁴The Transport Code 2017 is available in French at:

https://www.legifrance.gouv.fr/affichCodeArticle.do?jsessionid=1B5335E27C9C2DA2BF21C9B7CE3CD0CA.tpdila18v_2?i dArticle=LEGIARTI000033966687&cidTexte=LEGITEXT000023086525&categorieLien=id&dateTexte.

⁴⁵Article 131-13 of the Criminal Code 2005 is available in French at

<https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070719&idArticle=LEGIARTI000006417256>.

⁴⁶ *Id.*

⁴⁷ O'Grady, B., Gaetz, S., & Buccieri, K.. Can I See Your ID? The Policing of Youth Homelessness in Toronto. (Toronto: JFCY & Homeless Hub), 2011, p.7, is available at <https://www.homelesshub.ca/CanISeeYourID>

⁴⁸ *Id.*

⁴⁹ Section 13 of the Criminal Code is available in English at <https://laws-lois.justice.gc.ca/eng/acts/C-46/section-13.html>.

⁵⁰ The Safe Streets Act 1999 is available in English at: <https://www.ontario.ca/laws/statute/99s08>.

⁵¹ The Safe Streets Act 2004 is available in English at:

https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/00_04075_01.

⁵² The Trespass to Property Act 1990 is available in English at <https://www.ontario.ca/laws/statute/90t21>.

individuals, encampment residents who violate the Act can face fines of up to \$10,000. These fines have the potential to accumulate and can become compounded with additional offences, such as violating the Liquor License and Control Act, which penalizes individuals for acts like possessing or consuming open liquor in public spaces and underage alcohol consumption.

37. Not only do laws criminalizing homelessness, and penalizing those experiencing homelessness, unfairly target individuals in vulnerable circumstances, many of these laws make it more likely for at-risk youth to fall into homelessness. For example, truancy laws⁵³ impose penalties ranging from minor fines to a year of probation. A breach of probation can result in jail time in the youth juvenile system for up to 30 days for youth aged 12 to 15, even if school is missed for life-sustaining purposes such as employment. When jail time is imposed for youth and young adults already at risk of homelessness, they can lose access to social assistance and other supports and increase the likelihood of eviction from their family home or independent housing. Once released from the criminal justice system, a lack of adequate discharge planning and transitional supports can increase the likelihood of discharging youth into homelessness, which is yet another key mechanism of the criminalisation of homelessness.⁵⁴
38. Exiting homelessness is very difficult for youth who have been subject to penalties. Individuals who fail to pay fines may be subject to further penalties such as driver's licence restrictions, impacts on credit score, and arrest, amplifying the financial challenges and barriers that homeless youth encounter and constraining their ability to engage with training or education and secure housing or employment.⁵⁵ Early justice involvement is also found to be associated with later involvement in the criminal justice system, as well as other negative outcomes like poor physical and mental health, poor educational attainment, and difficulty finding employment in subsequent years.⁵⁶ Moreover, there are many intersections between involvement in the child welfare system, engagement with the youth justice system, and youth homelessness, magnifying the risks associated with each and contributing to longer episodes of homelessness.⁵⁷ This has implications for recurring instances of homelessness, and increases the potential to fall into chronic homelessness later in life.
39. One key consideration regarding the criminalisation of homelessness is that it is putatively designed to protect the public from “dangerous” or intimidating acts by people experiencing homelessness, yet research makes clear that youth experiencing homelessness are exponentially more likely to be victims of crime and violence.⁵⁸ Young people experiencing homelessness in Canada are more likely to be victims of crime than any other age group due to the isolating experience of youth homelessness, weaker support networks, the inability to take appropriate safety measures to protect themselves, developmental considerations, and their vulnerability for exploitation.⁵⁹ In particular, young homeless girls and women are more likely to be victimized and face exploitation and abuse, with higher rates also faced by

⁵³ Justice for Children and Youth, *Legal Rights Wiki*, is available at <https://jfcy.org/en/rights/right-to-attend-school/>.

⁵⁴ O'Grady, B., Gaetz, S., & Buccieri, K.. Can I See Your ID? The Policing of Youth Homelessness in Toronto. (Toronto: JFCY & Homeless Hub), 2011, p.7, is available at <https://www.homelesshub.ca/CanISeeYourID>.

⁵⁵ O'Grady, B., Gaetz, S., & Buccieri, K. (2013), 'Tickets... and More Tickets: A Case Study of the Enforcement of the Ontario Safe Streets Act', *Canadian Public Policy*, 39(4), p.544, is available at <https://www.homelesshub.ca/resource/tickets%E2%80%A6and-more-tickets-case-study-enforcement-ontario-safe-streets-act>.

⁵⁶ Almquist, L., & Walker, S. C., 'Reciprocal associations between housing instability and youth criminal legal involvement: a scoping review', *Health & Justice*, 10(1), 2022, p.2, is available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8991975/>.

⁵⁷ Nichols, N., Schwan, K., Gaetz, S., Redman, M., French, D., Kidd, S., O'Grady, B. (2017), 'Child Welfare and Youth Homelessness in Canada: A Proposal for Action', *Toronto: Canadian Observatory on Homelessness Press*, is available at www.homelesshub.ca/resource/child-welfare-and-youth-homelessness-canada-proposal-action.

⁵⁸ Gaetz, S., O'Grady, B., Buccieri, K. (2010). *Surviving Crime and Violence Street Youth and Victimization in Toronto*. (Toronto: JFCY & Homeless Hub), p.2, is available at www.homelesshub.ca/resource/surviving-crime-and-violence-street-youth-and-victimization-toronto.

⁵⁹ *Id.*, pp.2-3.

Indigenous, racialized, and LGBTQ2S youth.⁶⁰ Unfortunately, very few street youth share their experiences of victimization and crime with persons in authority, since many report a greater likelihood of engagement with law enforcement when they are seen as potential perpetrators of crime rather than victims in need of support and protection.⁶¹ This speaks to the nuanced experiences of the criminalisation of youth homelessness and the need for better support and protection.

South Africa

40. In Cape Town, efforts to develop urban governance have led to problems for CiSS. The developments have largely taken place through the use of private security companies and CCTV, and been focused on crime reduction and tourism,⁶² which have impacted street-connected children's access to the streets on which they rely for survival, community and a place to sleep.⁶³ Tactics employed by security personnel have included the taking of blankets from CiSS, the removal of children to other parts of the city in vans and in some cases, incarceration.⁶⁴ Unsurprisingly, CiSS have reported feeling dehumanized by the actions of authority figures and a sense of displacement.⁶⁵ Other children reported losing their sense of mobility and ability to move around the city freely.⁶⁶
41. A consequence of this approach has been the greater invisibility of CiSS, who as a result are "much more open to abuse" and more unable to access services, given their detachment from the city.⁶⁷ In addition, this invisibility creates a false narrative that problems related to street-connectedness have been solved, when in fact the underlying problems, "such as drugs, crime, gangsterism and extreme poverty,"⁶⁸ remain present but out-of-sight, and therefore arguably more difficult to tackle.

"Protective" approaches to homelessness

42. In other jurisdictions, whilst activity related to homelessness or street-connectedness may not be criminalised, protective policies are implemented that often fail to take a child rights approach to challenges facing CiSS. What follows is an illustration of the types of approaches taken.

Bangladesh

43. To address risks faced by homeless and street-connected children in Bangladesh, organisations have called for safe night shelters to be established for children without parental care, with priority being given to girls facing commercial sexual exploitation.⁶⁹ Under section

⁶⁰ Gaetz, S., O'Grady, B., Kidd, S., & Schwan, K. (2016). *Without a Home: The National Youth Homelessness Survey*. Toronto: Canadian Observatory on Homelessness Press, p.80, is available at www.homelesshub.ca/YouthWithoutHome.

⁶¹ Gaetz, S., O'Grady, B., Buccieri, K. (2010). *Surviving Crime and Violence Street Youth and Victimization in Toronto*, p.50, *supra* note 56.

⁶² Van Blerk, L., 'New Geographies: The Impact of Urban Governance on the Mobilities of Cape Town's Street Youth', *Urban Studies*, 50(3), pp.556-573, p.561.

⁶³ *Id.*, p.565.

⁶⁴ *Id.*

⁶⁵ *Id.*, p.566.

⁶⁶ *Id.*, pp.567-8 and 570

⁶⁷ *Id.*, p.570.

⁶⁸ *Id.*

⁶⁹ Incidin Bangladesh, *Sound of Silence: Scoping study of child vulnerability in rural and urban areas in Bangladesh*, *supra* note 13. See also: Grambangla Unnayan Committee and Consortium for Street Children, *Rights Versus Reality, Street-connected children in Bangladesh*, 2022, p.10.

59 of the Bangladesh Children's Act 2013,⁷⁰ the government has established child development centres for the development and integration of children in conflict with the law, including homeless children who fall foul of Bangladesh's Vagrancy Act 1943.⁷¹ Reports suggest that conditions in the centres are dangerous, with children of all ages kept in cramped, single cells and exposed to further dangers by being kept in close quarters with members from organised criminal groups further exposing them to contemporary forms of slavery.⁷² Reports also suggest a separate system established by the government for the care of abandoned young children, with six centres located across the country, and which are also plagued by concerns, including reports of corporal punishment and religious conversion.⁷³

Nepal

44. Nepal's Children's Act 2018⁷⁴ includes measures making the state responsible for the "rescue" of children in street situations, including homeless children, for the provision of support to families, the reintegration of children with their families, and psychosocial counselling. In 2015, the government also issued Guidelines on the Rescue, Rehabilitation and Management of Street Children (the Guidelines)⁷⁵ which, as of 2021, have reportedly led to 1,648 children being removed from the street by being reunited with their families or placed in government facilities.⁷⁶ It is important to do a follow-up on the status of these children in the homes after the state operation as reports suggest that many children re-enter the street.⁷⁷ The local media reports highlight the coercive manner in which the children are removed from the streets. The Guidelines' emphasis on the "rescue" of children and removal to drop-in centers, without provision for the consideration of each individual child's circumstances or motivations for being on the street or views,⁷⁸ is a cause for concern, with overly heavy-handed or paternalistic approaches to children in street situations being anathema to a child rights approach and a breach of article 12 of the Convention on the Rights of the Child guaranteeing the right of children to be heard in decisions affecting them.⁷⁹ Further, the use of police forces to enforce the guidelines and conduct the removal of children in street situations to government centres increases the risk of arbitrary and discriminatory police sweeps, contrary to paragraph 26 of UNCRC General Comment 21.⁸⁰

⁷⁰ The Children's Act 2013 is available in English at:

<https://www.unicef.org/bangladesh/sites/unicef.org.bangladesh/files/2018-07/Children%20Act%202013%20English.pdf>.

⁷¹ The Vagrancy Act 1943 is available in English at <http://bdlaws.minlaw.gov.bd/act-details-199.html?lang=bn>.

⁷² The Business Standard, *Where lost children, pickpockets, drug peddlers and the mentally ill live together: Inside Dhaka's largest government-run shelter for vagrants and the homeless*, 4 July 2021, is available at <https://www.tbsnews.net/features/panorama/where-lost-children-pickpockets-drug-peddlers-and-mentally-ill-live-together>.

⁷³ The Daily Star, *Abandoned children deserve better care*, 28 December 2022, is available at <https://www.thedailystar.net/opinion/editorial/news/abandoned-children-deserve-better-care-3207436>.

⁷⁴ The Children's Act 2018 is available in English at <https://www.lawcommission.gov.np/en/wp-content/uploads/2019/07/The-Act-Relating-to-Children-2018-2018.pdf>.

⁷⁵ Referred to in Khabarhub, *Campaign to make country free of street children gains pace*, 22 January 2021, available at <https://ncrc.gov.np/law-policy/topic/67>.

⁷⁶ *Id.*

⁷⁷ CLARISSA, *Life Stories from Kathmandu's adult entertainment sector*, is available at <https://clarissa.global/resource/life-stories-from-kathmandu-adult-entertainment-sector-told-and-analysed-by-children-and-young-people/>.

⁷⁸ See paragraph 4.1.1.8 to 4.1.2 of the Guidelines.

⁷⁹ The Convention on the Rights of the Child 1989, *supra* note 5.

⁸⁰ United Nations Committee on the Rights of the Child General Comment 21, *supra* note 1.

Conclusions and recommendations

CiSS rely on the streets for their survival, and form part of a larger social and cultural environment which must be recognised. Their rights to and on the street must be upheld.

Recommendation 1: States must decriminalize conduct associated with homelessness and street-connectedness for CiSS, including loitering, vagrancy, begging, street-vending and sleeping, living, cooking or washing in public places.

Recommendation 2: States must implement the principle of non-punishment and diversion for CiSS experiencing homelessness who are forced to engage in criminal activity to survive on the street.

Recommendation 3: States must abolish provisions of law that allow children under the age of 18, including CiSS, to be incarcerated for petty offences and the non-payment of fines, and expunge CiSS's criminal records of such crimes.

Efforts to tackle homelessness and “protect” CiSS are often heavy-handed and fail to take a rights-based, prevention oriented, approach.

Recommendation 4: States must make efforts to tackle the structural and interpersonal causes of homelessness, such as poverty, family breakdown, housing costs and addiction, and not simply remove, relocate, evict, arbitrarily detain, or restrict the freedom of movement of CiSS experiencing homelessness, whether under criminal law or protective measures.

States are obliged to uphold the rights of CiSS whilst they are living and working on the streets.

Recommendation 5: States must secure equitable access to education, vocational training, food, safe living environment, water and sanitation, as well as medical, legal, housing and psychosocial support for CiSS, without discrimination.

Recommendation 6: States must ensure that parents and families are socially and economically supported to prevent children and youth from being pushed into street situations.⁸¹

⁸¹ Recommendations 1 to 3, and 4 to 6, are echoed by the Special Rapporteur on contemporary forms of slavery in A/HRC/54/30, which is available in English at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G23/132/65/PDF/G2313265.pdf?OpenElement>.