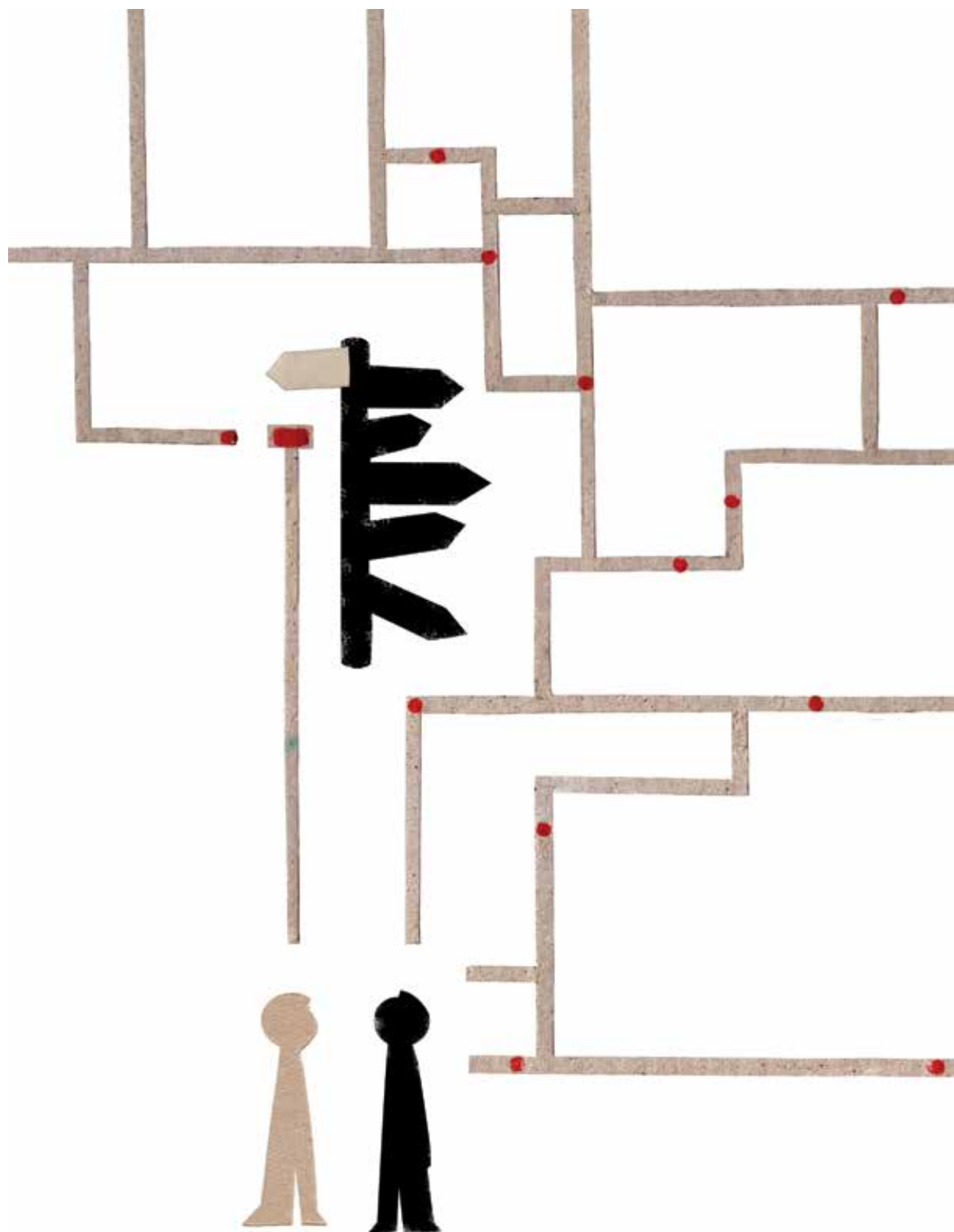


DISCRIMINATION AND DISENFRANCHISEMENT: A GLOBAL REPORT ON STATUS OFFENCES (THIRD EDITION)



Acknowledgements

CRIN is a global children's rights advocacy network. Established in 1995, we press for rights - not charity - and campaign for a genuine shift in how governments and societies view and treat children. We link to nearly 3,000 organisations that between them work in children's rights in every country in the world and rely on our publications, research and information sharing.

This publication gives an overview of status offences, including curfew violations, disobedience, begging, truancy, suspected gang membership and with examples from around the world. It also contains a section on how to challenge curfew laws as a first step towards seeking the abolition of all status offence laws affecting children.

Please note that the examples provided in this report are not necessarily a comprehensive overview of all laws criminalising children for status offences or a comprehensive reflection of the current laws in a country or city. Rather, they serve to show the various forms that status offences can take, the ways that they often come into being, and the manner in which they affect children's lives.

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PART I

STATUS OFFENCES

Status offences criminalise actions for only certain groups of people, most commonly because of their religion, sexuality or age. Curfews, truancy laws and vagrancy offences can penalise children just for being in public, while “disobedience” laws can transform activities that would be perfectly lawful for an adult into a criminal offence.

Even where a status offence does not explicitly single out children, children will often be disproportionately affected and those children with the lowest levels of resources and the least available support from home or family environments will be the most affected. Because police are given great discretion to question and investigate children’s activities, especially when they are without adult supervision, disadvantaged and street children are targeted because they are forced to spend more time in public spaces and face entrenched cultural biases that equate poverty with criminality.

Most importantly, regardless of their backgrounds or situations at home, status offences are a violation of all children’s rights. They violate children’s rights because they target what adults consider to be problematic behaviour in children but acceptable once above the age of majority. Thus, limits are placed on children’s behaviour that are not tolerated by adults. The United Nations Guidelines for the Prevention of Juvenile Delinquency have spoken out against these limits, stating that status offences stigmatise, victimise, and criminalise young people. These guidelines, the UN Human Rights Council, the Committee on the Rights of the Child, and the United Nations World Report on Violence Against Children have all called for the abolition of status offences to achieve equal treatment for children and adults. CRIN first published a global report on status offences in

2009, looking at the ways that laws on curfew violations, disobedience, begging, truancy and suspected gang membership affected children around the world. Seven years later, we are publishing an updated report addressing the ways that status offences have developed, the new forms they have taken and the way that laws that do not exclusively target children can indirectly criminalise children based on their age. In this report, we also look at the way that these laws and practices have been challenged.

CRIN believes that status offences are a form of age discrimination and should be eliminated. Status offences are not only unfair, they curtail the freedom children need to grow and develop. They prevent children from becoming integrated into adult society. Ultimately, then, status offences not only fail to respect children’s rights, they are in conflict with children’s best interests. With this in mind, it is time to call on every country to abolish status offences and protect children from harmful age discrimination.

Curfews, truancy laws and vagrancy offences can penalise children just for being in public, while “disobedience” laws can transform activities that would be perfectly lawful for an adult into a criminal offence.

PART II

INTERNATIONAL

STANDARDS

International human rights bodies have unequivocally called for the complete abolition of all status offences:

United Nations Guidelines for the Prevention of Juvenile Delinquency (“the Riyadh Guidelines”):

“In order to prevent further stigmatisation, victimisation and criminalisation of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalised if committed by an adult is not considered an offence or not penalised if committed by a young person” (para. 56).

UN Human Rights Council resolution on human rights in the administration of justice, in particular juvenile justice:

“Calls upon States to enact or review legislation to ensure that any conduct not considered a criminal offence or not penalised if committed by an adult is also not considered a criminal offence and not penalised if committed by a child, in order to prevent the child’s stigmatisation, victimisation and criminalisation;” (para. 23)

General Comment No. 10 of the Committee on the Rights of the Child on children’s rights in juvenile justice:

“It is quite common that criminal codes contain provisions criminalising behavioural problems of children, such as vagrancy, truancy, runaways and other acts, which often are the result of psychological or socio-economic problems. It is particularly a matter of concern that girls and street children are often victims of this criminalisation. . . . The Committee recommends that the States parties abolish the provisions on status offences in order to establish an equal treatment under the law for children and adults” (para. 8).

UN World Report on Violence against Children:

“Many children are arrested and detained for offences that are only a crime when committed by children. These ‘status offences’ include truancy, running away from home, or being ‘beyond parental control’” (p. 194).

“In the interests of reducing the numbers of children taken into custody, criminal codes and other legislation related to crime and policing need to decriminalise status offences and survival behaviours (such as begging, loitering, vagrancy) to remove the legal basis under which many children are taken into custody” (p. 204).

“Governments should ensure that all forms of violent sentencing are prohibited for offences committed before the age of eighteen, including the death penalty, and all indeterminate and disproportionate sentences, including life imprisonment without parole and corporal punishment. Status offences (such as truancy), survival behaviours (such as begging, selling sex, scavenging, loitering or vagrancy), victimisation connected with trafficking or criminal exploitation, and anti-social or unruly behaviour should be decriminalised” (pp. 218-19).

Human Rights Council, Resolutions A/HRC/18/L.9 and A/HRC/24/L.28:

“enact or review legislation to ensure that any conduct not considered a criminal offence or not penalised if committed by an adult is not considered a criminal offence and not penalised if committed by a child, in order to prevent the child’s stigmatisation, victimisation and criminalisation” (paras. 14 and 23 respectively)

PART III

STREET CHILDREN

Status offence laws in many countries criminalise children without a home and children living in the streets in particular.¹ These laws prohibit begging, truancy (absence from school), vagrancy, homelessness, collecting rubbish, running away, and may further target children affected by sexual exploitation or gambling. Street-connected children are undoubtedly one of the most vulnerable groups in society. Status offence laws that criminalise their lifestyles fail to provide these children with the special protection and assistance they need. Instead, street children are harassed and detained by police to face harsh conditions in jails and other poorly-suited institutions. Because these children are confined solely on the basis of factors beyond their control - their age and often extreme poverty - status offence laws relating to street children should be abolished.

Bangladesh

The UN Committee on the rights of the Child has voiced concerns over the “extensive discretionary powers of the police, reportedly resulting in incarceration of street children and child prostitutes....”² Children involved in prostitution “are sometimes charged with immoral behaviour and detained until their case is heard and [...], after the trial, especially boy victims are often placed in child correctional centres.”³ The government reported that a new law⁴ was passed to ensure shelter and rehabilitation of the street children.⁵ However, the same law has been severely criticised by civil society for allowing the government to lock homeless people up as criminals: “With the law, it seems the government is more interested in keeping them [shelterless people] behind bars than making arrangements for their rehabilitation.”⁶

1 Special Rapporteur on extreme poverty and human rights, A/66/265, 4 August 2011, at para 42. Available at: <http://www.ohchr.org/Documents/Issues/EPoverty/A.66.265.pdf>.

2 UN Committee on the Rights of the Child, Concluding Observations on the second periodic report of Bangladesh, CRC/C/15/Add.221, 27 October 2003, at para. 77. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CR%2FC%2F15%2FAdd.221&Lang=en.

3 UN Committee on the Rights of the Child, Concluding Observations on the initial report of Bangladesh under the OPSC, CRC/C/OPSC/BGD/CO/1, 5 July 2007, at p. 4. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CR%2FC%2FOPSC%2FBGD%2F1&Lang=en.

4 Vagrants and Shelterless Persons (Rehabilitation) Act 2011, amending and revising Vagrancy Act 1943,

5 Fifth periodic report of Bangladesh to the UN Committee on the Rights of the Child, CRC/C/BGD/5, 16 December 2014, at para. 36-39. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CR%2FC%2FBGD%2F5&Lang=en.

6 The Daily Star, ‘Vagrant act a ‘tool’ to put shelterless behind bars’, 18 September 2011. Available at: <http://www.thedailystar.net/news-detail-202904>.

Brazil

Street children in Brazil are victimised by the police. The Committee on the Rights of the Child has noted “(a)The reports of children in street situations being taken to police stations, under unfounded suspicions, and being arbitrarily placed in young offenders’ institutions without the required judicial authorisations pursuant to the Statute of the Child and Adolescent; (b) Police operations, including the “shock of order” operation, resulting in the eviction of children in street situations as well as the confiscation of their belongings; (c) Increased police repression and physical violence against child street vendors in the course of “street clean-ups”;” and urged the state to prohibit the arbitrary arrest of children in street situations and their institutionalisation without judicial authorisation.⁷

Egypt

There is great social stigma attached to street children in Egypt and this is accompanied by an increasing resort to ‘status offences’ to detain and discipline children. These children are regularly arrested under the guise of an effort to ‘curb delinquency’. Having no home, sleeping on the streets and begging are criminalised under the Children’s Code.⁸

Article 96. “The child shall be considered at risk if he is exposed to a situation threatening the sound upbringing that should be made available to him, or in any of the following cases: [...]

7. If the child is found begging. Acts of begging include offering for sale trivial goods and services, or performing acrobatic shows and other activities not considered an appropriate source of living.
8. If the child collects cigarette butts, or any other kind of trash or waste.
9. If the child has no permanent residence, or generally sleeps in the streets or in other unfit places for residence or accommodation [...]
12. If the child has no legitimate means of supporting himself or does not have a trustworthy provider.”

“Egyptian law does not effectively distinguish between children who have committed criminal offences and children who are in need of protection. Chapter Eight of Egypt’s Child Law 12 of 1996, entitled “The Criminal Treatment of Children,” allows police to arrest any child under eighteen for

7 UN Committee on the Rights of the Child, Concluding Observations on the combined second to fourth periodic report, CRC/C/BRA/CO/2-4, 29 October 2015, at paras. 83-84. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CR%2FC%2FBRA%2F2-4&Lang=en.

8 Child Law 2008, Article 96. Available at: http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Egypt/egypt_children_2008_en.pdf.

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a wide variety of activities. Some of these activities, including being habitually absent from school or suffering from mental illness or diminished mental capacity, are “status offences” that would not constitute crimes if committed by adults. Others, like being homeless, begging, or practicing or working for those involved in prostitution, gambling, or drugs, are clear evidence that a child is in need of special protection and assistance from the state.”⁹

The Committee on the Rights of the Child has recommended that Egypt “[e]nd all arrests and detention of children in street situations and ensure that these children are provided with protection and assistance from social services rather than being dealt with in the framework of criminal justice.”¹⁰

Iraq

The Network of Iraqi Reports for Investigative Journalism reported in 2011 that the police were enforcing an almost 30 year old law which allowing them to take “vagrant” children to shelters.¹¹ Juvenile Law No.76 of 1983 defines a “vagrant” as any juvenile not older than 15 years old and unaccompanied by a guardian found begging in a public place, practising an itinerant profession, such as shoe-shining or selling cigarettes, or any other profession that leads to delinquency. The law considers a juvenile to be ‘vagrant’ “if they do not have a known place of residence, use a public place as shelter, if they are without a legitimate means of securing a livelihood, or if they left their guardian’s home without a legitimate excuse.”¹² Once the children reach the age of majority, they are forced to leave the shelters but with nowhere to go, they end up on the street again. When passed in the 1980’s, this legislation was concerned with the international image of the former regime in Iraq, rather than the rehabilitation or the rights of children in vulnerable situations.

Jordan

During its review of Jordan in 2014, the Committee on the Rights of the Child criticised the State’s response to children in street situations expressing concern that they continued to be “arrested by the police and detained for a short time until their parents bail them out, and that there is still no clear strategy in place to rehabilitate and respond to the needs of those children.” The Committee urged Jordan to ensure that

no children in street situations are arrested and detained, and that, rather, they are assisted [...] in order to support their full development.”¹³

Kyrgyzstan

Children as young as three years old designated as neglected/abused, runaways, homeless, illegal migrants or underage offenders can be detained in centres run by uniformed militia.¹⁴

Malawi

A research study by the Southern Africa Litigation Centre found that children living on the streets are often arrested for nuisance-related offences, not because there is evidence that they have done anything wrong, but because the police suspect that there is a possibility that they might commit such an offence.¹⁵ “The rationale behind these arrests was the assumption that street children are generally involved in crimes such as pick-pocketing, robbery and rape. The arrests themselves, however, were not linked to specific crimes. Police sought to explain their arrest practices relating to street children in particular: “Most of them are street kids who end up stealing or pick-pocketing”; [...] “It is usually street kids who are involved in crimes like pick-pocketing or robbery. If they are just found loitering for no proper reason we arrest them”; [...]”¹⁶

Myanmar

Myanmar’s law includes children who earn a living by begging within its definition of children in need of protection and care.¹⁷ These children are liable to be sent to a ‘training school’ until they reach the age of 18 or supervised by a probation officer for a period of up to three years.¹⁸ Speaking to the media, a state representative said: “If we catch a beggar under 16, we take them to the youth rehabilitation centre under the Department of Social Welfare. ... However, parents

9 Representing Children Worldwide, Egypt, available at: <http://islandia.law.yale.edu/representingchildren/rcw/jurisdictions/afn/egypt/frontpage.htm>.

10 UN Committee on the Rights of the Child, Concluding Observations on the combined third and fourth periodic report of Egypt, CRC/C/EGY/CO/3-4, 15 July 2011, at para. 81. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CR%2fC%2fEGY%2fCO%2f3-4&Lang=en.

11 Network of Iraqi Reporters for Investigative Journalism, “Vagrant Children in Iraq: Kicked Out from State Institutions, Recruited by al-Qaeda, and Exploited by Gangs Selling Organs”, 2011. Available at: <http://www.nirij.org/?p=1021>.

12 Ibid.

13 UN Committee on the Rights of the Child, Concluding observations on combined fourth and fifth periodic report of Jordan, CRC/C/JOR/CO/4-5, 07 July 2014, at paras. 59-60. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CR%2fC%2fJOR%2fCO%2f4-5&Lang=en.

14 UNICEF, Lost in the Justice System: Children in Conflict with the law in Eastern Europe and Central Asia, May 2008, at p. 28. Available at: http://www.unicef.org/ceecis/Lost_in_the_Justice.pdf.

15 Southern Africa Litigation Centre, No Justice for the Poor: A Preliminary Study of the Law and Practice Relating to Arrests for Nuisance-Related Offences in Blantyre, Malawi, 9 July 2013, pp. 77-79. Available at: http://www.southernafricalitigationcentre.org/11/wp-content/uploads/2013/07/08_SALC-NoJustice-Report_Law-and-Practice-Relating-to-the-Arrest-of-Children.pdf.

16 Ibid.

17 The State Law and Order Restoration Council Law No. 9/93, the Child Law, Article 32. Available at: <http://myanmarhumantrafficking.gov.mm/content/child-law>.

18 Ibid., Article 34.

only have to sign to take back their children.”¹⁹ Children who are living on the streets are less likely to have the support of their parents, meaning that they might be detained for long periods. The Committee on the Rights of the Child has been highly critical of these provisions.²⁰

Nigeria

During its review of Nigeria in 2010, the Committee on the Rights of the Child expressed its alarm at “the increase in the number of children in street situations and that children can be penalised under criminal law for “status offences”, such as vagrancy, truancy or wandering.” The Committee recommended that the State “abrogate laws which criminalise vagrancy, truancy or wandering and other “status offences” for children.”²¹

Tanzania

Tanzanian law allows police officers to bring to a juvenile court any child who “(a) is found begging or receiving alms (whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise), or being in certain street, premises or for the purpose of so begging or receiving alms; (b) is found wandering and not having home or settled place of abode, or visible means of subsistence, or if found wandering and having no parent or guardian, or has a parent or guardian who does not exercise proper guardianship; (c) is found destitute.”²² The court can order that the child is placed in the custody of a relative or other adult or detained in an institution until they reach the age of 18 or the age of 21 for girls with their consent.

The 1944 Townships (Removal of Undesirable Persons) Ordinance - an instrument originally designed to benefit colonial interests by empowering district authorities to exclude “undesirable persons” from their district - has also been used to criminalise street-connected children.²³ A Tanzanian NGO challenged the the Ordinance through

the courts but the High Court rejected their claim.²⁴ The judgment states that “[t]he solution to the problem of street children lies in trying to address the root causes and not in the laws which are there to afford a balance between the interests of these groups and the rest of the members of the public.”²⁵ According to the court finding, removing children from the streets was in the public interest, despite it meaning that those children are subjected to arbitrary arrest, deprivation of liberty and harassment.

Rwanda

During its review of Rwanda in 2013, the Committee on the Rights of the Child found that “[c]hildren in vulnerable situations, such as children living in street situations and victims of child sexual exploitation continue to be perceived as offenders and detained in an unofficial detention centre in Gikondo under poor living conditions and without any charges.”²⁶ In 2014 the Kigali Mayor’s Office and the National Commission for Children announced that children will no longer be sent there, though in 2015, Human Rights Watch found that young children and babies were still being detained with their mothers.²⁷

Uganda

A number of status offences, including vagrancy, begging and gambling in public, were decriminalised when the Children Act came into force in 1997.²⁸ However, in 2012 Penal Reform International reported that police were still rounding up children living and working on the streets and detaining them in Kampiringisa Rehabilitation Centre alongside children who had been convicted of criminal offences.²⁹

Vietnam

In 2006, Human Rights Watch reported that children living on the streets, primarily poor children moving from the countryside into Hanoi, were “routinely and arbitrarily rounded up by police in periodic sweeps. The research

19 Myanmar Times, “Beggars, vagrants stump municipal officials”, 13 May 2013. Available at: <http://www.mmmtimes.com/index.php/national-news/mandalay-upper-myanmar/6718-beggars-vagrants-stump-mandalay-municipal-officials.html>.

20 UN Committee on the Rights of the Child, Concluding observations on second periodic report of Myanmar, CRC/C/15/Add.237, 30 June 2004, at para. 76. Available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MMR&Lang=en.

21 UN Committee on the Rights of the Child, Concluding observations on the combined third and fourth report of Nigeria, CRC/C/NGA/CO/3-4, 21 June 2010, at paras. 84-85. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CR%2FC%2FNGA%2FCO%2F3-4&Lang=en.

22 Children and Young Person Ordinance, Section 25. Available at: http://www.tanzania.go.tz/egov_uploads/documents/Children%20and%20Young%20Persons%20Act.pdf.

23 Mkombozi Centre for Street Children, Position paper: Police round-ups of street children in Arusha are unjust, inhumane and unconstitutional, Arusha Caucus on Children’s Rights. Available at: <http://www.streetchildrenresources.org/wp-content/uploads/2013/02/police-roundups-arusha.pdf>.

24 Ibid. See also, CRIN website, DISCRIMINATION: Children detained for status offences in Panama and Tanzania, 16 February 2010. Available at: <https://www.crin.org/en/library/news-archive/discrimination-children-detained-status-offences-panama-and-tanzania>.

25 Cited in Legal and Human Rights Centre, Tanzania Human Rights Report 2007, at pp. 87-89. Available at: <http://www.humanrights.or.tz/downloads/tanzania-human-rights-report-2009.pdf>.

26 UN Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic report of Rwanda, CRC/C/RWA/CO/3-4, 14 June 2013, at para. 62. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2FCRC%2FCO%2FRWA%2F13833&Lang=en.

27 Human Rights Watch, Rwanda: Rounded Up Off the Streets, 24 September 2015. Available at: <https://www.hrw.org/news/2015/09/24/rwanda-rounded-streets>.

28 Children Act, Article 106. Available at: http://www.aclr.info/images/stories/uploader/Publication_files/Acts/The_Children_Act_Uganda.pdf.

29 Penal Reform International, A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in Uganda, at p. 13. Available at: <http://www.fhri.org/index.php/2015-07-22-14-08-32/survey-reports/39-a-review-of-law-and-policy-to-prevent-and-remedy-violence-against-children-in-police-and-pre-trial-detention-in-uganda/file>.

found that “[children] are sent to two compulsory state ‘rehabilitation’ centers on the outskirts of town, [...] where they may be detained for periods ranging from two weeks to as much as six months.”³⁰ Such round ups are often carried out in advance of national holidays or other important occasions in order to remove street children from the view of international visitors.

Vietnamese law defines these detention centres as part of the administrative legal system, so no court order is required for a child to be sent there and the normal criminal law safeguards do not apply. Children are frequently not informed of the reason for their detention and they have no way to challenge it or assert their right to liberty.³¹



30 Human Rights Watch, 'Children of the Dust', 2006. Available at: <https://www.hrw.org/report/2006/11/12/children-dust/abuse-hanoi-street-children-detention>.

31 Ibid.

PART IV

CURFEWS

Curfew laws typically restrict children to their homes during nighttime hours. In some countries curfews apply nationwide (for example in Iceland¹, Russia² and Bulgaria³), while in others it is up to local authorities to make rules for their cities (for example in Switzerland⁴ and the United Kingdom⁵). Curfews vary widely across jurisdictions with respect to times, targeted locations, and punishment for violations, but regardless of the specifics, curfews of any nature violate children's right to associate with one another and expose them to even bigger dangers by criminalising and penalising normal behaviour.

Curfews remove all children within a town or city's boundaries from the streets, banning them from public spaces regardless of their circumstances. Some curfew laws exempt children attending events sponsored by schools, religious organisations, or government bodies; however, these exemptions are inconsistent and far from universal. Adults are not subject to similar restrictions on movement and need not prove the worthiness of their activity to avoid criminal liability.

Many different rationales have been put forward to justify the imposition of curfews on children. Overwhelmingly these laws purport to protect children from dangerous activities, "delinquency" or anti-social behaviour or from being exposed to crime against children, abductions or activities deemed immoral or inappropriate for children. Curfews are also sometimes seen as beneficial to children as a guarantee that they will get enough sleep or spend more time with their family.

However, the reality is that curfews confine children to their homes not because they threaten public safety, but simply because they are below a certain age. Essentially, curfews punish every child out of adults' fear and assumptions that children allowed to gather freely in evening and early morning hours will inevitably resort to criminal or anti-social activity. Not only is this unfair, it is untrue. The vast majority of children are law-abiding, and even for those few who might contemplate unlawful behaviour, there is little evidence that curfews have any meaningful effect on crime rates. Curfews prevent children from interacting with each other and violate their rights and freedoms and should be abolished.

Nighttime curfews

By far the most common form of curfew, these prohibit children from being present in public areas without a parent or other responsible adult during the evening and at night, sometimes as early as 6 or 8 p.m..

Australia. There are many examples of curfews in Australia and some have been in place for a long time.⁶ Most were introduced for the stated purpose of curbing crime committed by children. A 12-hour curfew in Victoria prohibits children aged 10 to 18 from being outdoors between 7 p.m. and 7 a.m..⁷ Children who breach the curfew can be released on bail until they appear before a children's court.⁸ A 6 p.m. to 6 a.m. curfew has been adopted by the city council in the Queensland town of Woorabinda.⁹

Belarus. A curfew between the hours of 11 p.m. and 6 a.m. was introduced in 2012¹⁰ with a view to lowering the rate of juvenile crime and delinquency on the premise that those occur predominantly at night.¹¹ The measure follows previous restrictions on the presence of minors in discos, cultural and recreational clubs after 10 o'clock in the evening.¹²

Daytime curfews

Found in the United States, this spin-off of the night time curfew aims to remove children from public spaces during school hours in order to reduce truancy or crime committed by truant children.

United States. It is reported that in 2009, over 100 US cities had implemented daytime curfews.¹³ These curfews last during school hours and permit police to detain children who are outside during the curfew hours without a legitimate reason.¹⁴ Proposals for a daytime curfew with fines for

6 "For 15 years the children of Miriam Vale have not been allowed on the streets on their own after 8pm" - The Observer, "Town curfew keeps children off the streets at night", 12 November 2014. Available at: <http://www.gladstoneobserver.com.au/news/police-rule-on-curfew-for-kids/2450356/>.

7 News.com.au website, "Night curfews in Victoria to drive down crime", 17 August 2011. Available at: <http://www.news.com.au/national/night-curfews-in-victoria-to-drive-down-crime/story-e6frfkp9-1226116292338>.

8 Ibid.

9 ABC News, "Qld town introduces child curfew", 15 August 2007. Available at: <http://www.abc.net.au/news/2007-08-16/qld-town-introduces-child-curfew/641244>.

10 Law on amendments and additions to some laws of the Republic of Belarus on the prevention of child neglect and juvenile delinquency N 376-3, 26 May 2012. Available at: <http://naviny.org/2012/05/26/by11391.htm>.

11 Charter 97 website, "Belarusian Interior Ministry to introduce curfew for teenagers", 8 February 2011. Available at: <https://charter97.org/en/news/2011/2/8/35863/>.

12 Ibid.

13 City Mayors website, "Youth curfews popular with American cities but effectiveness and legality are questioned", 21 July 2009. Available at: <http://www.citymayors.com/society/usa-youth-curfews.html>.

14 SL.com website, "Mobile's daytime curfew back in effect as schools reopen", 13 August 2013. Available at: http://blog.al.com/live/2013/08/daytime_curfew_back_in_effect.html.

1 Child Protection Act, Article 92. Available at: https://eng.velferdarraduneyti.is/media/acrobat-enskar_sidur/Child-Protection-Act-as-amended-2013.pdf.

2 CRIN, "RUSSIA: Night curfew for children", 26 March 2009. Available at: <https://www.crin.org/en/library/news-archiv/russia-night-curfew-children>.

3 Child Protection Act, Article 8(3). Available at: <http://www.lex.bg/bg/laws/ldoc/2134925825>.

4 BBC News, "Bucking the teen curfew in Switzerland", 1 March 2013. Available at: <http://www.bbc.co.uk/news/world-europe-21592368>.

5 BBC News, "UK Politics: Child curfew laws unused", 17 August 1999. Available at: http://news.bbc.co.uk/1/hi/uk_politics/422528.stm.

violations were heavily opposed in Texas on the grounds that they discriminate against children who are homeschooled or have other good reason not to be at school,¹⁵ as well as the fact that they criminalise children for normal behaviour and infringe on their civil liberties.¹⁶

Alabama's Mobile City daytime curfew extends to children who have been suspended from school, meaning under-17s are not allowed to be at school but also not allowed to be outdoors anytime between 9 a.m. to 2:30 p.m. on weekdays.¹⁷

The daytime curfew in the city of Richmond, California carries particularly harsh consequences for children who breach it. The presence of any child unaccompanied by an adult outside between 9 a.m. and 2 p.m. on a school day is a municipal offence and violators can receive a citation, fine or be sent to a juvenile traffic court. Local businesses are also made to report children in breach of the curfew and employees could be cited with a misdemeanor if they fail to do so.¹⁸

Curfews and businesses

Businesses are generally free to designate which customers they serve as long they do not illegally discriminate. However, instances where children are restricted from entering shops are common despite them being a clear example of age discrimination.¹⁹ Such policies are often a disproportionate response to incidents of anti-social or criminal behaviour committed by a small number of people.

United States. There are numerous reports of curfews being imposed in shopping malls,²⁰ despite concerns that such measures may be enforced in a way that discriminates against minority children.²¹ In a shopping centre in Texas, a curfew applied to all children under the age of 16 after 6 p.m., though an exception was made for children working at the mall.²²

Alabama's Mobile City daytime curfew extends to children who have been suspended from school, meaning under-17s are not allowed to be at school but also not allowed to be outdoors anytime between 9 a.m. to 2:30 p.m. on weekdays

Curfews may also be imposed by cinemas. In one instance, disruptive behaviour by a small group of children led to anyone under the age of 18 being banned from going to a cinema, unless a parent was present.²³

Japan. In Osaka, although no curfew applies generally to public spaces at night, children under the age of 16, who are not accompanied by an adult, are prohibited from entering cinemas, game centres, karaoke boxes and Internet cafes after 7 o'clock in the evening.²⁴ The reason is 'to keep teenagers out of trouble', as well as to encourage parents and children to spend more time at home together.²⁵

15 The Wall Street Journal, "Imagine theater in Birmingham bans unaccompanied teens", 26 March 2009. Available at: <http://www.wsj.com/articles/SB123802404458842181>.

16 NBC Dallas-Fort Worth, "Daytime Curfew Criminalizes Children, ACLU Says". Available at: <http://www.nbcdfw.com/news/local/Daytime-Curfews-Criminalize-Children-ACLU-Says.html>. See also, ACLU Oregon, "Daytime curfews: And Why the ACLU of Oregon opposes them". Available at: http://www.aclu-or.org/sites/default/files/Youth_curfews.pdf.

17 AL.com website, "Mobile's daytime curfew back in effect as schools reopen", 13 August 2013. Available at: http://blog.al.com/live/2013/08/daytime_curfew_back_in_effect.html.

18 SF Gate, "Richmond fights truancy with daytime curfew", 11 April 2010. Available at: <http://www.sfgate.com/bayarea/article/Richmond-fights-truancy-with-daytime-curfew-3267968.php>.

19 CRIN, Briefing on age discrimination, 1 October 2009. Available at: <https://www.crin.org/en/library/publications/discrimination-briefing-age-discrimination>.

20 Yahoo, "Teens Are Getting Banned From Malls", 6 January 2015. Available at: <https://www.yahoo.com/parenting/teens-are-getting-banned-from-malls-107347372697.html>.

21 The New York Times, "Big Mall's Curfew Raises Questions Of Rights and Bias", 4 September 1996. Available at: <http://www.nytimes.com/1996/09/04/us/big-mall-s-curfew-raises-questions-of-rights-and-bias.html?pagewanted=all>.

22 Northpark Center Code of Conduct. Available at: <http://www.northparkcenter.com/pages/northpark-northpark-center-code-of-conduct>.

23 Detroit Free Press, "Imagine theater in Birmingham bans unaccompanied teens", 5 October 2015. Available at: <http://www.freep.com/story/money/business/michigan/2015/10/05/Imagine-theater-birmingham-bans-unaccompanied-teens/73374272/>.

24 ABC News, "Karaoke curfew imposed on Japanese teens", 1 February 2006. Available at: <http://www.abc.net.au/news/2006-02-01/karaoke-curfew-imposed-on-japanese-teens/790216>. The Japan Times, "Osaka 'curfew' plan rife with problems", 23 June 2005. Available at: <http://www.japantimes.co.jp/news/2005/06/23/national/osaka-curfew-plan-rife-with-problems/#.Vvz4TkJK1F>.

25 Ibid.

Curfews on 'harmful' activities

Some countries have legislated to restrict children's access to certain types of entertainment by limiting the hours during which such platforms are accessible as a safeguard on excessive use. Although these measures prohibit children from certain 'harmful' activities typically at night, they cannot guarantee that the child will instead engage in a 'beneficial' activity during the curfew hours or that the 'harmful' activity, e.g. excessive internet use, will not be carried out during the day. Further, a blanket penalty that applies to all children, rather than just to those who would benefit from them, is excessive and a disproportionate limitation on children's access to information.²⁶ For these reasons, legislation providing for curfews on gaming or internet use must be abolished.

South Korea. A 'curfew on gaming' was introduced in South Korea in 2011. Under the 'Shutdown law', as it is commonly known, children under the age of 16 are not allowed to play online games between midnight and 6 o'clock in the morning.²⁷ The law aims to address the problem of internet addiction, which mostly affects children aged nine to 12.²⁸ However, soon after the measures entered into force they were revealed to have been ineffective in reducing the number of users as children could easily circumvent the restriction by creating an account with their parents' personal information.²⁹ Since an amendment in 2014, parents can opt-out of the curfew on their child's behalf.³⁰

Vietnam. A law in Vietnam has blocked access to all online games from 10 p.m. until 8 a.m. and a curfew also prevents children from going to internet cafes during those hours.³¹

Philippines. Both a daytime and a nighttime curfew applies to children who want to visit internet cafes.³² Children are required to present identification cards and their class schedule to be granted entry.

Japan. A city in Japan has suggested a voluntary curfew on children's use of mobile phones after 9 o'clock in the evening,³³ Another city followed suit and began encouraging children to hand their mobile phones over to an adult after 10.³⁴ These non-binding recommendations are hoped to reduce the risks of children's internet use such as "cyberbullying, leaks of private information and unintended use of pay sites."³⁵

Curfews on driving for young people have been discussed in **Canada**³⁶ and in the **United Kingdom**.³⁷ In Connecticut, a curfew prevents anyone under the age of 18 from driving between 11 p.m. and 5 a.m. except for the purposes of employment, school, religious practice or a medical necessity.³⁸ The reason given for such curfews is to reduce road accidents which are more common in poor lighting conditions and when inexperienced drivers are involved. Nonetheless, a curfew which prohibits all children from driving during a specific window of time is a disproportionate response. Only a small percentage of drivers are involved in road accidents and targeting children is not carefully tailored towards all inexperienced drivers. Less restrictive measures could also be implemented to improve road safety without infringing on human rights, such as improving road infrastructure.

Enforcing curfews

One of the arguments against curfews is that they divert limited law enforcement resources from addressing the real cause of the problem that makes curfews seem necessary. For example, where curfews purport to protect children from being victims of a crime, the police will be occupied with removing children from the streets instead of focusing on reducing crime levels generally.

Colombia. A curfew was introduced in Bogotá to clamp down on children involved in sex work and to reduce violence and drug abuse, as well as other crimes committed by or

26 Read CRIN's policy paper Access denied: Protect rights - unblock children's access to information, June 2014. Available at: https://www.crin.org/sites/default/files/access_to_information_final_layout.pdf.

27 Chris Marlowe, "Korea Slaps Curfew on Gamers", Digital Media Wire, 28 November 2011. Available at: <http://dmwmedia.com/news/2011/11/28/korea-slaps-curfew-on-gamers>.

28 CNN website, "South Korea pulls plug on late-night adolescent online gamers", 22 November 2011. Available at: <http://edition.cnn.com/2011/11/22/world/asia/south-korea-gaming/>.

29 Xinhua news website, "Controversy remains after S. Korea's implementation of gaming curfew", 31 January 2012. Available at: http://news.xinhuanet.com/english/sci/2012-01/31/c_131384140.htm.

30 The Wall Street Journal, "South Korea Eases Rules On Kids' Late Night Gaming", 2 September 2014. Available at: <http://blogs.wsj.com/korearealtime/2014/09/02/south-korea-eases-rules-on-kids-late-night-gaming/>.

31 Vietnam breaking news, "Online game curfew proposed to curb youth addiction", 26 October 2012. Available at: <http://www.vietnambreakingnews.com/2012/10/online-game-curfew-proposed-to-curb-youth-addiction/>.

32 The Inquirer, "Marikina Internet cafés asked to implement ban on students during school hours", 22 July 2012. Available at: <http://newsinfo.inquirer.net/233809/marikina-internet-cafes-asked-to-implement-ban-on-students-during-school-hours>.

33 Japanese Daily Press, "Japanese city introduces smartphone 'curfew' for school children", 19 March 2014. Available at: <http://japandailynews.com/japanese-city-introduces-smartphone-curfew-for-school-children-1946009/>.

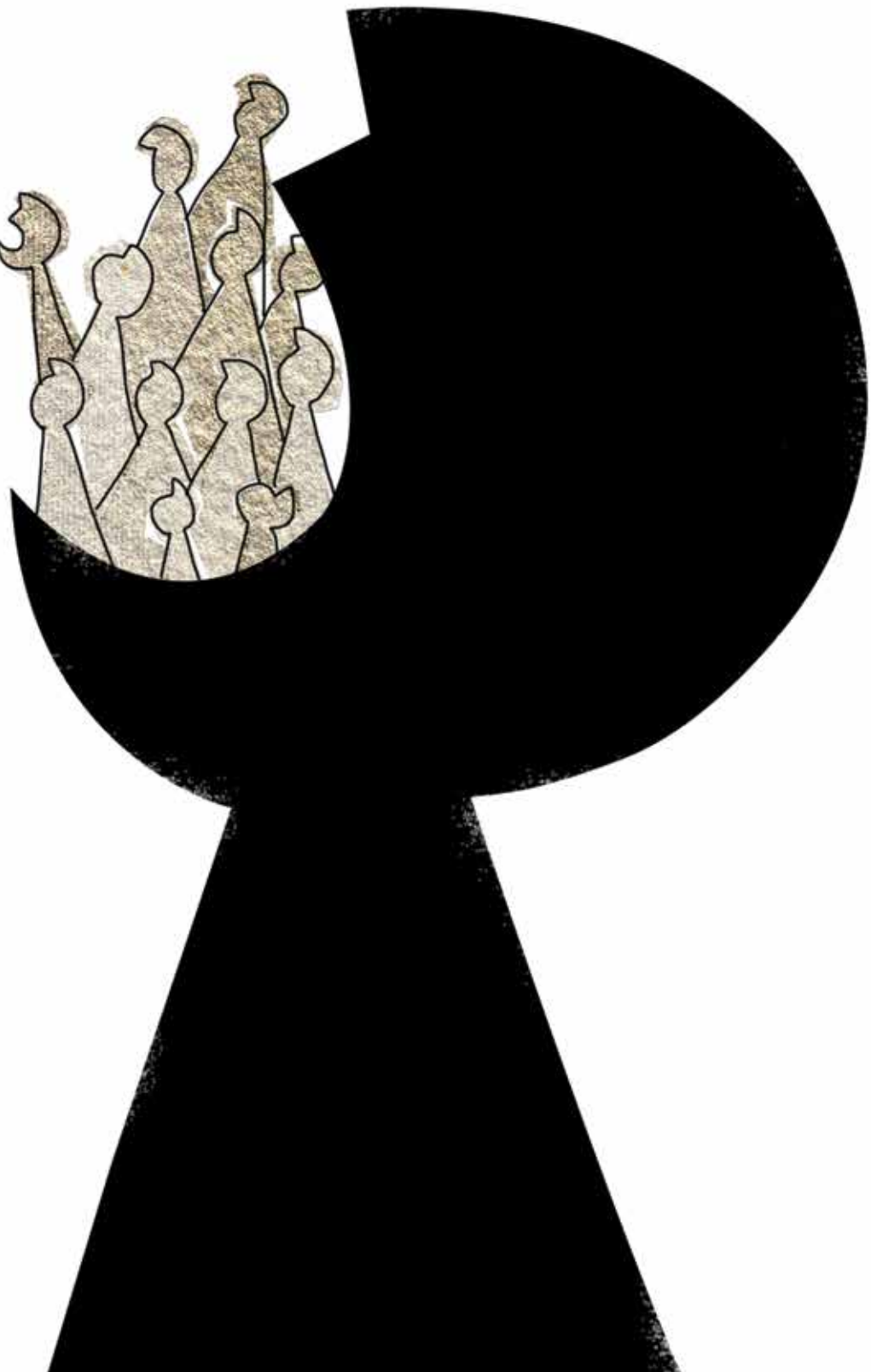
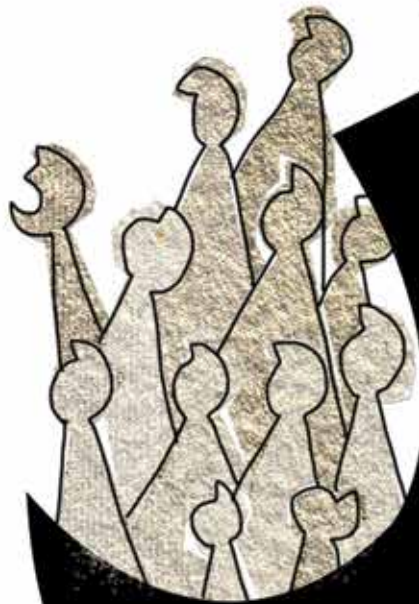
34 The Wall Street Journal, "City Educators to Teens: No Smartphones After 10 P.M.", 7 July 2014. Available at: <http://blogs.wsj.com/japanrealtime/2014/07/07/city-looks-to-block-teens/?mod=e2tw>.

35 Ibid.

36 CTV News Montreal, "Quebec coroner recommends curfew for young drivers", 10 May 2011. Available at: <http://montreal.ctvnews.ca/quebec-coroner-recommends-curfew-for-young-drivers-1.642169>.

37 The Sunday Times: Driving, "Curfew for young drivers 'unworkable', say ministers", 14 July 2014. Available at: <http://www.driving.co.uk/news/news-curfew-for-young-drivers-unworkable-say-ministers/>.

38 Department of Motor Vehicles, State of Connecticut, "Driving Restrictions for 16 and 17 Year Olds". Available at: <http://www.ct.gov/dmv/cwp/view.asp?a=805&q=424252>.



against children.³⁹ Under the curfew's provisions, any child under the age of 16 who is on the streets between 11 p.m. and 5 a.m. will be arrested by the police.⁴⁰

Belize. Belize City has periodically introduced curfews for children since 1999. According to the State's report to the Committee on the Rights of the Child, the purpose of imposing a nighttime curfew was to protect children from violent crime. "In 1999 [the government of Belize] introduced the Families and Children (Protection of Children) (Belize City) Regulations, which imposed a curfew in Belize City for all children less than 16 years, partly in reaction to a spate of abductions and murders of young girls."⁴¹

The government admitted that "[t]he curfew scheme is poorly resourced, relying on an already stretched Police Department and MHD [Ministry of Human Development, Women and Children and Civil Society] staff who have been expected to assist police patrols up until midnight, 2-3 nights a week. [...] Nevertheless, it is acknowledged that the curfew is barely operational, and it is understood that, in that time, no child has been taken into care [...] In this sense, the curfew has likely served more as a means of reassuring parents alarmed at risks to children on the street, than as an effective measure against the child abductions that it was a response to. (The abductions largely occurred in daylight, such as on the way to and from school.)" Despite this, the curfew was renewed.⁴²

The way in which curfews are enforced is itself often a violation of children's rights. Exposing children to the criminal legal system is more damaging than their being outdoors during the night. Curfews imposed to tackle crime committed by children fail to recognise the fact that children who are involved in criminal activity might themselves be victims of rights violations. In such situations, instead of assisting and rehabilitating children in conflict with the law or tackling the real causes of problems underlying their behaviour, the law unfairly criminalises children for what is usually normal behaviour.⁴³ Once dragged into the justice system, status offenders don't always have their right to access to justice fully guaranteed.

Marshall Islands. A nighttime curfew for all children in Majuro Atoll and Ebeye between 10 p.m. and 6 a.m.⁴⁴ was introduced in response to increasing rates of crime committed by young people. According to the State's report to the Committee on the Rights of the Child, "[i]n 2001, 18 and 19 year olds comprised 41.3 percent of those arrested in Majuro; females of this same age group made up 83 percent of all crimes committed by women. [...] The possible implications of escalating juvenile crime on social stability and economic development are a significant concern."⁴⁵ The State has also indicated that children are regularly detained and face criminal charges for curfew violations: "Over the past three years, there have been over 200 juvenile cases. Most cases involve multiple defendants, so the number of juveniles charged with offences is much higher - as many as 400. The majority of cases involve misdemeanours such as breach of curfew, drunk and disorderly conduct, traffic violations, malicious mischief and simple assault. In about 95 percent of the cases, the court finds the juveniles guilty."⁴⁶

Panama. An introduction of a curfew in Panama immediately led to mass arrests of children. On the first night "the National Police arrested 86 minors for violating the newly imposed curfew. Among those detained was a 17 year old girl who was taken to the Santo Tomas hospital with symptoms related to a possible miscarriage. [...] Parents, guardians or responsible adults [...] will be fined \$50 for the first offense, and \$100 per every subsequent offense."⁴⁷ One year in, the number of arrests reported was in the thousands: "Panamanian authorities reportedly detained 877 children in January for violating night-time curfews established in July 2009. The curfew, designed to reduce the potential for children to engage in criminal activity during night-time hours, establishes 9 pm as the curfew. [...] Panamanian authorities appear to ramping up enforcement of the curfew. Last year, 133 cases out of a total of 161 in which children were detained for curfew violations occurred in December, according to reports by the Police's Department for Children and Young People. Between December and January, then, over 1,000 children were arrested and detained for being in public spaces in the night-time and early morning hours."⁴⁸

39 BBC News, "Bogotá curfew aims at child sex", 13 December 2001. Available at: <http://news.bbc.co.uk/1/hi/world/americas/1708260.stm>.

40 Ibid.

41 Second periodic report of Belize to the UN Committee on the Rights of the Child, 13 July 2004, CRC/C/65/Add.29, at para 82. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CR%2F%2F65%2FAdd.29&Lang=en.

42 Channel 5 Belize, "Belize City will reintroduce summer curfew", 3 July 2007. Available at: <http://edition.channel5belize.com/archives/6810>.

43 CRIN, Stop making children criminals (Updated version), 29 January 2013. Available at: <https://www.crin.org/en/library/publications/juvenile-justice-stop-making-children-criminals>.

44 Juvenile Procedure Act, 26 MIRC Ch. 3, §312. Curfew Hours for Juveniles. Available at: http://www.paclii.org/cgi-bin/sinodisp/mh/legis/consol_act_2004/jpa207/jpa207.html?stem=&synonym_s=&query=juvenile%20procedure.

45 Second periodic report of the Marshall Islands to the UN Committee on the Rights of the Child, CRC/C/93/Add.8, 24 August 2005, paras. 150-152. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CR%2F%2F93%2FAdd.8&Lang=en.

46 Initial Report of Marshall Islands to UN Committee on the Rights of the Child, CRC/C/28/Add.12, 18 November 1998, para. 199. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CR%2F%2F28%2FAdd.12&Lang=en.

47 Panama-guide.com website, "86 Minors Arrested On First Night of Curfew in Panama", 28 July 2009. Available at: <http://www.panama-guide.com/article.php/2009072812214618>.

48 CRIN website, "DISCRIMINATION: Children detained for status offences in Panama and Tanzania", 16 February 2010. Available at: <https://www.crin.org/en/library/news-archive/discrimination-children-detained-status-offences-panama-and-tanzania>.

United States. “Like tens of thousands of kids every year, A.G. was in court to answer for a non-criminal infraction that only a minor can commit. These infractions are called “status offenses,” and they can include skipping school, running away, underage drinking or smoking or violating curfews. But since status offenses aren’t technically crimes, indigent minors don’t benefit from the constitutional right to the appointment of defense counsel before they plead guilty. That meant A.G, whose family couldn’t afford to hire a lawyer, was left with no trained defense counsel to argue that there might be justifiable reasons why she was having so much trouble going to school.”⁴⁹

Of further concern is the unequal enforcement of curfew laws in relation to children from minorities and children of lower socio-economic status, especially when curfews are restricted to designated areas.⁵⁰

United States. “A new report from the American Civil Liberties Union of Minneapolis found that black juveniles were more than 16.3 times more likely to be arrested for truancy and curfew charges than white juveniles between 2004 and 2012. [...] Criminalising low-level juvenile behavior in or around school that amounts to disciplinary violations is what is known as the school-to-prison pipeline, and the notion of the phenomenon is that disproportionately minority children are funneled out of the classroom and introduced instead to the criminal justice system, whether through negative police interactions, arrests, and even frequent detention. This has been found to translate to an increase in negative interaction with the police later in life.”⁵¹

Los Angeles’ daytime curfew was reported to “disproportionately target youth of colour, and further contribute to pushing them out of school. [...] 82 percent of truancy citations issued in the past five years were given to Black and Latino students who make up only 74 per cent of the Los Angeles Unified School District’s (LAUSD) student population. Curfew tickets, costing \$250 or more, can be a significant financial burden for the majority of low-income families that make-up the LAUSD population, as well as cause students and their families to miss time from school and work. These criminalising policies also contribute to a more hostile school climate and strain relationships between the

community, school administrators, and law enforcement.”⁵²

Curfews can keep children off the street, but they do not ensure that children’s home environment is conducive to their development. Being questioned or detained by police in relation to a curfew is a traumatic experience for children, especially when they don’t understand the reason for the interaction. For this reason, curfews do not comply with the principle of the best interests of the child.

United States. A police raid which saw about 20 teenagers arrested outside a cinema provoked anger by parents and the community in Oklahoma City.⁵³ The arrests took place 20 minutes before the curfew actually came into operation and despite the fact that some of the children were accompanied by a parent who was temporarily away. One parent said: “A female police officer approached them, instructed them to hand over their cellphones and get over and get in that paddy wagon, [...] My daughter and her friend were never once asked, ‘Were you there to see the movie and do you have a ticket?’ They tried to explain to the police officers, and they were told to shut up and be quiet.”⁵⁴

A similar experience was described by another child in the United States who was under a daytime curfew “[a] year ago, Lannisha Taylor was questioned by police while waiting at a bus stop after being let out of school at 12:55pm. “I felt like he (the policeman) was harassing me,” says Taylor. “He made me feel like I was doing something (wrong), but I was just trying to get home.”⁵⁵

Finally, curfews enforced by private companies raise a multitude of concerns related to the level of training their employees have on working with children and observing children’s rights.

Switzerland. In at least one town a curfew is enforced by a private security firm empowered to handcuff and escort children.⁵⁶ “We talk to the young people,” [the company manager] explains. “We ask them what are you doing, where are you going, do they have alcohol with them, how old are they, we ask to see ID. And most of the time we get it because we do it in a friendly way. It’s just, if you provoke us, there’s a limit, and if you go over the limit, there’s the end.”

49 The Centre for Public Integrity, “Juvenile injustice: truants face courts, jailing without legal counsel to aid them”, 9 May 2014. Available at: <https://www.publicintegrity.org/2014/05/09/14699/juvenile-injustice-truants-face-courts-jailing-without-legal-counsel-aid-them>.

50 Norton, D., Why Criminalize Children? Looking beyond the express policies driving juvenile curfew legislation, Vol. 4:175 *Journal of Legislation and Public Policy* 175. Available at: <http://www.nyujlpp.org/wp-content/uploads/2012/11/Deirdre-E.-Norton-Why-Criminalize-Children-Looking-Beyond-the-Express-Policies-Driving-Juvenile-Curfew-Legislation.pdf>.

51 Think Progress website, “The Disturbing Treatment Of Black Kids In Minneapolis”, 30 October 2014. Available at: <http://thinkprogress.org/justice/2014/10/30/3586105/if-youre-a-black-kid-in-minneapolis-youre-16-times-more-likely-to-be-arrested-for-these-offenses/>.

52 Dignity in school website, “Victory for Campaign to End Truancy Ticketing: LASPD Agree to End Curfew Sweeps and Limit Ticketing”, 24 October 2011. Available at: <http://www.dignityin-schools.org/blog/victory-campaign-end-truancy-ticketing-laspd-agree-end-curfew-sweeps-and-limit-ticketing>.

53 News Ok website, “Oklahoma City parents complain police wrongly rounded up teenagers in Bricktown”, 20 July 2011. Available at: <http://newsok.com/article/3587106>.

54 Ibid.

55 Richmond Pulse, “Richmond’s Daytime Curfew: A Matter of Perspective”, 28 February 2011. Available at: <http://richmondpulse.org/2011/02/28/daytime-curfew/>.

56 BBC News, “Bucking the teen curfew in Switzerland”, 1 March 2013. Available at: <http://www.bbc.co.uk/news/world-europe-21592368>.

Modern GPS technology poses a further threat to children's freedoms and privacy rights when used to track children's location and movements with a view to comply with curfews. Devices currently on sale record children's whereabouts and issue notifications when the child steps outside a pre-approved zone.⁵⁷

Australia. It is reported that the option of using electronic tracking bracelets to ensure children comply with a curfew was at one point considered by Australia's Northern Territory.⁵⁸

United States. A proposed federal law would allow the tracking of people with certain disabilities who are in danger of wandering off unattended.⁵⁹ The proposal states that federal funding will be allocated to law enforcement agencies to develop tracking technology. It would be up to the Attorney-General to develop best practice in relation to the use of this technology and the criteria which will be used to determine the people who may be tracked and who will have access to the tracking system. The rationale behind the proposal is to allow parents or other adults responsible to find children who have wandered off as is common for children with autism.⁶⁰ Although the bill aims to protect children from physical harm, it fails to respect children's rights.

A newly enacted law in Wisconsin has made GPS tracking of a person without their consent a misdemeanour criminal offence, but it makes an exception for the police and for parents who may still legally use this technology to track their children.⁶¹ The same exception is also found in a bill in North Carolina.⁶²

GPS technology has also been used to track children for the purposes of reducing truancy. One school in California took part in a pilot programme of distributing GPS trackers to children aged 12 to 14 with a record of school absences.⁶³ Although participation in the programme was voluntary, the

Modern GPS technology poses a further threat to children's freedoms and privacy rights when used to track children's location and movements with a view to enforcing curfews

children and their parents were given a tough choice - accept the tracking or face detention in a juvenile hall for the child and a hefty fine for the parent. "I feel like they come at us too hard, and making kids carry around something that tracks them seems extreme [...] This makes us seem like common criminals," one parent said.

Curfew reform

Because curfews are very popular, high-profile, and can affect large numbers of children where they are in force, many strategies have been developed to advocate for their repeal. Before you begin a campaign against a curfew, it is important to fully understand who has put the curfew in place, what precisely it prohibits, and where and when it applies. If there is a youth rights or civil liberties organisation in your area, they may be an excellent source of information.

If it is a local curfew that applies only within your town or city, you might write letters to your mayor or city councilman or present your objections at local town hall or city council meetings. If the curfew is on a state or national level, you could contact your state or national representative or seek an audience before the legislature.

57 The Guardian, "Would you use a GPS device to track your child?", 5 February 2016. Available at: <http://www.theguardian.com/sustainable-business/2016/feb/05/big-mother-gps-tracking-technology-threat-privacy-childhood>.

58 The Sydney Morning Herald, "Territory looks at electronic bracelets to keep track of children", 10 September 1997, at p. 8. Cited in Australian Law Reform Commission, Seen and heard: priority for children in the legal process, 19 November 1997, at para 18.79. Available at: http://www.alrc.gov.au/publications/18-childrens-involvement-criminal-justice-processes/public-spaces#_ftn186.

59 Bill H. R. 4253. Available at: <http://alceehastings.house.gov/news/documentsingle.aspx?DocumentID=398538>.

60 The Big Story, "Law proposed for autistic NYC boy who vanished", 27 January 2014. Available at: <http://bigstory.ap.org/article/law-proposed-autistic-nyc-boy-who-vanished>.

61 Skipease, "Wisconsin Criminalizes Tracking People With GPS", 3 July 2015. Available at: <http://www.skipease.com/blog/gps/wisconsin-criminalizes-tracking-people/>.

62 WRAL, "House votes to criminalize most GPS tracking", 2 September 2015. Available at: <http://www.wral.com/house-votes-to-criminalize-most-gps-tracking/14871940/>.

63 The Orange County Register, "Kids who skip school are tracked by GPS", 17 February 2011. Available at: <http://www.ocregister.com/news/school-288730-students-program.html>.

On a grass roots level, children, parents, and advocates have begun movements to repeal curfews in their towns and cities. Simple and direct strategies like distributing information and stickers about how curfews negatively affect children may be a first step. Once a group of people interested in challenging a curfew has been gathered, speeches, press releases and protest marches may all play a role in gathering momentum behind the cause. A petition signed by children and parents affected by the curfew and asking for it to be repealed may be of great value to show politicians that the community is concerned about the negative impact of curfews on children's rights and freedoms. Where a complete reversal of a curfew proves difficult to achieve, civil society has collaborated with police to at least ensure that the number of children fined for curfew breaches decreases.⁶⁴

Many curfews have also been successfully challenged in courts.⁶⁵ Where curfews violate fundamental rights and freedoms, courts have overturned them as inconsistent with national or international protections. The sources of these rights are many, from state or national charters and constitutions to international conventions like the European Convention of Human Rights and the Convention on the Rights of the Child. Successful lawsuits have focused on many rights (including liberty, protection against unreasonable detention, and privacy) and freedoms (including movement, association, speech, and peaceful assembly). Some lawsuits are brought by children directly, some by parents, and some by civil liberties or youth rights organisations on behalf of children and their families.

Canada. The Quebec Human Rights Commission unanimously found that a proposed nighttime curfew in the town of Huntingdon would violate the provincial Charter of Human Rights and Freedoms, which guarantees individuals' freedom of movement and freedom of peaceful assembly regardless of their age.⁶⁶

In Manitoba, the city council of Thompson voted to repeal a curfew law when faced with a lawsuit raised by two parents and one child.⁶⁷ Initially passed with the purpose of responding to incidents of vandalism, the curfew began at 10 p.m. for children aged under 12, at 11 p.m. for children aged 12 to 15, and at midnight for 16- and 17-year-olds and

continued until 7 a.m. the following morning. The lawsuit questioned the curfew's constitutionality in view of the Canadian Charter of Rights and Freedoms which guarantees the right to non-discrimination, to liberty and to be free from arbitrary detention. The suit also argued that the curfew law is illegal because it was in effect a criminal law and only the federal government can pass criminal laws in Canada.⁶⁸

United Kingdom. In 2004, a 13-year-old boy sued the Government to challenge new police curfew powers with the assistance of a prominent civil liberties advocacy group.⁶⁹ Under the curfew the police could escort home any unaccompanied children under the age of 16 if they were found in a designated 'dispersal zone' after 9 p.m.. The High Court held that the curfew is too broad an interpretation of the police's legislative powers.⁷⁰ In the end, the court agreed that police could not detain or remove children from an area simply because they are present there during certain hours; rather, there must be some measure of anti-social behaviour involved.⁷¹

Belarus. The Constitutional Court has confirmed the legality of the country's curfew, ruling that the law is a justified restriction on the freedom of movement given its purpose to protect children.⁷² Nonetheless, the Court issued direction to law enforcement on the implementation of the curfew: the parents of any child found to have breached the curfew must be notified immediately; children should be detained in a socio-educational centre only in exceptional circumstances, for example, when a parent cannot be found or the child has previously committed an administrative offence such as hooliganism, damage to property or other on three or more occasions; any detention must comply with the prohibition of cruel, inhuman or degrading treatment or punishment; and any deprivation of liberty must only be used as a measure of last resort and for the shortest time possible.

United States. Various branches of the American Civil Liberties Union (ACLU) have brought challenges to local curfew laws in the courts with varying degrees of success.

In a case supported by ACLU's intervention, a New York

64 Dignity in school website, "Victory for Campaign to End Truancy Ticketing: LASPD Agree to End Curfew Sweeps and Limit Ticketing", 24 October 2011. Available at: <http://www.dignityin-schools.org/blog/victory-campaign-end-truancy-ticketing-laspd-agree-end-curfew-sweeps-and-limit-ticketing>.

65 CRIN, Guide to strategic litigation. Available at: <https://www.crin.org/en/guides/legal/guide-strategic-litigation>.

66 Press release of the Commission for Human and Young People's Rights of Quebec, 13 July 2004. Available at: http://webcache.googleusercontent.com/search?q=cache:C-x89Hwh-HcJ:www.cdpcj.qc.ca/Documents/comm_huntingdon_avis.pdf+&cd=1&hl=en&ct=clnk&gl=uk.

67 CBC news, "Controversial curfew to end in Thompson, Man.", 2 May 2007. Available at: <http://www.cbc.ca/news/canada/manitoba/controversial-curfew-to-end-in-thompson-man-1.692755>.

68 Centre for Constitutional Studies, "City of Thompson's Curfew Challenged as Unconstitutional", 1 January 2007. Available at: <http://ualawccsprod.srv.ualberta.ca/centres/ccs/news/?id=125>.

69 Liberty, "Liberty High Court Challenge to Government Anti-Social Behaviour Policy", 26 May 2005. Available at: <https://www.liberty-human-rights.org.uk/news/press-releases/liberty-high-court-challenge-government-anti-social-behaviour-policy>.

70 W, R (on the application of) v Commissioner of Police for the Metropolis & Ors [2005] EWHC 1586 (Admin) (20 July 2005). Available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2005/1586.html>.

71 BBC News, "Boy, 15, wins curfew legal battle", 20 July 2005. Available at: <http://news.bbc.co.uk/1/hi/england/london/4699095.stm>.

72 Decision of the Constitutional Court of the Republic of Belarus No. P-704/2012 of 17 May 2012 on the constitutionality of the Law "On amendments and additions to some laws of the Republic of Belarus on the prevention of child neglect and juvenile delinquency", N P-704/2012 of 17 May 2012. CRIN summary available at: www.crin.org/en/node/41868.

appeals court found that a nighttime curfew in the city of Rochester violated both the federal US Constitution and the Constitution of the state of New York.⁷³

In 2001, an Alaskan court struck down a curfew in the city of Anchorage on the basis that it was unconstitutional.⁷⁴ The decision was based on the rights of parents to set curfews for their children without interference from the government. However, on appeal the Supreme Court of Alaska reversed this decision and ruled that the curfew was constitutional.⁷⁵ According to the judgment the curfew is justified because the state has a “compelling interest in protecting juveniles and curbing juvenile crime.”⁷⁶ “Curfews sound like tough crime-fighting tools, but they are clearly not a solution to the problem of juvenile crime,” said Hugh Fleischer, Cooperating Attorney for the Alaska Civil Liberties Union. “These laws only offer quick fixes and create a false sense of security. Police already have the right -- and the duty -- to arrest anyone committing a real crime. Curfews don’t punish kids who commit real crimes and they punish kids who aren’t doing anything wrong.”⁷⁷

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“These laws only offer quick fixes and create a false sense of security.”

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The curfew in Anchorage, Alaska had already been challenged once before by means of referendum in 1997.⁷⁸ Although in this case the public voted to retain the law,⁷⁹ referenda can be a feasible means to challenge curfews which are already in force where the public is likely to oppose the curfew. This can happen where the law of your country allows a referendum to be initiated by citizens who gather a certain number of signatures in support of the proposed referendum.

73 *Jiovan Anonymous v. City of Rochester* Available at: <http://www.nyclu.org/case/jiovan-anonymous-v-city-of-rochester-challenging-rochesters-youth-curfew-law>.

74 ACLU, “Alaska Court Strikes Down Curfew Law as Violation of Parents and Childrens’ Constitutional Rights”, 22 March 2001. Available at: <https://www.aclu.org/news/alaska-court-strikes-down-curfew-law-violation-parents-and-childrens-constitutional-rights>.

75 First Amendment Centre website, “Alaska high court upholds Anchorage curfew”, 17 May 2004. Available at: <http://www.firstamendmentcenter.org/alaska-high-court-upholds-anchorage-curfew>.

76 *Treacy v. Municipality of Anchorage*, Nos. S-9800, S-10149 (14 May 2004). Available at: <http://caselaw.findlaw.com/ak-supreme-court/1058604.html>.

77 ACLU, “Alaska Court Strikes Down Curfew Law as Violation of Parents and Childrens’ Constitutional Rights”, 22 March 2001. Available at: <https://www.aclu.org/news/alaska-court-strikes-down-curfew-law-violation-parents-and-childrens-constitutional-rights>.

78 Kwait, D., “Curfew Laws in Alaska” Available at: http://www.ehow.com/info_8530026_curfew-laws-alaska.html.

79 “New mayor in Mat-Su; old curfew in Anchorage”, 5 November 1997. Available at: <http://juneauempire.com/stories/110597/mayor.html#VwOVHz96E4B>.

PART V

DISOBEDIENCE

In many countries, children may be reported to the authorities simply for disobeying their parents. Children are routinely detained for “unruly”, “disruptive”, and “difficult” behaviour, or even where adults believe them to be “out of control”. These laws do not address the nature of the conflict between a child’s and his or her parent’s wishes, and do not require authorities to explore the reasons behind his or her behaviour. Instead, children are subject to official punishment regardless of how unreasonable the demands on them may be. And because status offence laws covering disobedience are very vaguely worded, it is impossible for children to know when they risk arrest or detention.

Unfortunately, this means that these laws are easy for parents and authority figures to abuse, turning a confused or upset child into a criminal. Moreover, as many of these children are brought to the police directly by their parents, officers are unlikely to believe or even listen to them, much less fully investigate the circumstances. In sum, disobedience laws arbitrarily and unnecessarily criminalise children’s actions on the basis of ideas of acceptable behaviour. For this reason, disobedience laws should be abolished.

Bahrain

Laws in Bahrain punish children for “bad behaviour”, among other status offence-related provisions: “In cases of exposure to delinquency, such as begging, peddling, truancy from educational institutions and lack of parental control, the sociologist at the Office of the Women’s Police serves notice, in writing, on the guardian to provide the juvenile with the care and supervision needed to ensure that the juvenile is never again found in a situation that exposes him or her to the risk of delinquency. A copy of the said notice is sent to the Juvenile Welfare Unit at the Ministry of Labour and Social Affairs, the staff of which monitor the juvenile’s welfare and endeavour to overcome any obstacles impeding the rectification of his or her conduct. If the juvenile is again found to be at risk of delinquency six months after the notice was served, the juvenile’s case is once again referred to the Women’s Police, who takes the necessary measures to bring the matter, through the Juvenile Social Welfare Unit, to the attention of the juvenile court. The situations that entail a risk of delinquency include: (i) Frequentation of delinquents, suspected delinquents or persons renowned for their bad conduct; (ii) Engagement in, or assisting persons engaged in, acts associated with prostitution, vice, moral corruption, gambling or narcotic drugs, etc.; (iii) Lack of a legitimate livelihood or reliable provider; (iv) Affliction with a mental disease or infirmity entailing total or partial loss of discretion or choice and endangering the safety of the afflicted person

or of others.”¹ The UN Committee on the Rights of the Child has expressed concern over the fact that a number of status offences carry legal sanctions for children.²

Bangladesh

The Committee on the Rights of the Child has said of Bangladesh: “The situation in relation to the administration of juvenile justice, and its incompatibility with articles 37, 39 and 40 of the Convention and other relevant international standards, is a matter of concern to the Committee. Specifically, the Committee is concerned about the very young age of criminal responsibility (7 years), the lack of adequate protection for children aged 16-18, grounds for arrest and detention of children that can include prostitution, ‘vagrancy’ or ‘uncontrollable behaviour’, the possibility of imposing heavy sentences on children and the solitary confinement and ill-treatment of children by the police.”³

because laws on disobedience are vaguely worded, it is impossible for children to know when they risk arrest or detention

1 Initial Report of Bahrain to the UN Committee on the Rights of the Child, 23 July 2001, CRC/C/11/Add.24, at para. 148. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f11%2fAdd.24&Lang=en.

2 UN Committee on the Rights of the Child, Concluding Observations on the initial report of Bahrain, 11 March 2002, CRC/C/15/Add.175, at para. 47. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f15%2fAdd.175&Lang=en.

3 UN Committee on the Rights of the Child, Concluding Observations on the initial report of Bangladesh, 18 June 1997, CRC/C/15/Add.74, at para. 26. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f15%2fAdd.74&Lang=en.

Belize

A law in Belize allows a parent to place children under the age of 16 in detention for being 'out of control'.⁴ "The [Act] allows parents to send their child to a juvenile detention centre known as the Youth Hostel, for being 'out of control'. In 2003, over 400 children and adolescents went to court for this status offence. The Youth Hostel was relocated from Belize City to a remote place at 21 miles on the Western Highway, in contravention of section 21 of the 1990 Rules which requires that as much contact as possible be maintained between children and community to enable children's rehabilitation. Children were removed from being in a community which sometimes reported suspected abuse. In 2002 there was such concern about the systematic harsh punishment of children at the Youth Hostel that NGO human rights monitors were called in. At one stage all the girls held there were said to have absconded. Absconders as young as 12 are detained in Hattieville prison. Corporal punishment and harsh treatment of children at the Youth Hostel persist, despite official efforts to forbid it and train staff. There have been reports that Youth Hostel staff take children to local police for a good beating."⁵

Denmark

The Committee on the Rights of the Child has requested that the government "take measures to abolish practice of imprisoning or confining in institutions persons under 18 who display difficult behaviour."⁶

Egypt

Under Article 96 of the Child law, "A child shall be considered liable to perversion in any of the following cases: [...]"

3. If he is found performing...debauchery, corruption of morals, gambling, drugs, or other such conducts, or serving those performing them [...]
5. If he mingles with others who are liable to perversion, and the suspects or persons who are notorious for bad conduct and behaviour.[...]
7. If he has a bad conduct and errs from the authority of his father, guardian, or curator, or from the authority of his mother in case of the decease and absence of his guardian, or his legal incapacity.. no procedures shall in

this case be taken vis a vis the child, even if it is a factual investigation procedure, except with the permission of his father, guardian, curator, or mother, according to each case...."⁷

Children at risk are referred to a committee,⁸ which may remove the child from the family and place them in "a reception center or rehabilitation center or health care institution or with a reliable family or association or an appropriate social or educational institution for a period of time until the risk is removed".⁹

Japan

"In quite a number of States Parties to the CRC, including Japan, children who have not committed a crime but have shown a problematic behaviour that indicates that they may commit offences in the future, are treated under the same rules and regimes as juvenile delinquents. But it is not clear what kind of charges (if any) are brought against them. The Committee regularly expresses its concerns in this regard. For instance, they may be deprived of their liberty and kept in police custody or some kind of pre-trial detention without having committed a crime (or being accused of it). So, how can they defend themselves if no clearly defined charges have been submitted to the judge (or the family court). And, are there specific criteria for the decision to treat a juvenile with problematic behaviour as a juvenile delinquent? The Committee on the Rights of the Child has recommended States Parties to abolish these kind of rules and practices. In this regard the same applies for the so-called status offences, that is the criminalisation of unruly/difficult behaviour of a juvenile, such as in Japan habitually disobeying the proper control of the custodian or frequenting places of dubious reputation."¹⁰

Myanmar

Myanmar's law defines a child in need of protection and care as "[o]ne who is of so depraved a character that he is uncontrollable by his parents or guardians."¹¹ Such children are liable to be sent to a 'training school' until they reach the age of 18 or supervised by a probation officer for a period of up to three years.¹²

4 Certified Institutions (Children's Reformation) Act, Cap. 121, Section 16. Available at: http://www.oas.org/dil/Certified_Institutions_Childrens_Reformation_Act_Belize.pdf.

5 Alternative NGO Report to the Committee on the Rights of the Child, Children and Adolescents in Belize 2004, at pp. 7, 27. Available at: https://www.crin.org/en/docs/resources/treaties/crc.38/Belize_ngo_report.pdf.

6 UN Committee on the Rights of the Child, Concluding observations on Denmark's third periodic report, 23 November 2005, CRC/C/DNK/CO/3, at paras. 58-59. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fdnk%2fCO%2f3&Lang=en.

7 Child Law 2008, Article 96. Available at: http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Egypt/egypt_children_2008_en.pdf.

8 Ibid., Article 98.

9 Ibid., Article 99-bis.

10 Keynote Speech, Jaap E. Doek (Committee on the Rights of the Child), Juvenile justice and the role of probation officers, 12 October 2005. Available at: http://www.jaapedoek.nl/publications/keynotes/keynote_337.doc.

11 The State Law and Order Restoration Council Law No. 9/93, the Child Law, Article 32. Available at: <http://myanmarhumantrafficking.gov.mm/content/child-law>.

12 Ibid., Article 34.

Singapore

Parents in Singapore can apply to a court for what is known as a ‘Beyond Parental Control (BPC) order’ in relation to children under the age of 16 who are considered to have behavioural problems.¹³ Applications for such orders are on the rise: “In the first three months of 2015, the team has screened 113 complaints. It screened a total of 373 complaints for the whole of 2014.”¹⁴ The consequences for children are very serious: “The judge then has three options: To keep the child in a closed institution, or admit the child in an open institution like Boys’ Town, where they can come out during weekends. The child can also be put under a Statutory Supervision Order, where a counsellor will supervise youth and parents. All options can last between one and three years.”¹⁵

Trinidad and Tobago

Under the Children Act, children under the age of 16 can be sent to a juvenile court for being “beyond control”.¹⁶ “The placement of Children in Institutions as a result of parents applying to the Magistrates Court to have his or her child committed to a Children’s Institution as “beyond control” is a system that does not serve the best interest of the Child. Thorough Investigation into the home and family situation of the child and into parent child relationships as well as the provision of effective family support systems, would greatly reduce the unnecessary institutionalization of Children.”¹⁷

Kazakhstan

Kazakhstan’s juvenile justice laws on behavioural problems and status offences have been criticised by a number of different observers, including the Committee on the Rights of the Child, the Danish Centre for Human Rights, and local NGOs.

“The Committee notes, inter alia, that disorderly conduct has been defined as a serious crime constituting a danger to society, leading to the criminalization of behavioural problems. ...The Committee recommends that the State party review its classification of serious crimes in order to reduce criminal law prosecution of 14 to 16-year-old children and

abolish provisions that criminalize the behavioural problems of children (so-called status offences).”¹⁸

“[A]t the present it is considered a status offense, if more than 5 children are gathered on the street.”¹⁹

“The existing procedure applied to juvenile offenders is not defined by any separate procedural laws, but is based on subordinate legislation (regulations, rules, instructions) and on practical experience. At first children are taken to police departments on juveniles (PDJ). According to the departmental rules, the groups of children taken to juvenile police stations are as follows: 1) children below the age of criminal liability that committed acts injurious to the public in general, containing signs of a criminal act; 2) children that committed administrative violations; 3) children that left without proper authorisation the special educational institutions for children, Centers of temporary isolation, adaptation and rehabilitation for juveniles (CTIARJ); 4) juveniles below 16 years of age that left their family without proper authorisation, and unidentified adolescents from 16 to 18 years of age that need supervision and help to be taken to CTIARJ with a purpose of subsequent return to parents or placement in the health and education institutions; 5) children that were lost or abandoned are taken to PDJ with a purpose of return to their parents or others that have the care of the child, or to be placed in CTIARJ, orphanage or healthcare institutions. The adoption of such decision on placement of the child is not defined by any procedure of the procedural code and legislation.”²⁰

Morocco

Article 513 of the Penal Code defines children in difficult situations: “a minor not having attained the age of 16 is considered to be in a difficult situation if his/her physical, mental, psychological or moral security, or his/her education is endangered because of spending time with delinquent persons or persons known for their bad reputation or record with the law; if he/she rebels against the authority of his/her parents, guardian, court-appointed guardian, tutor, the person responsible for his/her care, or the institution where he/she has been placed, if he /she is habitually truant at school, if he/she runs away from home, or if he/she doesn’t

13 Ministry of Social and Family Development website, Children Beyond Parental Control. Available at: <http://app.msf.gov.sg/Policies/Children-Youth/Children-Beyond-Parental-Control>.

14 Channel News Asia, ‘More parents opting for Beyond Parental Control order’, 21 April 2015. Available at: <http://www.channelnewsasia.com/news/singapore/more-parents-opting-for/1798954.html>.

15 Ibid.

16 Children’s Act, Ch 46:01, Sections 44-45. Available at: http://www.oas.org/juridico/PDFs/cyb_tto_children.pdf.

17 NGO Comments on Trinidad and Tobago Second Periodic report under the CRC, April 2005. Available at: <https://www.crin.org/en/library/un-regional-documentation/ngo-comments-trinidad-tobagos-second-official-periodic-report>.

18 UN Committee on the Rights of the Child, Concluding Observations on the initial report of Kazakhstan, 10 July 2003, CRC/C/15/Add.213, at paras. 68-69. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CR%2FC%2F15%2FAdd.213&Lang=en.

19 The Danish Centre for Human Rights, Juvenile Justice in Kazakhstan (2000). Available at: <http://www.streetchildrenresources.org/wp-content/uploads/2013/02/juvenile-justice-kazakhstan.pdf>.

20 Alternative NGO Report on Kazakhstan’s initial report to the UN Committee on the Rights of the Child, 2003, at p. 42. Available at: <https://www.crin.org/en/library/un-regional-documentation/alternative-report-non-governmental-organizations-kazakhstan>.



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Nigeria

Reports of large numbers of children being detained for being “beyond parental control” are common in the press and the UN human rights system alike.

“In March–April 2003, 60 per cent of children detained in a Boys’ Remand Home in Lagos, Nigeria were non-criminal cases, of which 55% were boys ‘beyond parental control’, and 30 per cent were care and protection cases (‘found’ children). A further 15 per cent were children who had been rounded up in police street raids. Likewise, 80 per cent of girls detained in the Girls’ Remand Home were non-criminal cases, i.e. ‘beyond parental control’, or ‘care and protection’ and civil dispute cases.”²²

The CRC Committee said it was “gravely concerned that the juvenile justice system in the State party, in particular, the Shariah court system, does not conform to international norms and standards, in particular that... (h) Some children are detained for ‘status offences’ such as vagrancy, truancy or wandering, or at the request of parents for ‘stubbornness or for being beyond parental control.”²³

United States

The presence of police officers has become a normal fixture in hundreds of US schools leading to children being treated as criminals for misbehaving at school.²⁴ A 13-year-old child was tasered and charged with one felony and two misdemeanor offences after a physical struggle with a police officer who was arresting him for ‘misbehaving’ at school.²⁵ In another case, a school police officer “punched a 13-year-old for cutting in line, and then put another child of the same age in a choke hold, causing brain damage.”²⁶ Children with disabilities are in particular danger of police violence. After a six-year-old child knocked down a shelf in her kindergarten that injured the principal, she was handcuffed, taken to a police station and charged with assault.²⁷ The ACLU has filed a federal lawsuit.

21 CRIN translation. Original text available at: <http://www.ahjucaf.org/Rapport-de-la-Cour-supreme-du,7217.html>.

22 UN World Report on Violence against Children, at p. 194. Available at: <https://www.crin.org/en/library/publications/world-report-violence-against-children>.

23 UN Committee on the Rights of the Child, Concluding Observations on the initial report of Nigeria, 13 April 2005, CRC/C/15/Add.257, at para. 78. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f15%2fAdd.61&Lang=en.

24 BBC News, “Misbehaving pupils ending up in court”, 11 April 2012. Available at: <http://www.bbc.co.uk/news/magazine-17664075>.

25 Counter Current News, “Police Use Taser On 13-Year-Old, Charge Him With Felony For ‘Misbehaving’ In School”, 2 October 2015. Available at: <http://countercurrentnews.com/2015/10/police-13-year-old-charge-him-with-felony-for-misbehaving-in-school/>.

26 Ibid.

27 InfoWars website, “Police Handcuff, Charge 6-Year-Old Girl For Misbehaving”, 17 April 2012. Available at: <http://www.infowars.com/police-handcuff-charge-6-year-old-girl-for-misbehaving/>.

PART VI

ANTI-SOCIAL BEHAVIOUR ORDERS

Anti-Social Behaviour Orders vary in practical terms among the countries where they have been adopted, but the basic functioning is the same. Civil courts are empowered to impose an order banning an individual from carrying out specific behaviour or entering a certain area. The orders are issued in response to evidence that a person has been acting in a way that causes or is likely to cause harassment, alarm or distress. In themselves, the orders are not a criminal punishment - and it is not necessary for a person to commit a criminal offence in order to be subject to an ASBO - but the breach of the terms of the order can result in a criminal conviction and a prison sentence. ASBOs blur the boundary between civil law and criminal law drawing people into the criminal justice system. These orders do not exclusively target children, but the way they police non-criminal activity in public spaces means that children are disproportionately targeted. ASBOs should be abolished to prevent children from being drawn into the criminal justice system for non-criminal behaviour.

United Kingdom

First introduced in the United Kingdom in 1999, ASBOs became a widely used tool for a variety of behaviour that was not criminal. Between the introduction of the orders and the end of 2013, 24,427 ASBOs were issued in England and Wales, 36 percent of which were applied to people under the age of 18. Breach of an ASBO in England and Wales can lead to a criminal conviction and almost 60 percent of ASBOs are breached. For children, this figure is even higher; two-thirds of children affected breach their order at least once. Of these children, 37 percent received a custodial sentence for breaching their order.¹

In 2014, Public Space Protection Orders (PSPOs) were introduced to cover public spaces rather than individuals. The powers permit local authorities to criminalise behaviour that would not normally be criminal within specifically defined areas. A local authority can make an order if the activity is carried out in a public place, and has had or would have a detrimental effect on the quality of life of those in the locality.²

Some of the early PSPOs that have been introduced have been highly controversial. Hackney Council introduced an

order in April 2015 allowing for on the spot fines of £100 and the possibility of court action and fines of up to £1000 for rough sleepers. The Council dropped the order two months later in the face of criticism from local campaigners and homelessness charities.³

Other PSPOs have specifically targeted children. Bassetlaw District Council introduced an order to prohibit children under the age of 16 gathering in groups of three or more at the Celtic Point area of the district.⁴ Oxford City Council also introduced an order preventing anyone under the age of 21 entering the Foresters Tower block in the city if they were not a legal resident or visiting a legal resident.⁵

The reforms also introduced a broader test for anti-social behaviour alongside the power for a judge to order the eviction of a tenant of social housing if they, their family or someone visiting them breaches an injunction in their place of residence.⁶

The Committee on the Rights of the Child has been highly critical of ASBOs and their use on children, particularly of the fact that the orders can draw children into the criminal justice system and that they disproportionately affect children from disadvantaged backgrounds.⁷ National human rights organisations, too, have been outspoken about the effect the orders have on children and about the potentially damaging effect of expanding these orders. During the drafting process for the PSPO provisions, Liberty spoke out about the potential scope of the powers, for which there is no limit to area that could be covered. There is also concern that the powers permit the targeting of certain groups of people, such as rough sleepers.⁸

3 The Guardian, "Hackney council in east London drops threat to fine rough sleepers", 5 June 2015. Available at: <http://www.theguardian.com/uk-news/2015/jun/05/hackney-council-drops-threat-to-fine-rough-sleepers>.

4 Bassetlaw District Council, "Council uses new legislation to tackle ASB in Worksop", 23 April 2015. Available at: <https://www.bassetlaw.gov.uk/news-and-events/news-archive/april-2015/council-uses-new-legislation-to-tackle-asb-in-worksop.aspx>.

5 Oxford City Council, "Foresters Towers Public Spaces Protection Order", 20 February 2015. Available at: https://www.oxford.gov.uk/downloads/file/1942/foresters_towers_public_spaces_protection_order.

6 The full legislation is available online at: <http://www.legislation.gov.uk/ukpga/2014/12/contents/enacted>. Local authorities publish the PSPOs they have issued on their individual websites.

7 Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic report of the United Kingdom, CRC/C/GBR/CO/4, 20 October 2008, para. 79.

8 The Guardian, "ASBO reform is sloppy, dangerously broad and could put basic rights at risk", 25 November 2013. Available at: <http://www.theguardian.com/local-government-network/2013/nov/25/asbo-reform-broad-impact-human-rights>.

1 Ministry of Justice, Statistical Notice: Anti-Social Behaviour Order (ASBO) Statistics - England and Wales 2013, 18 September 2014. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/355103/anti-social-behaviour-order-statistical-notice-2013.pdf.

2 Anti-social Behaviour Crime and Policing Act 2014, Section 59(1) and (2). Available at: <http://www.legislation.gov.uk/ukpga/2014/12/part/4/chapter/2/crossheading/public-spaces-protection-orders/enacted>.



Ireland

Ireland introduced ASBOs in 2006,⁹ modeling the provisions on the earlier legislation from the United Kingdom. The Irish system has a more graduated system by which the Gardai (police) can issue a behavioural warning and a good behaviour contract to a child accused of anti-social behaviour before they can apply to the Children's Court for an ASBO. The breach of an ASBO can lead to a sentence of detention in a children's detention school or a fine of up to €800. ASBOs in Ireland have not been as widely used as the equivalent powers in the UK. Between their introduction in 2006 and April 2012, only seven ASBOs were issued, three of which were imposed on children.¹⁰

ASBOs blur the boundary
between civil law and criminal
law drawing people into the
criminal justice system

9 The Criminal Justice Act 2006. For more information, see Citizens Information, Anti-social behaviour by children, available at: http://www.citizensinformation.ie/en/justice/children_and_young_offenders/anti_social_behaviour_by_children.html.

10 The Journal, Explainer: Why have just seven ASBOs been issued in Ireland in five years?, 17 June 2012. Available at: <http://www.thejournal.ie/asbos-ireland-asbo-criminal-justice-alan-shatter-485523-Jun2012/>.

PART VII

PURCHASE AND

POSSESSION OF ALCOHOL

AND TOBACCO

Laws preventing children from engaging in certain activities are a common and common sense way of protecting children. Whether preventing children from engaging in harmful work or accessing drugs, alcohol and tobacco, these laws can be an effective way of protecting children from damage to their health and wellbeing as well as protecting them from exploitation. However, where these laws criminalise the actions of children rather than the adults who are enabling this harmful behaviour, these laws can become status offences that harm the very children they are intended to protect.

For example, laws prohibiting the sale of tobacco to children, the purchasing of tobacco for children or the targeting of children in cigarette advertising are well grounded rules to prevent children becoming engaged in an activity that is particularly harmful to their health as their bodies are developing. These rules target adults who knowingly expose and facilitate children's access to harmful substances. However, when children can be prosecuted for the possession, use or purchasing of tobacco, the law compounds the physical harm of smoking with additional punishment. Similarly, setting a minimum age for the purchase of alcohol, providing sanctions for those who sell alcohol to underage children and allowing police to confiscate alcohol from underage children all seek to protect children from the harms of drinking, but when possession by children is criminalised, the law creates a status offence that creates more harm for the child. For this reason laws criminalising the purchasing and possession of alcohol and tobacco by children should be abolished.

United States

The United States has a long history of laws prohibiting children from possessing, using or purchasing tobacco. In 1988, six states had these so-called PUP laws, but by 2003, this figure had risen to 37 states with laws permitting the punishment of children for these tobacco offences, with penalties ranging from fines, to court appearances, suspension from school or the denial of a driving licence.¹

The Drinking Age Act 1984 requires all states to prohibit the "public possession" of alcohol by persons under the age of 21. Penalties for offences related to the the possession of alcohol are determined at the state level and may include fines, the suspension of a driving licence or imprisonment. Nebraska,

for example, allows for imprisonment of up to three months for a first time offender under the age of 18.²

United Kingdom (Scotland)

In 2010, Scotland enacted legislation making it an offence for a person under the age of 18 to buy or attempt to buy tobacco products or cigarette papers.³

United Kingdom (England and Wales)

In 2008, the Home Office Minister announced that the government was considering criminalising the possession of alcohol by a person under the age of 18.⁴

Kenya

In October 2015, more than 200 children were arrested at a Nairobi disco and charged with offences including possessing alcohol. A similar incident occurred in Eldoret, where 500 children were arrested for being in possession of drugs and alcohol.⁵



² A state-by-state breakdown of these penalties is available at: <http://www.criminaldefenselawyer.com/crime-penalties/federal/minor-alcohol-possession.htm>

³ Tobacco and Primary Medical Services (Scotland) Act 2010, Section 5. Available at: <http://www.legislation.gov.uk/asp/2010/3/section/5>.

⁴ The Telegraph, "Teenage drinkers could be criminalised", 19 February 2008. Available: <http://www.telegraph.co.uk/news/politics/1579141/Teenage-drinkers-could-be-criminalised.html>.

⁵ Standard Digital, "More than 200 children found in Nairobi discotheque charged" 22 October 2015. Available at: http://www.standardmedia.co.ke/article/2000180354/more-than-200-children-found-in-nairobi-city-discotheque-charged?articleID=2000180354&story_title=more-than-200-children-found-in-nairobi-city-discotheque-charged&pageNo=3.

¹ See Wakefield and Giovino, Teen penalties for tobacco possession, use and purchase: evidence and issues, Innovations in youth tobacco control, June 2003. Available at: http://tobaccocontrol.bmj.com/content/12/suppl_1/i6.full.

PART VIII

ANTI-GANG LAWS

Laws designed to curb gang activity, particularly in Latin America, have criminalised children based solely on their physical appearance. Under these laws, children may be arrested and detained on unfounded allegations that they belong to a gang, simply because of the way they dress or the presence of a tattoo or other marking. These children are subject to criminal penalties simply for associating with the “wrong” crowd, even where they have done nothing wrong. Because these laws unfairly criminalise children’s physical appearance and the company they keep, anti-gang laws targeting children should be abolished.

El Salvador

The Committee on the Rights of the Child has been highly critical of anti-gang measures in El Salvador, particularly the concept of “a capable minor” (menor habilitado) allowing for the prosecution of children as young as 12 as adults. The Committee also criticised the criminalisation of “physical features such as the use of signs or symbols as a means of identification and the wearing of tattoos or scars.” The Anti-Gang Law has also been widely criticised for undermining the Juvenile Justice Act and introducing a dual system of juvenile justice.¹

Honduras

In 2002, Honduras passed the Police and Social Co-Existence Act, which led to widespread arrests of children and adolescents “suspected of belonging to ‘maras’ because they had tattoos or another forms of identification. This legislation was followed-up with reforms to the Penal Code, particularly extending powers under its “illicit association” provisions. The provisions allow for the conviction and punishment of “maras’ leaders with between 20 to 30 years’ imprisonment and 13 to 20 years for membership of such a group.²

Several international human rights bodies have been highly critical of these reforms. The UN Human Rights Committee has expressed its concern at “mass round-ups based on appearance alone and with no warrant from a competent authority” and the broad wording of the amended illicit association provisions and urged the State to reform this legislation to restrict the scope of the offence.³ In its concluding observations on Honduras in 2007, the Committee on the Rights of the Child also raised concerns

that the “illicit association” provisions of the Honduran Penal Code had been interpreted so broadly as to violate children’s rights to free association.⁴ The Committee was also critical of the practice of arresting and detaining children on the basis of allegations that they may belong to a ‘mara’ because of their appearance (for example, because of a way of dressing, the presence of a tattoo or of another symbol).⁵

Regionally, the Inter-American Commission on Human Rights has found that the Illicit association offence was so broad as to allow the detention of children and adolescents “merely on the perception of membership of a ‘mara’.”⁶

children can be subject to criminal penalties simply for associating with the “wrong” crowd

1 Concluding observations of the Committee on the Rights of the Child on the second periodic report of El Salvador, CRC/C/15/Add.232, 30 June 2004, paras. 67 and 68.

2 Honduran Penal Code, Article 332. Amended January 2005.

3 Concluding Observations of the Human Rights Committee on the initial report of Honduras, CCPR/C/HND/CO/1, 13 December 2006, para. 13.

4 Concluding observations of the Committee on the Rights of the Child on the third periodic report of Honduras, CRC/HND/CO/3, 3 May 2007, paras. 41 and 42.

5 Ibid. at. Para.s. 80 and 81.

6 Inter-American Commission on Human Rights, Juvenile Justice and Human Rights in the Americas, para. 140. Available at: <https://www.cidh.oas.org/countryrep/JusticiaJuvenileng/jjii.eng.htm>.

PART IX

CONSENSUAL SEXUAL

ACTIVITY

The criminalisation of consensual sexual activity, particularly involving technology, is an emerging form of status offence for children. Laws commonly criminalise children for “possessing child pornography” when they have taken a picture of themselves nude or “disseminating child pornography” if they share it with another person their own age, a practice commonly known as “sexting”. Similarly, children can commit an offence by engaging in consensual sexual activity with another person of their own age. Sentences for these offences can include lengthy prison terms and the requirement to register as a sex offender.

A status offence that applies to children is an offence that criminalises activity that would be lawful if conducted by an adult. While these laws may appear to treat everybody equally, for example by prohibiting anyone from possessing pictures of children that are of a sexual nature, these blanket provisions fail to take into account the different situation of children who conduct this activity among themselves. These laws are based on the role of power, coercion and the vulnerability of the child that exist when an adult commits this kind of sexual offence. No one should be able to make or distribute pictures of children being abused, but where a child is taking a picture of him or herself without coercion, this is not what is taking place. Knowingly taking pictures of oneself without being compelled to do so, even if that picture is of a sexual nature, would not be an offence for an adult.

The criminalisation of possessing and sending pictures of oneself can also prevent children from coming forward when they are being bullied, threatened or blackmailed over pictures that they may have taken, undermining the intended protection that these laws are supposed to provide children.

Similarly, laws that prohibit all sexual activity with persons under a certain age can cross the line from protecting children to criminalising them for consensual actions that are only an offence because of their age or sexual orientation.

Australia

In recent years, “sexting” among teenagers has been receiving increased attention in Australia. Relevant laws vary across Australian jurisdictions, but the Commonwealth criminalises accessing, transmitting, publishing, possessing, controlling, supplying and obtaining child pornography¹ and similar laws exist across Australian States and territories. Some jurisdictions also require anyone found guilty of these

offences to be placed on the Sex Offenders Register.² These offences apply to children as well as adults.

Reliable figures on the number of children charged and prosecuted under these laws are not publicly available, but media coverage indicates that cases are not uncommon. In 2007, 32 teens in Victoria faced charges related to producing, possessing or distributing child pornography.³ In 2011, an Australian newspaper reported that 450 child pornography charges were laid against people aged 10 to 17 in the previous three years, including 113 charges of “making child exploitation material”.⁴ It is not clear from the figures how many of the charges related to exclusively consensual activity.

There is also evidence, though not comprehensive statistical evidence, of prosecutors and courts using their discretion to prevent cases proceeding to trial. In October 2010 a teenager was charged with possessing a photo of a nude 15-year-old girl. The Magistrate threw out the case as the charge required that a reasonable adult would believe that the girl was “apparently under 16”.⁵

Law reforms are also underway in some Australian jurisdictions to update laws to take account of these developments. In December 2015, the South Australian government put forward a draft bill that would create a new offence to cover filming and sexting by people under the age of 17.⁶ The law would prevent children from being prosecuted for “creating or possessing child pornography”, but would continue to criminalise children for consensual sexual activity with other people their own age.

In 2013, the Law Reform Committee of Victoria published the results of its inquiry into sexting and recommended that the Victorian Government introduce legislation to decriminalise consensual sexting where the accused is not more than two years older than the other minor, where the sexual activity recorded was lawful.⁷

1 Criminal Code, Division 273 - Offences involving child pornography material or child abuse material outside Australia. Available at: http://www.austlii.edu.au/au/legis/cth/consol_act/cca1995115/sch1.html

2 For more detailed analysis of the legislation in place across Australia and its application, see Crofts and Lee, *Sexting, Children and Child Pornography*, Sydney Law Review, Vol. 35:85. Available at: https://sydney.edu.au/law/slr/slr_35/slr35_1/04_Crofts_Lee.pdf.

3 The Age, “Alarm at teenage ‘sexting’ traffic” 10 July 2008. Available at: <http://www.theage.com.au/national/alarm-at-teenage-sexting-traffic-20080709-3clg.html>.

4 News.com.au, “More than 450 child pornography charges against youths aged 10 to 17 in past three years”, 9 December 2011. Available at: <http://www.news.com.au/national/more-than-450-child-pornography-charges-laid-against-youths-aged-10-to-17-in-past-three-years/story-e6frfkvr-1226162162475>.

5 Daily Mercury, “Court dismisses sexting case”, 22 October 2010. Available at: <http://www.dailymercury.com.au/news/sexy-text-or-child-porn-court-dismisses-case-again/665761/>.

6 ABC News, “New sexting laws in SA to spare children from facing child pornography charges”, 30 December 2015. Available at: <http://www.abc.net.au/news/2015-12-30/new-laws-in-sa-to-protect-children-sexting-from-porn-charges/7059932>.

7 Full text of the proposed reform available in the publication: Law Reform Committee of Victoria, *Inquiry into sexting*, May 2013, p. xviii, recommendation 6. Available at: http://www.parliament.vic.gov.au/file_uploads/LRC_Sexting_Final_Report_0c0rvqP5.pdf

Austria

The European Court of Human Rights has ruled three times on Austria's laws that criminalised consensual sexual activity between males where one party was aged 19 or over and the other was aged 14 to 18. Sexual activity between women or mixed sex couples was not criminalised in the same circumstances.⁸ In 2003, the court found that the law discriminated on the basis of sexual orientation and the Austrian Parliament repealed the law. In a follow-up case in 2013, the Court found that maintaining the criminal records of men who had been convicted under the law violated the men's right to an effective remedy.⁹

Canada

Under the Canadian Criminal Code, it is an offence to make, possess, distribute or access any material that falls within the Code's definition of child pornography.¹⁰ Child pornography is defined to include a photographic, film, video or other visual representation that shows a person under the age of 18 engaged in explicit sexual activity or of which the dominant characteristic of the depiction is a sexual purpose, of a sexual organ or of the anal region of a person under the age of 18 years.¹¹ It is a defence to all of these offences that the act that is alleged to constitute the offence "[did not] pose an undue risk of harm to persons under the age of 18 years."

The Canadian Supreme Court has also read two exceptions into these offences when they considered them in 2001,¹² namely:

- (i) when the material is created by one person alone and exclusively for his or her own personal use, such as personal journals or drawings intended only for the eyes of the creator; and
- (ii) where a person possesses visual recordings depicting him or herself and those recordings do not depict unlawful sexual activity.

To date, prosecutions against children for child pornography offences have revolved around distributing images more broadly, particularly in cyberbullying cases, rather than in consensual situations. A 16-year-old girl was charged with

distributing child pornography when she forwarded naked pictures of a girl she found on her boyfriend's phone through text and Facebook.¹³ Cases have also emerged in the press relating to five teenagers in Ontario.¹⁴

South Africa

In October 2013, the Constitutional Court of South Africa ruled that the criminalisation of consensual sexual behaviour between children violated their rights to dignity and privacy. The decision declared two provisions of the Sexual Offences Act (statutory rape and statutory sexual assault) unconstitutional in that they violated children's rights to dignity, privacy and the best interests of children. The court also introduced a moratorium on prosecutions of children between these ages under these offences for 18 months to prevent prosecutions while the legislation was being amended. The offences had previously made it a criminal offence for persons aged 12 to 15 to engage in any kind of sexual contact, from kissing and cuddling to penetrative sex.¹⁵

United Kingdom

In the United Kingdom, a teenager under the age of 18 that takes a naked picture of him or herself is guilty of a serious sexual offence. It is a criminal offence for a person to take, possess or distribute an indecent picture of a child¹⁶ and these offences are punishable with up to ten years' imprisonment.¹⁷ It is for a jury, magistrate or judge to decide whether an image is indecent, but the circumstances and motive of the person who took the picture are irrelevant in making this decision.¹⁸ Any person convicted of these offences must also register as a sex offender.

A number of cases have emerged in the UK. In 2014, a teenage girl was investigated and cautioned by police for distributing an indecent image of a child when she sent a

8 See *L and V v. Austria* [2003] 39392/98 and 39829/98, summary and link to the full text of the judgment available at: www.crin.org/node/41700. *S.L v. Austria* [2003] 45220/99, summary and full text of the judgment available at: www.crin.org/node/41701.

9 See *E.B. and others v. Austria* [2013] 31913/07, 38357/07, 48098/07, 48777/07 and 48779/07, summary and full text of the judgment available at: www.crin.org/en/node/41703.

10 See offences defined under Criminal Code, Section 163.1. Available at: <http://laws-lois.justice.gc.ca/eng/acts/C-46/FullText.html>.

11 Criminal Code, Section 163.1(1).

12 See *R v. Sharpe* [2001] 1 SCR 45, 2001 SCC 2. Available at: <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1837/index.do>.

13 Vice, "Canada's new cyberbullying law is targeting teen sexting gone awry", 1 May 2015. Available at: <https://news.vice.com/article/canadas-new-cyberbullying-law-is-targeting-teen-sexting-gone-awry>.

14 *Simcoe Reformer*, "Oxford OPP charge two teens with possession and distribution of child pornography", 18 March 2014. Available at: <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1837/index.do>. The News Kitchener, "3 Norfolk County teens charged with distributing child porn", 14 January 2015. Available at: <http://kitchener.ctvnews.ca/3-norfolk-county-teens-charged-with-distributing-child-porn-1.2189065>.

15 *Teddy Bear Clinic for Abused Children and another v. Minister of Justice and Constitutional Development and another* [2013] Case CCT 12/13 ZACC 35. A summary of the case and a link to the full judgment are available at: www.crin.org/node/41741. Read CRIN's case study available at: www.crin.org/en/node/41745/

16 Protection of Children Act 1978, Section 1. Available at: <http://www.legislation.gov.uk/ukpga/1978/37>.

17 Protection of Children Act 1978, Section 6(2). Note, it is for a Magistrate, jury or District judge to determine whether an image is indecent depending on where the case is heard.

18 See *R v. Graham-Kerr* 88 Cr App R 302 CA; *R v. Smethurst* [2002] 1 Cr App R 6, CA.

topless picture of herself to her boyfriend.¹⁹ Even where a case is not prosecuted, information about a child who has engaged in ‘sexting’ can be stored in police intelligence databases and could be disclosed to future employers.²⁰

Police and prosecutors appear to be using their discretion to avoid bringing charges against children where action is consensual, but it is not clear the extent to which this is taking place systematically. In 2014, the Attorney General was asked in Parliament how many people under the age of 18 had been referred to the Crown Prosecution Service for sending nude or sexually explicit images of an individual under the age of 18. The Attorney General was not able to provide the information as the CPS did not produce sufficiently detailed statistics.²¹

United States

In the United States, countless young people have been charged and convicted of possessing or distributing child pornography in sexting cases.

- In January 2009, three teenage girls were prosecuted for manufacturing and disseminating child pornography when they sent nude pictures of themselves to three male classmates, while the boys who received the photos were prosecuted for possessing child pornography.²²
- In September 2015 a 17-year-old schoolboy and his 16-year-old girlfriend, were charged with sexual exploitation of a minor for texting each other sexually explicit images of themselves. They were both also charged with making and possessing such pictures, identifying each of them as both their own victim and offender.²³
- In 2010, two teenagers from Indiana were charged with child pornography and child exploitation offences for sending nude pictures of themselves to each other.²⁴
- In September 2015, a teenage couple in North Carolina were prosecuted for sending nude pictures of themselves to each other. Despite the fact that the boy involved was charged with exploitation of a minor for taking nude pictures of himself, North Carolinian law required that he be charged as an adult, as he was 16 years old. The girl

and boy struck a deal with prosecutors to plead guilty to lesser misdemeanor offences to avoid the case going to trial.²⁵

- In November 2015, police in Colorado investigated what they described as “large scale” sexting scandal at a High School involving hundreds of explicit pictures of students.²⁶

Some states have begun to legislate to prevent children from being prosecuted under child pornography laws for consensually sharing photos of themselves with other children their own age. At least 20 states have laws that specifically address sexting.²⁷ Texas, for example, makes it an offence for one minor to electronically send an image of someone younger than 18 years of age (including images of the sender) but also creates a defence where the images are solely of the sender or recipient, were sent within a dating relationship and both parties are no more than two years apart in age.²⁸ A number of states are in the process of developing legislation on the issue:

- In February 2016, a bill was introduced in New Mexico to decriminalise children aged 14 to 18 who consensually share nude photographs of each other.²⁹
- A bill in Colorado would also create a new offence of “displaying... publishing ... or possessing, a sexually explicit image of himself or herself or of another juvenile.” The new offence would downgrade this activity from a felony to a misdemeanor.³⁰

19 The Guardian, “Teenagers who share ‘sexts’ could face prosecution, police warn” 22 July 2014. Available at: <http://www.theguardian.com/media/2014/jul/22/teenagers-share-sexts-face-prosecution-police>.

20 See, for example, BBC, “Sexting boy’s naked selfie recorded as crime by police”, 3 September 2015. Available at: <http://www.bbc.co.uk/news/uk-34136388>.

21 Written parliamentary question 213364, asked on 4 November 2014. Available at: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2014-11-04/213364/>.

22 The Guardian, “Sexting craze leads to child pornography charges”, 14 January 2009. Available at: <http://www.theguardian.com/world/2009/jan/14/child-pornography-sexting>.

23 See CRINmail 1445, 9 September 2015, available at: www.crin.org/node/41907.

24 The Vancouver Sun, “Boy, 12, and girl 13, face felony charges for ‘sexting’ nude pictures” 30 January 2010. Available at: <http://www.vancouversun.com/touch/girl+face+felony+charges+sexting+nude+pictures/2502056/story.html>.

25 Washington Post, “N.C. just prosecuted a teenage couple for making child porn - of themselves” 21 September 2015.

26 CBS, “Colorado students in sexting scandal could face felony charges”, 6 November 2015. Available at: <http://www.cbsnews.com/news/canon-city-high-school-sexting-scandal-students-could-face-felony-charges/>.

27 Sameer Hinduja and Justin Patchin, State sexting laws: A brief review of state sexting and revenge porn laws and policies, July 2015. Available at: <http://cyberbullying.org/state-sexting-laws.pdf>.

28 Criminal Defence Lawyer, “Teen sexting in Texas”. Available at: <http://www.criminaldefenselawyer.com/resources/teen-sexting-texas.htm>.

29 International Business Times, “New Mexico legalises ‘sexting’ between two consenting teens”, 27 February 2016. Available at: <http://www.ibtimes.co.uk/new-mexico-passes-law-allowing-sexting-legal-between-two-consenting-teens-1546415>.

30 CBS, “Why proposed sexting law is facing pushback in Colorado”, 31 March 2016. Available at: <http://www.cbsnews.com/news/colorado-bill-proposal-to-downgrade-sexting-to-misdemeanor-faces-pushback/>.

PART X

STATUS OFFENCES AND ACCESS TO JUSTICE

This report aims to give an overview of status offences around the world, the forms they take and the way they are enshrined in the law. Some of these offences have a long history while others have emerged more recently as technology has developed, but all status offences are a clear form of discrimination against children and should be abolished. Yet these violations of children’s rights persist and spread as States, cities and local communities take dubious inspiration from each other.

Abolishing status offences requires children’s rights advocates and children themselves to campaign and bring complaints. Great strides have already been made in combating some of these offences, whether fighting back curfews through local councils or challenging them before the highest courts. These successes point the way to realising access to justice for children affected by these violations, particularly those advocating on new and emerging forms of status offence.

To promote children’s rights in this area, we encourage children’s rights advocates to consider:

- Challenging status offences through the courts where they violate the right to non-discrimination, right to liberty or other constitutional and human rights;
- Engaging children’s ombudspersons to challenge established and newly emerging forms of status offence;
- Launching and supporting grassroots campaigns against status offences where they are developing in local communities;
- Submitting information to international human rights mechanisms to bring scrutiny to the discrimination that children face in this area;

For more information or to discuss this report please, contact us at comment@crin.org. You can also find out more about access to justice for children at www.crin.org/home/law/access.



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