



JUVENILE JUSTICE IN SIERRA LEONE **An Analysis of Legislation and Practice¹**

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INTRODUCTION

An analysis of the Juvenile Justice system in Sierra Leone must bear in mind that the country has been ravaged by a 9 year civil war, which has destroyed the structures and infrastructures that were in place before its outbreak in 1991. Furthermore, the country has suffered at the hands of corrupt and inept governments and leaders and from numerous coups and outbreaks of violence, since its independence from Britain in 1961². Consequently, although Sierra Leone has the natural resources (mineral, forestry and fishery resources) to be one of the world's wealthiest countries it languishes at the bottom of the UNDP table, graded as the least developed country on the planet³.

The consequences of this prolonged conflict for children have been severe. A large number of children have been displaced, orphaned, injured and traumatised. Children have been subjected to and have been perpetrators of terrible atrocities. Many have been abducted and forced to fight. Girls have been raped and kept as sex slaves by the rebel groups, falling pregnant and giving birth at very young ages. Unaccompanied children have arrived in large numbers in Freetown many of whom have ended up living on the streets and engaging in commercial sex work.

Although juvenile crime is not very high, it is rising and is expected to continue to rise in the aftermath of the conflict. Unfortunately the civil war has also caused the near collapse of the juvenile justice system.

This paper will examine the law and practice of Sierra Leone in the field of juvenile justice, the extent to which the system is in conformity with the international standards that the State is bound to uphold and will look at the main challenges facing the juvenile justice system.

¹ The analysis uses information obtained from reports and from the on site visit by the Children and Armed Conflict Unit in July 2000

² This is not to imply that the country was free from corruption and violence under British rule

³ UNDP Human Development Report Human Development Index (HDI)
<http://www.undp.org/hdro/HD.html>

INTERNATIONAL JUVENILE JUSTICE STANDARDS

The State has ratified all the major International Human Rights Treaties, with the exception of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, of which it is a signatory only. Most pertinent to ensuring the protection of children's rights in the juvenile justice arena is the Convention on the Rights of the Child⁴ (specifically articles 37 and 40), which Sierra Leone ratified in 1990⁵, and the supporting juvenile justice guidelines. There are three main guiding juvenile justice documents: The UN Standard Minimum Rules for the Administration of Juvenile Justice (UN Res 40/33-Beijing Rules 1985, Annex 2); The UN Rules for the Protection of Juveniles Deprived of their Liberty (UN Res 45/113 -JDLs 1990 Annex 4); The UN Guidelines for the Prevention of Juvenile Delinquency (UN Res 45/112- Riyadh Guidelines 1990 Annex 3). The Convention on the Rights of the Child (CRC) is now considered to be the umbrella under which these three documents exist, even though the Beijing Rules pre-date and provide the basis for the CRC juvenile justice provisions. The instruments supplement, expand and fill in the detail of the CRC. The Committee on the Rights of the Child evaluates the juvenile justice practices and legislation of a State in light of these instruments. Although the guidelines are soft law and are not directly binding on Sierra Leone "*together they constitute a comprehensive set of universal standards and set out desirable practices to be pursued by the world community*"⁶. Other relevant international documents are The Universal Declaration of Human Rights (UDHR) (1948) and the International Covenant for Civil and Political Rights (1966). They contain fundamental human rights principles in relation to justice that have achieved almost universal acceptance.

The inherent special needs and vulnerability of children must be taken into account in the implementation and development of laws. The primary goal of a juvenile justice system should be the rehabilitation and reintegration of the juvenile⁷.

In all actions concerning children, their best interests shall be the primary consideration. (A3 Convention on the Rights of the Child). The best interests of the child along with non-discrimination (A2), rights to survival and development (A6) and right to participation (A12) are the four general principles that should be upheld in implementing all the provisions of the Convention on the Rights of the Child.

⁴ adopted by the General Assembly of the United Nations, 20 November 1989

⁵ The Convention on the Rights of the Child is still not applicable in domestic courts. Legislation to incorporate the CRC into domestic legislation is in the process of being put through Parliament. The resolution of the Sierra Leone Bar Association (6/7/00) supports the proposed incorporation of the CRC into national law

⁶ *The UN Manual on Juvenile Justice* at 6, Crime Prevention and Criminal Justice Division, submitted pursuant to UN GA Res 45/112. In addition ECOSOC res. 1997/30 on the Administration of Juvenile Justice lays down the most recent thinking on juvenile justice.

⁷ A9 ICCPR states that the essential aim of the treatment of prisoners in the penitentiary system shall be their reformation and social rehabilitation, The CRC, A40(1), provides that children be treated in a manner consistent with the desirability of promoting the child's assuming a constructive role in society. Also see the Standard Minimum Rules for the Treatment of Prisoners (1955), Rule 58

THE JUVENILE JUSTICE SYSTEM IN SIERRA LEONE⁸

The various components of the juvenile justice system come under different Ministerial Headings. Children's welfare and protection in general is dealt with by The Ministry of Social Welfare, Gender and Children's Affairs, while the justice system itself comes under the Ministry for Justice⁹. The Chief of Justice's Offices control the appointment of court officials and magistrates in the juvenile courts.

A DISTINCT SYSTEM FOR JUVENILES

Chapter 44 - The Children and Young Persons Act (31st December 1945) (henceforth CAP 44) governs the treatment of juveniles in conflict with the law. CAP 44 applies to anyone below the age of 17¹⁰. Anyone who is 17 years or above is treated, for the purposes of criminal law, as an adult. Those who are 16 years and below fall into two categories, that of 'child' and 'young person'. A 'child' is anyone aged under 14 years. A 'young person' is aged 14 years and above but below 17 years¹¹.

CAP 44 establishes a system of juvenile justice distinct from that of adults, which has "*laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed penal law*" (A40(3) CRC).¹²

However, treating 17 year olds as adults is contrary to the Convention on the Rights of the Child, which states that for the purposes of the Convention, and therefore its juvenile justice articles (37 and 40), a child means every human being below the age of 18.¹³

The Sierra Leone delegation, at the analysis of its periodic report by the Committee on the Rights of the Child¹⁴, in 1999, stated that "*legislation on juvenile justice was in conformity with the provisions of the Convention. Children under the age of 18 were taken before a children's court*"¹⁵. However, in practice and in accordance with CAP 44, only juveniles below the age of 17 have their cases heard in the juvenile court. Those 17 or over have their case heard in the adult court and are treated as adults and

⁸ The evidence of past British rule is very evident in the law and practice in the justice system. For example the Offences Against the Persons Act 1861, a criminal statute in the UK, is still in force in Sierra Leone.

⁹ The Attorney General is also the Minister of Justice and therefore the head of the Ministry of Justice. This means that there is no separation of powers between the executive and the judiciary. For further discussion on this issue see *Food for Thought for the Proposed Constitutional Review Committee: "Should the Attorney-General Continue to Function as Minister of Justice?"* Mohamed Pa-Momo Fofanah, Research Counsel, Chambers of the Chief Justice 16/8/99

¹⁰ Some provisions of the Act can be applied to the juvenile up until his/her 18th birthday e.g. a juvenile can be committed to the Approved School until he/she is 18 years (CAP44 A26(1))

¹¹ CAP44 Part I, A2

¹² For example s.3(1) states that the hearing shall, if practicable be held in a different building or room from ordinary sittings of the court

¹³ Although A1 CRC allows a child's majority to be attained earlier under each provision "*such expression should in no way be interpreted as a general escape clause, nor should it allow ages to be established which might be contrary to the principles and provisions of the Convention*" *Manual on Human Rights Reporting* 1997, p444. It is interesting to note that in s1(3) of the Sierra Leone Citizenship Act 1973 a person shall be of full age is he has attained the age of 21. Section 31 of the 1991 Constitution stipulates the voting age as 18. Para.25 Initial report of Sierra Leone 03/06/96 CRC/C/3/Add.43

¹⁴ henceforth the 'Committee'

¹⁵ CRC/C/SR.594, 13 January 2000 (Summary records) para.35

punished as such. However, although capital punishment still exists in Sierra Leone¹⁶, section 216 of the Criminal Procedure Act prohibits the imposition of the death penalty on anyone who committed a crime whilst below the age of 18 years. This provision is in accordance with the Convention on the Rights of the Child.¹⁷ However section 216 CPA does not prohibit the imposition of life imprisonment on a juvenile, a sentence which is prohibited for juvenile offenders by the CRC.¹⁸ Instead, it specifies that the juvenile should be confined to a chosen place as may be directed by the president and for a stated period of time until a juvenile's reformation and transformation is guaranteed. This time period, however, is highly unlikely to amount to life imprisonment.¹⁹

A child or young person will also have his/her case tried in an adult court if charged jointly with an adult (s3(1)CAP44). The trial will not take into account the juvenile's age, for example the trial will not be held *in camera* - the juvenile will go through the same trial process as their adult co-defendant. However the judge will take into account the juvenile's age when passing sentence. For example, while the adult defendant might be sentenced to imprisonment in Pademba Road (the adult prison in Freetown), the juvenile defendant will be sentenced to a period in the Approved School.

In addition, juvenile courts do not have the jurisdiction to try and dispose of homicide cases²⁰ - all juveniles charged with homicide will be brought before the High Court of Sierra Leone. It is not certain what punishments the High Court may see fit to impose on juveniles found guilty of homicide because there have not been any cases of juveniles committing homicide recently, apart from those carried out in the context of the civil conflict.²¹

Due to poor birth registration in Sierra Leone, the age of the juvenile is not always certain and on occasion a determination on the age of the child will have to be undertaken before the trial can proceed in the appropriate court (s18(1)CAP44). Section 18(2)CAP44 provides that if *after* the trial it is discovered that the juvenile was 17 or above, the original trial verdict and disposition order will stand and the juvenile will not be returned for further trial at an adult court.

The Committee on the Rights of the Child consistently criticises States which treat under 18-year-olds as adults and urge that they be treated as children²² and be guaranteed the rights and protection under the CRC.

¹⁶ section 216 of the Criminal Procedure Act (1965) Act No.32 of 1965

¹⁷ *"Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below the eighteen years of age"*A37(a)

¹⁸ *ibid*

¹⁹ Information provided by Mohamed Pa-Momo Fofanah, Barrister Chambers of the Chief Justice 10th November 2000

²⁰ s7 CAP44

²¹ Information provided by Mohamed Pa-Momo Fofanah, Barrister Chambers of the Chief Justice 2nd November 2000

²² The Committee is especially critical of States' common practice of treating 16-18 year olds as adults; *"The Committee expresses its concern about the possibility of the relinquishment of the jurisdiction provided for in article 38 of the Young Persons; Protection Act which allows for young persons between 16 and 18 to be tried as adults and thereby face the imposition of a death sentence or a sentence of life imprisonment"* Belgium 10/6/95 CRC/C/15.Add.38 (Concluding Observations) and

The Committee *“is deeply concerned... the status of children between 16 and 18 who are considered by penal law as adults. Those children are examined by adult court... recommends that the criminal age be raised and that persons aged between 16 and 18 be considered as children”* (Sri Lanka 21/06/95, CRC/C/15.Add40, paras.22 and 40)

AGE OF CRIMINAL RESPONSIBILITY

Although not provided for in CAP 44 the Government, in its report to the Committee on the Rights of the Child, stated that the age of criminal responsibility was 10 and those falling below the age of 10 are deemed incapable of committing a crime and therefore do not have any criminal liability.²³

Sierra Leone had set the age of criminal responsibility at 10 years because it was thought that a child of that age was able to understand the difference between lies and the truth.²⁴ Although the Convention on the Rights of the Child states only that a State must establish a “minimum age below which children shall be presumed not to have the capacity to infringe the penal law”²⁵, in its concluding observations the Committee on the Rights of the Child expressed its concern at the low age of criminal responsibility²⁶. The Committee recommended that the State reviewed the relevant legislation and raised the age of criminal responsibility.²⁷ The Sierra Leone delegation agreed that the age of criminal responsibility was too low and said that the issue would certainly be taken into consideration when future legislation was drafted.²⁸

THE TRIAL PROCESS

THE JUVENILE COURT

The functioning and composition of the juvenile court is governed by CAP44 - Part II s.3(1). The court is presided over by one Magistrate and two Justices of the Peace who assist the Magistrate in making his decision. The Justices of the Peace are not qualified judges but are appointed from outside the judiciary by the President, on the recommendation of the Attorney General. They should have some experience in child psychology or sociology. On our visit to the juvenile court one of the Justices of Peace was a retired Minister of Welfare. CAP 44 provides that the court sit in a separate building or room from where ordinary trials take place.(s3(1))The trial is also to be held in a closed session and the privacy of the juvenile maintained (s3(5)). However the press are allowed to attend but are not permitted to publish any information that would be likely to lead to the identification of the young person or child. (s3(5))

The Juvenile court sits on Tuesday and Thursday mornings. There are presently 2 magistrates that preside over juvenile hearings. This juvenile court only sits in Freetown and does not travel to sit elsewhere.

The magistrates do not receive specialist training on children’s rights and issues and on juvenile justice. They are chosen by the Chief Justice’s Office because they have shown a particular interest or aptitude for juvenile cases.²⁹ This does not conform with Beijing Rules, Rule 22.1 which requires that all those personnel dealing with juvenile cases should receive specialised training. The Committee on the Rights of the

²³ Initial report of Sierra Leone 03/06/96 CRC/C/3/Add.43 para.33

²⁴ CRC/C/SR.594, 13 January 2000 (Summary records) para.35

²⁵ A 40(3)(a). The Beijing Rules provides more guidance - “*the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity*” (Rule 4.1), The CRC provision is echoed in The African Charter on the Rights and Welfare of the Child (OAU Doc, CAB/LEG/153/Rev2 July 1990), A17(4). The Charter is in force having received the requisite 15 ratifications A47(3)

²⁶ CRC/C/SR.593, 13 January 2000 (Summary records) para.26

²⁷ CRC/C/15 Add.116 para.29

²⁸ CRC/C/SR.593, 13 January 2000 (Summary records) para.32

²⁹ Information provided by Chief Justice Desmond Luke, during our on site visit, July 2000

Child recommended to Sierra Leone that personnel involved in juvenile justice be trained in child psychology and development and relevant human rights law.³⁰

TRIAL PROCEEDINGS - DUE PROCESS

The proceedings of the trial are governed by Sections 8-19 CAP44.

The procedural guarantees for juvenile trials are found in A40(2)(b)(i-vii) CRC³¹. These guarantees reflect the fundamental principles, contained in key international instruments, that should underpin a criminal justice system.³²

Sections 8-11 CAP 44 guarantee the fundamental right to be presumed innocent until proven guilty, a right also contained in the Convention on the Rights of the Child (A40(2)(b)(i)CRC).

RIGHT TO LEGAL COUNSEL

A juvenile is entitled to be represented in court by an advocate.(s3(5)CAP44)

While the juvenile is allowed to be legally represented in court, CAP44 does not give him/her the right to be provided with free legal assistance by the State.

A fundamental due process guarantee is the right to have legal representation and other appropriate assistance in the preparation and presentation of his/her case in court³³. The International Covenant on Civil and Political Rights³⁴ (Article 14 (3)(d)) goes further guaranteeing the right of the accused to be provided with *free* legal representation if he/she cannot afford to pay.

In practice there is a huge shortage of legal representation for juveniles. The pool of lawyers in Sierra Leone has dwindled because of the conflict. In most cases juveniles are not represented in court and certainly do not receive legal advice when they are arrested and during detention in police cells. Only the wealthier children can afford representation. The children from poorer families, who are usually in a more vulnerable position and often come from broken homes, are left without much needed representation. NGOs are only occasionally able to step in and offer free legal representation.

In addition, although only state counsels can handle prosecution in theory, due to the shortage of state counsels, police are permitted to prosecute at a magistrate's court, hearing a juvenile case, for and on behalf of the Inspector General of Police, who represents the interest of the state in suppressing crimes.³⁵

There is obviously a great need for "*expert and child-responsive legal representation and assistance for ...the juvenile offender*"³⁶. An option would be to recruit from the

³⁰ CRC/C/15/Add.116 para.93

³¹ Also see Beijing Rules, rules 7.1, 15.1

³² Art.14, International Covenant for Civil and Political Rights, Art.10,11, Universal Declaration of Human Rights.

³³ CRC A.40(2)(b)(ii), Beijing Rules, rules 17.1, 15.1 the ICCPR, Article 14 (3)(d), guarantees the right to be provided with *free* legal representation if the defendant cannot afford to pay

³⁴ Sierra Leone acceded to the ICCPR in 1996

³⁵ Information provided by Mohamed Pa-Momo Fofanah, Barrister Chambers of the Chief Justice 2nd November 2000

³⁶ *Challenges of Juvenile Justice* Mohamed Pa-Momo Fofanah, Defence for Children - Sierra Leone, 2000, p.5

law schools and encourage newly qualified lawyers to offer their services to these children.

RIGHT TO CROSS EXAMINE WITNESSES AND THE RIGHT TO BE HEARD

If the juvenile does not have counsel the court will ask the witnesses questions and are under a duty to ask the juvenile if he wishes to question the witnesses. Regardless of whether the juvenile has legal counsel he has the right to question the witnesses, if he so wishes. (s13&14 CAP44)

This is in accordance with the right to cross examine witnesses guaranteed under A40(2)(b)(iii) CRC as well as A12 which gives the child the right to be heard in judicial proceedings. Also in accordance with the A12, **s15 CAP44 allows the defendant to make any statement he may wish in his defence.**

Magistrate C.J Cole³⁷ enthused about the process of enabling juveniles to represent themselves in court. As it is unlikely that a juvenile would have legal representation in court, it is important that the juvenile at least has a chance to have a voice in court. However, it is not and should not be used as an adequate substitute for legal representation.

PARENTAL PRESENCE IN COURT

Parents and relatives are permitted to be present in the court room (s3(5) CAP44) in accordance with the right enshrined in A40(2)(b)(iii) CRC. However, parents do not always attend the court session with their children *“The... disinclination of the parents/guardians... centres on their view that the offender ought to be taught a severe lesson for an offence for which he only stands accused of”*³⁸ The absence of the parents means that they are not *“available to render other forms of assistance to their children when the court is disposed to grant one”*³⁹ leaving their child more at risk of being given a custodial sentence.

The courts can make an order to require the attendance of the parents or guardians (s17 CAP44) and impose a fine on parents or guardians that fail to attend.(s23(2) CAP44) It is felt that parents should bear responsibility for the proper upbringing of their child in line with their constitutional duties. In practice, the system of fining is used infrequently because most of the children who appear in court are street children or have been neglected or abandoned by their parents. Therefore tracing either parent is very difficult and is rarely undertaken by probation officers.⁴⁰

INTERPRETERS

The Convention on the Right of the Child contains the right to “have the free assistance of an interpreter if the child cannot understand or speak the language used” (A40(2)(b)(iv)CRC).

³⁷ presiding in the juvenile proceedings that Children and Armed Conflict Unit representatives attended, July 2000

³⁸ *Challenges of Juvenile Justice* Mohamed Pa-Momo Fofanah, Defence for Children - Sierra Leone, 2000, p.3

³⁹ *Challenges of Juvenile Justice* Mohamed Pa-Momo Fofanah, Defence for Children - Sierra Leone, 2000, p.3

⁴⁰ Information provided by Mohamed Pa-Momo Fofanah, Barrister Chambers of the Chief Justice 10th November 2000

The official language of the court is English. However many defendants and witnesses only speak Krio (the lingua franca of Sierra Leone). Owing to the lack of official interpreters, the juvenile court Magistrates often allow Krio to be used when the court and the lawyers communicate with the witnesses and defendants, when dealing with issues of fact and when announcing the charge to the defendant.⁴¹

RIGHT TO APPEAL

The right to appeal, as demanded by the CRC (A40(2)(b)(v))⁴², is provided for in Part VII s41 CAP 44.

At the close of the trial in the Magistrate's court, the juvenile is supposed to be informed of his right to appeal and the process of appeal. However this information is not always conveyed. An appeal is heard in the High Court. The judge hearing the appeal in the High Court can choose to sit alone or with two Assessors⁴³. The Assessors have the same function as the Justice's of Peace in the Magistrates court - they give their opinions on the case to the Judge but he is not bound by them. The appellant can further appeal to the Court of Appeal and then to the Supreme Court, if the situation so warrants and if the juvenile is able to afford it.⁴⁴

RIGHT TO HAVE THE MATTER DETERMINED WITHOUT DELAY

The CRC, obligates State Parties to ensure that the matter is determined without delay by a competent, independent and impartial authority or judicial body.
(A40(2)(b)(iii)CRC)

The Sierra Leone delegation in its session with the Committee admitted that one of the gaps in the judicial process is that minors are not always tried as quickly as they should be.⁴⁵ Defence for Children International agree that the main problem with the system is the slow progress of proceedings. This is put down to a number of factors: *"institutional constraints faced by the entire juvenile justice machinery added to the lack of care shown by parents/guardians in the welfare of offenders during or after trial, and significantly too the way and manner in which complaints, principal witnesses and certain officers of the court treat court proceedings. Complainants and/or other principal witnesses stay away or irregularly attend court sittings even when subpoenaed to do so"*⁴⁶

This is not only frustrating for all those involved who must waste valuable time because of frequent adjournments, but potentially damaging for the juvenile who faces these delays detained in the Remand Home.

Adjournments also frequently occur because the juvenile held at the Remand Home fails to attend the court session. Certain failings of the juvenile justice system can be put down to the severe lack of resources. In this case the cash strapped Ministry of

⁴¹ Information on interpreters provided by Mohamed Pa-Momo Fofanah, Barrister Chambers of the Chief Justice 2nd November 2000

⁴² and by Art.14(5)ICCPR

⁴³ unless the juvenile had been charged jointly with an adult. In that case the judge must sit alone.

⁴⁴ Information provided by Mohamed Pa-Momo Fofanah, Barrister Chambers of the Chief Justice 2nd November 2000

⁴⁵ CRC/C/SR.593, 13 January 2000 (Summary records) para.20

⁴⁶ *Challenges of Juvenile Justice* Mohamed Pa-Momo Fofanah, Defence for Children - Sierra Leone, 2000, p.3

Welfare is responsible for transporting the children from the Remand Home to the court for their trial. Recognising the damage done to juveniles whose trials were being delayed in this way, Unicef donated 3 vehicles to the Ministry on the understanding that one of the vehicles would be used to transport the juveniles to and from court on Tuesday and Thursday mornings. Unfortunately the Magistrate and the Remand Home complained that the vehicle rarely turns up, forcing the Magistrate to adjourn the trial.

For those juveniles languishing in the Remand Home for extended periods, their right under the Convention, which states that detention shall be for the shortest appropriate period of time (A37(b) CRC)⁴⁷, is being violated. At the time of visiting the Remand Home we met one juvenile who had been awaiting trial for 6 months, for the theft of a pair of sandals.⁴⁸

PRACTICE IN THE PROVINCES

CAP 44 provides that a juvenile court can be set up in any Judicial District. (s.4)

Magistrates have to be available to preside over juvenile courts. At the present time Magistrates are only present in Bo, Lungi and Kenema (provinces in Sierra Leone).

Although criminal matters involving juvenile offenders are strictly the domain of the magistrates courts (sitting as juvenile courts) and must be transferred to them whenever they arise⁴⁹, oral reports from Unicef⁵⁰ suggest that in the provinces customary law is used to solve disputes involving juvenile crime⁵¹. This is not surprising considering that in many areas there is no police presence let alone access to magistrates who can hear such cases. However, it is also the case that where judicial authorities are present, the community find it preferable to deal with their delinquent juveniles outside the court system. It is believed that in Bo, Lungi and Kenema few juveniles are brought before the juvenile court for this reason.⁵²

In most cases the parties will try to resolve the dispute themselves. However if they fail to do so they will bring the matter before the Chief of the village to be determined. Where a child has been committing crime or causing mischief corporal punishment, usually flogging, is frequently administered to the child. The imposition of flogging is justified because customary law takes a serious view of juvenile crime and it is believed that physical punishment keeps juvenile delinquents under control and deters them from future crimes.⁵³ The parents may also be asked to pay a fine.⁵⁴ Often the child will run away to avoid punishment. If this happens then the matter is not pursued any further.⁵⁵

⁴⁷ The Beijing Rules specifically state that detention pending trial shall be for the shortest period of time, Rule 13.1

⁴⁸ Information provided by the Leonet Street Children Project, July 2000

⁴⁹ Information provided by Mohamed Pa-Momo Fofanah, Barrister Chambers of the Chief Justice 22nd August 2000

⁵⁰ Information on corporal punishment provided by Unicef, July 2000

⁵¹ This customary law differs from place to place and tribe to tribe. Information on corporal punishment provided by Unicef, July 2000

⁵² Information provided by Mohamed Pa-Momo Fofanah, Barrister Chambers of the Chief Justice 2nd November 2000

⁵³ Information provided by Mohamed Pa-Momo Fofanah, Barrister Chambers of the Chief Justice 2nd November 2000

⁵⁴ Information on corporal punishment provided by Unicef, July 2000

⁵⁵ Information on corporal punishment provided by Unicef, July 2000

In areas controlled by militiamen, children caught for alleged criminal activities are ‘militarily’ punished. The militiamen mete out harsh punishments, frequently severe beatings.

DISPOSITIONS

SENTENCING

If the court finds the juvenile guilty of the offence then the court shall obtain background information on the juvenile to enable it to decide on the best way to deal with the juvenile.(CAP44 s16)

The Beijing Rules lay down guidelines and principles for adjudication and disposition. (Rule17). The reaction shall always be proportionate not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of society.(Rule 17.1(a)) The well being of the juvenile shall be the guiding factor in any decision. (Rule 17.1(d))

Under Sierra Leone law, there are number of ways in which the Magistrate can dispose of the juvenile:

IMPRISONMENT

“No child shall be sentenced to imprisonment”(CAP44 s24(1)). While a child (under 14) cannot be sent to an adult prison, a young person (aged 14-17) can be so dealt with where “the court considers that none of the other methods in which the case may be legally dealt with by the provisions of this or any other Ordinance is suitable”.(CAP44 s24(2)) However “a young person sentenced to imprisonment shall, so far as circumstances permit, not be allowed to associate with adult prisoners.” (CAP 44 s24(3))

Imprisonment is the locking up of a juvenile in an adult detention centre. The main adult detention facility is Pademba Road Prison in Freetown, in which many of the captured rebels are being held. The approved school does not fall under this use of the word ‘imprisonment’ even though the juveniles detained there are not free to leave.

CAP 44 provides that juveniles be separated from adults in adult institutions but *only* so far as circumstances permit⁵⁶. The language should be made stronger to ensure that the young person does not mix with adults. In its present form the legislation does not fully conform to the CRC or the Beijing Rules, the former prescribing that mixing should only occur if it is in the juvenile’s best interests, the latter prohibiting any such association.⁵⁷

Two NGOs working in Sierra Leone, Prison Watch and GOAL, provided anecdotal evidence to us about children being detained in Pademba Road Prison with adults. However, as access to Pademba road is not permitted, no organisation has been able to document how many juveniles are being held there. The evidence comes from those who have been detained and released from Pademba Road Prison, including from juveniles. It must be noted that in our meeting with the Attorney General of Sierra Leone (Solomon Berewa), he categorically denied that juveniles were being held in Pademba road - if any juveniles were detained there he would have had to sign the paperwork to allow this and he said that he had not signed any such paperwork.

⁵⁶ The Committee expressed its concern regarding the legislation, CRC/C/15/Add.116 para.90

⁵⁷ A37(c) and Rule26.3 respectively, also see ICCPR A10(3)

DEPRIVATION OF LIBERTY

A child or young person can be sentenced to an approved school (s26 CAP44).

According to The Beijing Rules “[d]eprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in community other serious offences and unless there is no other appropriate response” (Beijing Rule 17.1.c). However juveniles are often detained for relatively minor crimes. For example 4 street children were sentenced to the approved school for 3 years for the theft of a goat. It seemed that the punishment given was very harsh because they had stolen from a government official. The 4 boys were being accommodated in the approved school when we visited in July 2000.

APPROVED SCHOOL ORDER

A Magistrate has the power to commit both a child and a young person to the custody of an approved school until he reaches 18 (CAP44 s26(1)) or for any lesser period which has to be greater than 2 years (s26(2)). If the young person is over 16 at the time the order is made he will only be committed until he is 18. Under this order a child of 10 could be committed to up to 8 years in the approved school. The magistrate only has the power to make this order if the offence proved is one punishable by imprisonment in the case of an adult.(s26(1))

The Rule II (11) JDL defines deprivation of liberty as “*any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.*” The approved school certainly falls into that category of deprivation of liberty and while it is an alternative to adult prisons it should still only be used as a last resort and for the minimum period possible⁵⁸.

ALTERNATIVES TO DEPRIVATION OF LIBERTY

- **“Discharge the child or young person without making an order” (s25(a))**
- **“ Order the child or young person to be repatriated at the expense of Government to his home or district of origin.” (s25(b))**
- **“Order the child or young person to be handed over to the care of a fit person or institution named in the order, such person or institution being ready to undertake such care.”(s25(c))⁵⁹**
- **Place him for a specified period, not exceeding three years, under the supervision of a probation officer (s20)**
- **In certain instances a fine, in conjunction with another punishment or standing alone, may be imposed. However if the offender is a child (under 14 years) then the parents will be ordered to pay. If the offender is a young person (14-17 years) then it is within the discretion of the court to decide whether the parents or the young person will be ordered to pay. (s23(1)).**

In practice it is the NGO community which provide the alternative institutions specified in s25(c). At the present time Defence for Children-Sierra Leone

⁵⁸ CRC A37(b), The Committee recommended that detention be used as a last resort “*particularly given the prevailing conditions in national detention facilities.*” CRC/C/15/Add. 6 para.91

⁵⁹ Alternative punishments under s25 can only be made where the offence is neither homicide nor an offence punishable with imprisonment exceeding 7 years

collaborates with the Don Bosco Home - a children's home in Freetown - to provide the Home as an alternative to the approved school for juvenile offenders.

While CAP44 provides for a number of alternatives to depriving the juvenile of his/her liberty, the provisions do not provide the full range and variety that the CRC demands⁶⁰. In addition, the frequency with which these other orders are used as opposed to depriving the juvenile of his/her liberty is unclear. The Committee on the Rights of the Child recommended that the State strengthen and make use of alternatives to imprisonment.⁶¹

PROBATION OFFICERS

In instances other than where a child or juvenile is charged with homicide or an offence punishable with imprisonment of more than a 7 year term, the court can order the child or young person under the care of a Probation Officer.⁶² The Probation Officers come under the Ministry for Social Welfare, Gender and Children. A probation officer, when acting under a probation order, shall be subject to the control of the courts for the district for which he is appointed.(CAP44 s20(1)). The Probation Officer's role is to see that the juvenile observes the conditions of his recognisance and to assist the juvenile in all aspects of life including helping him to find a job. (CAP44 s20(5)).

In practice, probation officers do not effectively carry out their duties. *"Probation officers lack incentives and working logistics to handle the increasing delinquent situation in Sierra Leone"*⁶³. They do not have adequate training in or knowledge of child psychology, sociology or welfare and lack mobility to follow up cases (i.e. they are not provided with the use of motorcycles or cars). In addition they are poorly paid. These factors *"seem to weaken any interest that they may have in general child welfare."*⁶⁴ In court, they usually do little more than make their presence known.

CORPORAL PUNISHMENT

The administering of corporal punishment is provided for in The Corporal Punishment Act of CAP 41 (Laws of Sierra Leone). A juvenile convicted of a crime can be sentenced to corporal punishment. Corporal punishment may be administered to juveniles in lieu of any other punishments and not in addition thereto. However Section 8 limits the number of strokes that can be administered to juveniles (whether for single or joint offences) to not more than 12 strokes for every conviction in any case. Only canes or birch rods should be used on juveniles and only on their buttocks. The juveniles should be medically examined to see if they are fit before such punishment is inflicted.⁶⁵

⁶⁰ A40(4) *"A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence."*

⁶¹ CRC/C/15/Add. 116 para.91

⁶² CAP 44 Articles 20(2) 20(3)

⁶³ Personal correspondence, Mohamed Pa-Momo Fofanah, Barrister Chambers of the Chief Justice 2nd November 2000

⁶⁴ Personal correspondence, Mohamed Pa-Momo Fofanah, Barrister Chambers of the Chief Justice 2nd November 2000

⁶⁵ Information provided by Mohamed Pa-Momo Fofannah, Chief of Justice Chambers (personal correspondence, 23/8/00)

Corporal punishment is against article 37(a) of the CRC⁶⁶ as it constitutes a cruel and degrading punishment.⁶⁷ In light of this, the Committee on the Rights of the Child urged the State party to take legislative and educative measures to prohibit the use of corporal punishment by the courts.⁶⁸

Section 7 (CAP 41) excludes the sentence of corporal punishment on all females⁶⁹. While the Committee was encouraged by the exclusion of girls from the application by domestic courts of corporal punishment sentences, the Committee nevertheless considered this provision to be discriminatory between boys and girls⁷⁰ and urged the State party to extend the prohibition of State sanctioned corporal punishment to boys.⁷¹

Generally, corporal punishment is very rarely used.⁷² Magistrate C.J.Cole presiding in the juvenile court that we visited, said that he had only sentenced one juvenile to corporal punishment recently.

DIVERSION

Whenever appropriate and desirable, measures for dealing with children who come into conflict with the law without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected, should be taken.⁷³ However there does not appear to be an alternative, with the exception of release without charge, that the police can employ to prevent a juvenile being subjected to a formal trial.

Police should have the power to dispose of cases⁷⁴ and need to be provided with a range of suitable options. The simplest form of diversion is a police caution. Other forms of diversionary measures could be community programmes such as temporary supervision and guidance, restitution, and compensation for victims. For diversionary measures to be successful there needs to be co-ordination of the police, the court system, social services and the parents. These alternatives also need to respect the juvenile's basic rights and safeguards need to be in place to ensure that the juvenile is fairly treated.⁷⁵

Lack of resources makes the establishment of such schemes difficult. The police need to receive the requisite training in how best to deal with juveniles for the system to

⁶⁶ as well as A19 which protects children from all forms of physical and mental violence. Corporal punishment is also prohibited under Rule 17.3 Beijing Rules, Rule 67 JDLs

⁶⁷ The Human Rights Committee has stated in its General Comment (20, HRI/GEN/Rev.2, p30) that the prohibition on torture and cruel, inhuman or degrading treatment or punishment must extend to corporal punishment, including excessive chastisement ordered as a punishment for a crime (or as an educative or disciplinary measure). They emphasised this in regard to children.

⁶⁸ CRC/C/15/Add. 116 para.36

⁶⁹ as well as for persons sentenced to death and persons over 45

⁷⁰ CRC/C/15/Add. 116 para.34

⁷¹ CRC/C/15/Add. 116 para.35

⁷² Information provided by Mohamed Pa-Momo Fofannah, Chief of Justice Chambers (personal correspondence, 23/8/00)

⁷³ A40(3)(b) CRC

⁷⁴ Beijing Rules Rule 11.2

⁷⁵ See the conditions laid down in the Beijing Rules Rule 11.1

function effectively. Local NGOs in Sierra Leone could run programmes providing diversionary measures with the support of public social services and the court.

APPROVED SCHOOL AND REMAND HOME in detail

At the present time there is one Remand Home and one Approved School in Sierra Leone. These facilities are both in the capital, Freetown. In the provinces there are no separate juvenile facilities and children are detained with adults.⁷⁶

The **Approved School** was established after World War 2. Its aim was to reform and transform juvenile delinquents into functioning members of society by giving them skill training programmes - carpentry, tailoring, masonry, and by giving them education in a formal primary school.

CAP 44 gives little guidance on the **Remand Home**. The juvenile will come before a magistrate from the police station and the juvenile will either be released on bail or sent to the Remand Home to await trial. This is supposed to be for a very short period of time but can be for quite long periods due to the logistics of getting the juveniles to the court house for trial.

In a Prison Watch report⁷⁷ it is stated that the Remand Home was built as a reformatory school for juvenile delinquents. *“Today this traditional function seems to be only effective on paper as it has become a mere dumping ground for delinquent children”*.⁷⁸ During our on site visit to the Remand Home we met a girl who was being detained for reformation, having been sent there by her mother claiming that she was arrogant and would not take parental orders⁷⁹.

Facilities in the Approved School and Remand Home

During the January 1999 invasion of Freetown by the RUF, all the basic facilities in the two institutions were vandalised. Due to the conflict, the **Approved School** is now in the midst of an IDP camp which has sprung up around it. At the time of our visit there were 15 boys being accommodated there. The Ministry of Social Welfare recently provided mattresses and blankets but all other facilities are lacking. The Approved School consists of 2 dormitories and an office which is separate. During our visit we saw that the boys are fenced in and there is no real space for recreational activities.

We were told by the staff at the Approved School that the initial aim of the institution was corrective and the children used to attend school, receive counselling and attend vocational training programmes. However the provisions of these services has been eroded over the years because of the conflict, and the Approved School now has little resources and consequently no ability to resume such programmes.

During our visit to the **Remand Home**⁸⁰ we saw that conditions were worse than at the Approved School. The Remand Home is lacking school facilities, recreation and proper welfare facilities and lacking in even the most basic of facilities. The Ministry

⁷⁶ There was a Remand Home cum Approved School in Bo but it is not longer functional.

⁷⁷ Prison Watch Report 1998, Sierra Leone.

⁷⁸ Prison Watch Report 1998, Sierra Leone.

⁷⁹ Information obtained from the Remand Home staff during an on site visit, July 2000

⁸⁰ Information obtained from the Remand Home staff during an on site visit, July 2000

of Social Welfare did recently provide blankets. However we were told by the staff at the Remand Home that the regular supply of food has stopped because the Ministry has not paid the suppliers. We saw that the structures have had makeshift repairs but the kitchen did not have sufficient equipment or protection from the elements.

There is capacity for about 50 children, boys and girls, at the Remand Home and in the past the home has accommodated children under 10. At the moment there are only 6 juveniles being detained there, all over 10 years. As the security is not very good at the Remand Home (it is quite easy to escape judging by the high rate of breakouts) the children are kept locked in their rooms all day until the staff believe that they are trustworthy enough to be let out into the yard. The children are locked up all night but there are no buckets for them to go to the toilet and in the morning, as the children have had to relieve themselves on the floor or in their bedclothes, the cell has to be disinfected. (The Ministry provides the disinfectant).⁸¹

Most of the children have little contact with their families⁸². In fact most are either street children or unaccompanied. In addition the children have no access to the outside world⁸³.

Where a child is deprived of his or her liberty it should be effected in circumstances which ensure respect for the human rights of juveniles. (JDLs II(12)) However, in our opinion, the 2 institutions quite clearly fall below acceptable standards in their maintenance and operation. The Committee expressed its concern at the very poor conditions in the detention facilities.⁸⁴ Under international standards where a child is detained, *“the place of detention should be equipped with facilities to guarantee meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society”*. JDL II(12). However, in our opinion, neither the Remand Home or the Approved School has the capacity to give the children meaningful activities and provide adequately for their mental, physical and developmental needs.

MAINTAINING DISCIPLINE

In the Approved School corporal punishment is not administered as a punishment but in the Remand Home it is used to maintain discipline⁸⁵. Under national law, corporal punishment can only be administered if pursuant to an order or a judgment of the court.⁸⁶ Under international law and standards, in addition to the prohibition of corporal punishment in general under the CRC (including A19), the JDLs states that *“all disciplinary measures constituting cruel, inhuman and degrading treatment shall be strictly prohibited, including corporal punishment”*⁸⁷ when the child is deprived of his liberty. Therefore the practice in the Remand Home violates national and international law.

⁸¹ Information obtained from the Remand Home staff during an on site visit, July 2000

⁸² The right to have contact with family members is enshrined in A37(c) CRC

⁸³ The JDLs provide that contact with family and the outside world is essential for juvenile detainees (Rule J 59-61)

⁸⁴ CRC/C/15. Add.116 para.90

⁸⁵ Information obtained from Approved School and Remand Home staff during on site visits July 2000

⁸⁶ The Corporal Punishment Act of CAP 41 (Laws of Sierra Leone)

⁸⁷ JDL Rule L.67

In the Approved School the Matron said that corporal punishment was not administered. However denial of a meal is often used as a disciplinary measure. This goes against the JDL guidelines - *“The reduction of diet...should be prohibited for any purpose”*⁸⁸ The Remand Home also uses ½ rations as a form of punishment.

The Remand Home staff also separate the children and lock them up by themselves as a punishment. This again goes against JDL Rule L.67 *“All disciplinary measures and procedures constituting cruel, inhuman and degrading treatment shall be strictly prohibited, including... closed or solitary confinement, or any other punishment that may compromise the physical and mental health of the juvenile concerned.”*

In the Approved School the punishment can take the form of extra chores, like scrubbing and doing the laundry for others. However *“labour should always be viewed as an educational tool and as a means of promoting self respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction.”*(JDL L.67)

Having said this at least in Freetown these separate institutions exist and consequently children are rarely detained with adults. In the provinces police stations do not always exist let alone institutions to enable the separation of children and adults at any level of the judicial process. Where police stations do exist in the provinces, the child offenders often have to share cells with adults in unfavourable conditions and for prolonged periods.⁸⁹

POLICE

*“The conflict has had a devastating impact on the capacity of... the police force to carry out their responsibilities for law enforcement.”*⁹⁰

There are between 8,000 - 10,000 police in the Sierra Leone police force.

The police force are in a process of repair, restructuring and retraining. A new Code of Conduct is being compiled for 2000. However the Code has little reference to the obligations of police towards juveniles. CIVPOL acting under the UN mandate⁹¹ has been training the police on 3 week training courses⁹². These are only for literate junior officers at the moment⁹³. 4 hours are set aside for training in Human Rights, one hour of which is dedicated to training on vulnerable groups. Children’s rights are taught under this heading. CIVPOL have also been holding workshops and seminars for the senior officers on specific topics but none yet have focussed on children’s issues.

Main Challenges

LACK OF RESOURCES

⁸⁸ JDL Rule L.67

⁸⁹ *Challenges of Juvenile Justice* Mohamed Pa-Momo Fofanah, DCI Sierra Leone 2000, at 3

⁹⁰ *Sierra Leone: Bringing Impunity to an End* Amnesty International, 2000

⁹¹ Resolution 1270 (1999) Adopted by the Security Council at its 4054th meeting on 22 October 1999, para.23

⁹² They have so far trained 1300 officers, as of July 2000.

⁹³ The course will have to be tailored for the illiterate officers. Illiteracy among the police poses problems of its own which need to be addressed to improve the efficiency of reporting in the police force.

As with other infrastructures in Sierra Leone the police force has a huge lack of resources. A large number of police stations have been destroyed at some point during the 9 years of conflict, many around Freetown being destroyed or damaged during the rebel attack on Freetown in January 1999. Where police stations do exist many have been badly damaged and those that are functioning lack facilities. At a basic level the police lack paper and pens to make records. Most police stations lack a telephone and vehicles to pick up and transport offenders. Many areas 'up county' do not have any police presence due to rebel activity.

Many of the problems that the police face and the violations of children's rights that exist among the police can be put down to the lack of resources. For example, many police stations simply do not have the capacity to be able to separate juveniles from adults when the police make the arrests⁹⁴.

CORRUPTION

It is a well known fact that in the past, during the era of one-party rule up until the time of multi-party rule, police corruption was rife. It seems that the present police reform, being carried out by the expatriate leadership of Inspector General Keith Biddle, has been somewhat successful in tackling the issue of corruption⁹⁵. The fact that senior police officers, who were previously safe from investigation and prosecution, can be and are being tried for involvement with criminal activities in the same way as their junior officers has proved to be an important development in stamping out corruption.

However, we were told by a number of local and international NGOs, during our visit to Sierra Leone, that corruption has in no way been eradicated. To supplement their meagre salaries (\$30-\$35 per month) a proportion of police officers still engage in extortion and other illegal activities. There were reports⁹⁶ that police regularly extort money from child sex workers or will arrest them and ask them for sex in lieu of payment. There have also been reports⁹⁷ of the police getting child sex workers to sell drugs for them. In addition, children from more well off families, if arrested, rarely come before a court, because their parents are able to pay the police off in return for release of their child.

The Commonwealth Police Team have also been tackling the other consequences of bad pay - poor morale and the lack of enthusiasm to do a good job - by providing new uniforms and much needed equipment and by renovating police stations.

LACK OF AWARENESS/ TRAINING IN CHILDREN'S ISSUES

While certain failings to uphold international children's rights and standards can be attributed to the lack of resources and the present situation in the country, other failings cannot and should not be so attributed. The police are not only failing to abide by international standards but they persistently flout the standards set by the Sierra

⁹⁴ It must be noted that it is the duty of the Commissioner of Police to make arrangements for preventing, as far as practicable, a child or young person while in custody, from associating with adults, charged with offences (s6CAP44). In addition Force Standing Orders 52(iii) provides for the separation of adults and juveniles

⁹⁵ Information provided by Mohamed Pa-Momo Fofanah, Barrister Chambers of the Chief Justice 2nd November 2000

⁹⁶ Oral report from local NGO, July 2000

⁹⁷ Oral report from local NGO, July 2000

Leone administration relating to children that should be upheld regardless of the lack of resources.

For example, under Section 10 Criminal Procedure Act (1965), all arrested persons shall be brought as soon as possible before the court within the local limits of whose jurisdiction any such person was arrested⁹⁸ or be released without charge. 48 hours is the maximum duration a detainee can be kept at the police station unless circumstances make it impossible to bring him/her before the court within that time.⁹⁹ A juvenile therefore should be brought before a juvenile magistrate within 48 hours¹⁰⁰, released on bail or released without charge. However this rule is frequently ignored. In one case a girl accused of theft was kept in a police station for 2 weeks without charge while the property she had stolen was returned. In another case, a boy, who was found at Foday Sankoh's (the ex-RUF leader) house when it was raided was being kept in 'open detention' at a police station in Freetown because he is a material witness, despite the fact that his parents had been located and wanted him home.¹⁰¹

Police need to be sensitised on children's issues - both on their duties under Sierra Leone law and international law.

Police need training in how to deal with all children, including in how to deal with the vulnerable children, currently ending up at the police stations. The conflict has displaced many 1000s of people and children often get separated from their parents on route to the major cities, or get lost when they are in the cities.

The Committee on the Rights of the Child, in their analysis sessions with the Sierra Leone Government, asked whether law enforcement officials get special training in how to deal with children in particularly sensitive situations such as cases of sexual abuse.¹⁰² The Committee suggested that such training in how to deal with sexual offences should be introduced for police officers and other law enforcement officials.¹⁰³ Any training that is given to the police on this issue needs to take into account that the police have to deal with both children who are victims and children who are perpetrators of sexual crimes.

The police need a good referral system available to them when children come into the police station so that, if appropriate, children can be placed or put in touch with organisations who can best cater to their needs. However, even with a good referral system in place the police do not have a phone which would enable them to contact the relevant organisations! It is therefore imperative that police are encouraged to work with the NGOs that monitor the police stations on a daily basis and who can offer alternatives to charging and detaining the child. For example, the Leonet Street Children Project currently monitors police stations in the Western Area of Freetown.

⁹⁸ Refresher Course Notes, Police Training School, Hastings, Sierra Leone Police, p28

⁹⁹ *ibid*

¹⁰⁰ However this time limit is hard to respect as the juvenile magistrate court only sits on Tuesday and Thursday. Consequently those juveniles who are arrested on Friday will have to wait until Tuesday to have their case heard.

¹⁰¹ Information provided by The Leonet Street Children Project, July 2000

¹⁰² CRC/C/SR.594, 13 January 2000 (Summary records) para.8

¹⁰³ CRC/C/SR.594, 13 January 2000 (Summary records) para.62

The attitude of the police to the work of this NGO varies from station to station. However the Community Relations Department are supportive of their work

The Community Relations Department, in the Sierra Leone Police Force, recognises the need to make the police force more child sensitive and are planning, in the long term, that each police station will have at least one police officer specialised in juvenile matters to handle child offenders and child victims¹⁰⁴. The Officer in charge at the police station will also need specific training on children's issues as he/she is the key decision maker in the station and will need to ultimately decide on how to handle the juvenile. These specialised police officers or units would also be invaluable in improving the prevention and control of juvenile crime as well as in handling juvenile offenders and victims.¹⁰⁵

VULNERABLE GROUPS

DEPRIVATION OF LIBERTY FOR CHILDREN IN NEED OF PROTECTION

The Beijing Rules provide that “[d]eprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response” (Beijing Rule 17.1.c.) However, in Sierra Leone juveniles can be detained when they are neither a danger to society nor convicted of a crime:

‘Children and Young Persons in Need of Care and Protection’ are provided for in Part IV of CAP 44. Section 27 lays down that a child or young person; found begging or receiving alms (27(1)(a)), found wandering and not having any home or viable means of subsistence and not having someone who can care for them properly (parent or guardian) (27(1)(b)), falling into bad associations, or exposed to moral danger, or beyond control (27(1)(c)), found destitute (27(1)(d)), is under the care of a parent or guardian of criminal or drunken habits (27(1)(e)), frequents the company of any reputed thief or common or reputed prostitute (27(1)(f)), being persistently ill-treated or neglected by his parent or guardian (27(1)(g)) or residing in a house used by a prostitute of for prostitution and or living in an environment where the child may go into prostitution (27(1)(h)), can be, on an order from the magistrate, sent to an Approved School. The magistrate can also commit him to the care of any fit person or any institution willing to take care of him until he reaches 18 or for any shorter period of time. In the case of a girl she can be committed to the care of a person or institution until the age of 21.¹⁰⁶ A child or young person can also be committed to an Approved School¹⁰⁷ if their parent or guardian brings them before the court and proves they are unable to control the juvenile. (CAP 44 s28)¹⁰⁸

The magistrate faces the very real dilemma of detaining a juvenile who has committed no crime or allowing him/her to return to a potentially very damaging environment.

¹⁰⁴ This would be in conformity with Beijing Rules, Rule 12.1 “in order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained”.

¹⁰⁵ Recognised in the commentary on Rule 12, Beijing Rules

¹⁰⁶ Or the magistrate can order that his parent/guardian take better care of him s27(1)(iii). Or he/she can be placed under the supervision of a probation officer s27(1)(iv)

¹⁰⁷ The Remand Home can act as an institution that the child can be committed to until he/she reaches 18.

¹⁰⁸ The Magistrate can also place them under the supervision of a probation officer or may place him or her under the care of a fit person

There are few other appropriate and functioning alternatives available to him. It can be argued that, unfortunately, as there is little alternative left open to the magistrate it is in the best interests of the child (A3CRC) to remove them from their current environment, even if they are placed in the poor conditions of the approved school and that it may even be crucial to their survival and development (A6CRC) that they are so dealt with.

However “[t]he Committee has noted that it does not accept that deprivation of liberty should be used for children in need of protection.”¹⁰⁹ It has frequently criticised the use of any form of detention for children who have committed no crime but have simply been abandoned or mistreated¹¹⁰ or are beyond parental control¹¹¹, especially in cases where such detention could take place among convicted offenders. The fact that the a child or young person can be sent to an approved school, when he has not committed a crime, where he will mix with juvenile offenders, is highly concerning. This practice also contravenes international law and standards.¹¹²

There is a huge gap in the provision of facilities and services for children in need of protection, which needs to be addressed as a matter of urgency.

COMMERCIAL SEX WORKERS

The issue of child commercial sex workers poses a particular problem in relation to juvenile justice and their relationship with the police.

LAW

Under the Prevention of Cruelty to Children Act (CAP31, Law of Sierra Leone, 1960 Vol. 1) it is an offence of strict liability to have sexual intercourse or attempt to have sexual intercourse with a girl below the age of 14(s6&7). However, this is academic in areas where customary law is practised¹¹³ and there is no minimum age of marriage.

The Protection of Women and Girls Act (1960, laws of Sierra Leone) (s2) provides that it is an offence to procure or attempt to procure any girl or woman under 21. However, if the person who procures the girl for another person can prove that the girl is a common prostitute or of known immoral character at the time of the offence then he/she will be acquitted.

This leads to the unfortunate situation where it is not unlawful to **procure** a girl as young as 10 for sex for someone else if she is a “*common prostitute or of known immoral character*”.

Of great concern is that a person accused of trafficking children for commercial sex purposes within or outside Sierra Leone, can also use this defence. This law leaves children, who peddle their bodies, very vulnerable to being targeted by child traffickers. To provide these children with greater protection the phrase “*not being a common prostitute or of known immoral character*” needs to be removed from the relevant provision prohibiting the procuring of girls. It has been suggested that this amendment should also include the lowering of age for procuring girls and women to

¹⁰⁹ *Implementation Handbook for the Convention on the Rights of the Child* Rachel Hodgkin and Peter Newell, Unicef 1998, p499

¹¹⁰ Chile, Summary Records CRC/C/SR.148, see paras.34-35

¹¹¹ Nigeria, CRC/C/15/Add.61 para.21

¹¹² ICCPR A10(2)(a), JDLs Rule 17 “*Untried detainees should be separated from convicted juveniles*”

¹¹³ CRC/C/15/Add. 116 para. 31

18 because a woman above that age is capable of giving the necessary consent to prostitute herself.¹¹⁴

It is in the best interests of the child to prohibit children from engaging in prostitution and protect them from sexual abuse and violence, in accordance with A19 (CRC). Prosecuting persons who entice girls to sell their bodies is therefore very important. However the children that do engage in prostitution should not be criminalised or liable to punishment under Sierra Leone law.

PRACTICE

The conflict has been characterised by mass abductions of children for recruitment into the armed groups to fight and to be sex slaves for the fighters. Many of the girls have returned to the city during the lull in fighting, many of whom are living on the streets. Many have children, who they gave birth to in the bush, having been made pregnant by their captors. The schemes in place to help these girls are limited and often their own community rejects them. They have little option but to turn to the streets and to prostitution to survive.

*“Estimates of the number of women working as commercial sex workers in Freetown vary considerably. The difficulty in assessing accurate numbers is compounded by the presence of a curfew each night and continuous harassment of the women by law enforcement agencies, which causes movement to different areas around the city...it is clear that increasing numbers of young girls are finding their way into the trade, particularly as a result of their treatment at the hands of rebels during the country’s civil war.”*¹¹⁵ However not all the girls engaged in commercial sex work are ex abductees or have suffered at the hands of rebels.

Defence for Children International estimate that 63% of women involved in the commercial sex trade are aged between 12 and 20 years.¹¹⁶ These women and children are among the most marginalised in Sierra Leonean society and among the most vulnerable.¹¹⁷ The majority take drugs of some form and do not have access either to education or to health care. GOAL have been testing girls for sexually transmitted diseases but have not tested for HIV/AIDS. There is no testing for HIV/AIDS being carried out in general in Sierra Leone because there is a feeling that as there is no medical help available, there is little point in testing for the disease.¹¹⁸

The girls are vulnerable to physical assault - sexual and violent. Girls are often beaten by the police, customers and the public. Most of the cases go unreported because the girls do not feel that their complaint will be taken seriously by the police. Sex workers are not seen as having any rights and in some cases the girls face further abuse by reporting the incident to the police. GOAL identified the need to educate Law Enforcement Agencies, community leaders, community social workers and the child

¹¹⁴ Amendments proposed by Mohamed Pa-Momo Fofanah

¹¹⁵ Relief of Commercial Sex Workers (Freetown, Sierra Leone), Project Proposal prepared by GOAL (NGO in Sierra Leone), p.4

¹¹⁶ *Juvenile Justice in Sierra Leone: What Hopes for the New Millennium?* Mohamed Pa-Momo Fofanah, August 2000, Chambers of the Chief Justice, section B(5)(ii)

¹¹⁷ Relief of Commercial Sex Workers (Freetown, Sierra Leone), Project Proposal prepared by GOAL, p.5

¹¹⁸ Information provided by GOAL, July 2000

commercial sex workers themselves, as well as the community.¹¹⁹ The abuse of child commercial sex workers can only be addressed if the rights of these children are known at all levels. Child commercial sex workers must be able to report abuse to the police and abuse by the police of these girls must be discouraged with tough disciplinary measures and recourse to the law.

At the moment the child commercial sex workers fear the police. They are subjected to constant police harassment in brothels and on the streets. The police ask the girls for money in return for not being arrested. If the girls are unable to pay there and then they are taken to the station, if they are still unable to pay the police sometimes ask the girls for sex instead of money. There have also been reports that the police get the girls or their pimps to sell drugs on their behalf. Other police then arrest the girls for selling drugs.¹²⁰

Boys aged 12-17 are also engaging in commercial sex work but there is a culture of silence surrounding the practice making the problem difficult to address. In addition the boys have powerful clientele, who often 'adopt' the boys so that they are attached to their exploiters, and who can blackmail people who interfere. Therefore the police never arrest the boys.¹²¹

STREET CHILDREN¹²²

The conflict has caused an increasing number of children to come to Freetown. Many end up on the streets. However, not all street children are orphans or unaccompanied and not all the children live on the streets. Many parents send their children into the streets to beg in order to supplement the in-kind assistance they receive in the IDP and amputee camps¹²³.

The relationship between street children and police and street children and the community is strained. The community does not trust street children and abuse of street children goes unreported and unpunished.

A large number of street children are being accommodated by NGOs, some of whom provide activities and vocational training. Some of these centres are 'open' allowing the children to come and go as they please. This approach is frowned upon by the law enforcement officials and the judiciary. They believe that the children are more likely to get themselves into trouble in the absence of a stricter regime.

It appears that these children commonly come into conflict with the law, most frequently for petty offences. The police do not appear to have sympathy with these children and tend to treat them harshly. When street children come before the juvenile court, they are more likely than their peers to be sentenced to lengthy terms for what is deemed to be in their own best interests.

¹¹⁹ Relief of Commercial Sex Workers (Freetown, Sierra Leone), Project Proposal prepared by GOAL, p.6. Also UNAMSIL need to be educated so that they will not use underage child sex workers, as a number are currently engaged in this activity. Information provided by GOAL, July 2000

¹²⁰ Oral report from a local NGO, July 2000

¹²¹ Information provided by GOAL, July 2000

¹²² The law was discussed above - 'Deprivation of liberty for children in need of protection' (s27(1)(a)&(b))

¹²³ CRC/C/SR.593, 13 January 2000 (Summary records) para.55

CONCLUSION - THE WAY FORWARD

The juvenile justice system in Sierra Leone is in need of urgent attention:

- **LEGISLATION:** The legislation needs to be reformed to bring it line with the relevant international standards.¹²⁴ While monetary constraints may affect the treatment of juveniles, the legislation should not in itself lead to a violation of children's rights; all those under 18 should be treated as children and benefit from the rights guaranteed to them in the CRC; corporal punishment should no longer be a lawful punishment; Magistrates should not be able to deprive juveniles of their liberty merely for their own protection when they have neither committed a crime nor are they a danger to society; alternatives to institutional care need to be increased and strengthened for juvenile offenders and juveniles in need of protection; diversionary schemes need to be legislated for; the laws on prostitution need to be reformed to better protect children.
- **LEGAL ASSISTANCE:** Expert and child responsive legal representation and assistance for both the juvenile offender and the child victim needs to be provided. The State should collaborate with NGOs in order to set up an effective system of legal aid.
- **INSTITUTIONS:** The appalling conditions in the Approved School and in the Remand Home need to be urgently improved; disciplinary punishments that contravene international standards need to be prohibited; the detainees need to be provided with meaningful activities.
- **TRAINING:** The rights and needs of child victims, juvenile offenders and vulnerable groups of children would be better protected and provided for if training on children's rights and issues was given to those working with these groups of children and in particular to law enforcement officials.
- **POLICE:** In addition to training and the improvement and rebuilding of structures and facilities, there needs to be a unit or individual in each police station who has specialist training in children's rights and issues to handle any cases involving juveniles; a good referral system needs to be available to the police so that the children who come into the police stations can, if appropriate, be placed or put in touch with organisations who can best cater to their needs; the issues of corruption and abuse of power need to be addressed by developing transparent and effective disciplinary mechanisms and enforceable disciplinary measures.
- **DATA COLLECTION:** There is an absence of statistical data on juvenile justice, which makes the adequate monitoring of the situation of juvenile justice impossible. It is vital that comprehensive data on juvenile justice in Sierra Leone be collected and documented.

Some of the problems faced by the juvenile justice system in Sierra Leone can only be addressed with a large injection of cash. However the Government's ability to provide the necessary resources is being severely curtailed by the ongoing conflict and the poor state of the economy. It will take a long time to rebuild the economy and the infrastructures and structures of the country. However, many of the failings of the juvenile justice system can and should be addressed now. The State, for their part, needs to co-operate with the international and NGO community and use the resources offered and provided by them appropriately.

¹²⁴ CRC/C/15/Add.116 para.92