Beyond the Law: Assessing the realities of juvenile justice in Sierra Leone

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Lead Researcher and Author
Ashley Audet

Contributing Authors and Editorial Team
Abdul Manaff Kemokai, Executive Director, DCI-SL
Tom Beah, Programme Manager Western Area, DCI-SL

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2 Kingtom Bridge
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PO Box 1078
dcisl@yahoo.com

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It takes a village to raise a child.
West African Proverb

For tomorrow’s leaders...
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# ACRONYMS

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<th>Description</th>
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<tr>
<td>ACRWC</td>
<td>African Charter on the Rights and Welfare of the Child</td>
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<td>CAP 44</td>
<td>Children and Young Persons Act, Chapter 44 of The Laws of Sierra Leone 1960</td>
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<td>CID</td>
<td>Criminal Investigations Division of the Sierra Leone Police</td>
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<td>CRA</td>
<td>Child Rights Act 2007</td>
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<td>CRC</td>
<td>UN Convention on the Rights of the Child</td>
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<td>CSO</td>
<td>Civil society organization</td>
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<td>DCI-SL</td>
<td>Defence for Children International – Sierra Leone</td>
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<td>FSU</td>
<td>Family Support Unit</td>
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<td>GOSL</td>
<td>Government of Sierra Leone</td>
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<tr>
<td>I Branch</td>
<td>Investigative Branch of the Sierra Leone Police</td>
</tr>
<tr>
<td>JSCO</td>
<td>Justice Sector Coordinating Office</td>
</tr>
<tr>
<td>JSDP</td>
<td>Justice Sector Development Program</td>
</tr>
<tr>
<td>MSWGCA</td>
<td>Ministry of Social Welfare, Gender, and Children’s Affairs</td>
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<tr>
<td>NGO</td>
<td>Non-governmental organization</td>
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<td>SLP</td>
<td>Sierra Leone Police</td>
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<td>SLPS</td>
<td>Sierra Leone Prison Services</td>
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<tr>
<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
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<td>YMCA</td>
<td>Young Men’s Christian Association</td>
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EXECUTIVE SUMMARY

Introduction

As future leaders, children have a critical role to play in the successful and sustained development of post-conflict societies. As Sierra Leone rebuilds from a decade of civil war, children’s rights and juvenile justice have gained increasing attention. This enhanced focus on children is evidenced in recent legislation and policies such as the National Child Justice Strategy 2006 and the Child Rights Act 2007. Despite these initiatives, however, the number of children in conflict with the law continues to rise. As a result, DCI-SL identified a need for research addressing not only the gaps between international and domestic legal standards, but also exploring the realities of juvenile justice administration in practice. The purpose of the completed report is to encourage stakeholders to acknowledge systemic strengths and weaknesses in the hopes of promoting coordinated efforts for future progress.

Crosscutting Challenges

- Lack of institution-specific policies and guidelines with respect to the administration of juvenile justice allows for a significant amount of discretion on behalf of authorities handling of children in conflict with the law
  - Contributes to inconsistency of treatment across cases and across regions from point of first contact through to investigation and judicial proceedings
- Limited Government commitment to the operationalization of legislation and to the provisions and principles of the CRC, ACRWC and CRA
  - Review of CRA currently being conducted in isolation
  - Critical lack of support structures for implementation of children’s rights instruments (ex: National Commission for Children, Child Panels...)
- Persistent lack of awareness, knowledge and understanding of the principles of children’s rights generally and of juvenile justice specifically among the population
  - Interviews with MSWGCA and police personnel suggest that this is particularly true amongst rural communities, traditional leaders and the grassroots level of formal justice service providers
- Limited use of evidence-based policy making hinders the development of policies and legislation that address the true causes of implementation failures

Snapshot of Juvenile Crime

Simply larceny account for 53% of children detained at Freetown Remand, 47% of detainees at Approved School and 51% of juvenile court cases in Kenema District.

Age

Determining Age

In order for a juvenile justice system to function effectively and fulfill its intended purpose of recognizing the special needs of children, a critical prerequisite is that authorities be able
to identify who actually is a “juvenile”. Currently in Sierra Leone, birth registration of children is only 48%.

**Age Assessment at Police**
- 14 of 17 stations initially reported that they either request birth certificates or have parents or relatives attest to the child’s age
- 5 stations reported being forced to rely on their own visual assessment when parents are absent or where there is no proof of birth registration (“the face of the child will tell”, “you just look at the person and you will see [their age]”)
- Implications of discretionary approach:
  - Inaccurate determinations of age resulting in under or overage individuals being charged
  - Age inflation (intentional and unintentional)
  - Impact on treatment of individual during investigation and once charged to court

**Age Assessment at Court Level**
- Children detained at Pademba Road Prison pending completion of court-ordered age assessment violates principles of giving children the benefit of the doubt
  - Two juveniles detained at Freetown Remand Home initially spent 27 and 21 days respectively at Pademba Road pending age assessment
- Discretion creates possibility for error in determinations by court officials
- Implications:
  - Accurate determinations of age are critical as decisions at court level are considered final and binding (s. 18(2)) of Cap 44

**Medical Age Assessments**
- In Western urban area (Freetown), average of 5 to 6 cases per month involve disputed ages and referrals for medical assessment (75% come from courts, 25% from SLP)
- Inconsistency among factors and interpretation of factors
- Example: “Chest – a bit broaden and narrow pelvic girdle; Smooth face and soft voice; Scanty hairs on the chin, arm pits and pubic areas; Normal development of genital organs. The physical features seen on Z are consistent with a teen age between 17-18 years.”

**Age Assessment Guidelines**
- Draft document recommends medical age assessment be used only as a last resort

**Age of Criminal Responsibility**
- Children under the age of 14 continue to be apprehended, interrogated by police, charged to court and convicted
- In 2008 and 2009, 28 and 25 children below the age of 14 years were respectively charged to Magistrate Courts
- Three juveniles detained at Approved School as of 8 June 2010 were convicted at the age of 13
- Since March 2009, 15 children below the age of 14 tried by differed Magistrate Courts in Freetown, six of whom were sentenced to Approved School

**Juvenile Courts and the Age of Criminal Responsibility**
- All three interviewed Magistrates were aware of new age of criminal responsibility but cases suggest low knowledge of or disregard for the age and its implications
- Two cases from same juvenile court involved underage children discharged to MSWGCA only at point of judgment. One involved proceedings that continued for 209 days through 23 adjournments before Magistrate delivered verdict

**Police and the Age of Criminal Responsibility**
- 13 of 19 interviewed officers accurately identified the age of criminal responsibility
- Lack of clarity and inconsistent approach among stations with regards to how they handle children under 14 accused of crimes
  - 7 of 20 said they would engage in mediation
  - 4 of 20 (2 of whom correctly identified the age of criminal responsibility) acknowledged that in some cases juveniles under 14 can be charged to court
  - Others reported that cases would be “referred” to the MSWGCA

**Arrest, Investigation, and Pre-Trial Detention**

**Specialization of the Police**
- Under s. 57 of the CRA mandate of the FSU was expanded to include all offences committed against and by children
- Less than half of interviewed FSUs were adequately staffed with MSWGCA personnel
- Juvenile cases are not being referred consistently (if at all) to appropriate FSUs
  - 7 of 11 reported that unless they send one of their own personnel to check for juveniles in other divisions, cases will not generally be referred to the FSU
  - 83% of detained children reported being processed by CID, General Division or I Branch and only 12% by FSU
- Lack of understanding/awareness as to the mandate of FSU by other divisions of SLP
  - 4 of 6 CID divisions reported that FSU handles matters of “a family nature” whereas criminal cases were to be handled by CID, General Duties or I Branch

**Training**
- Situation appears to be increasingly positive
  - 75% of interviewed FSU personnel reported having received trainings on the arrest and detention of children
  - 83% of personnel from other SLP divisions responded that personnel had received training on juvenile justice
- Challenges
  - Trainings are not reaching all personnel and often target only senior officers
  - Ad-hoc nature of trainings contributes to inconsistency in content
**Notification of Parents**

- No legal obligation to notify parents of the apprehension of their child
- Police and probation officers limited in numbers and capacity
- Challenges include inaccurate information provided by juveniles, insufficient personnel, inadequate mobility and logistics, and lack of parental responsibility
- Mobility is a critical challenge for tracing and notification
  - 67% of FSU mobility limited to a single motorbike
  - Probation officer in provincial district reportedly receives 5 gallons of fuel for three months, despite responsibility to cover 13 chiefdoms and 8 police
- Notification can make critical difference in how case is handled from point of first contact through to trial
  - 81% of children whose parent(s) or guardian were notified of their apprehension by DCI-SL or YMCA/SL ended up being released or granted bail

**Interviewing Juvenile Suspects**

- No laws governing interview process for children in conflict with the law
- Privacy is a critical concern and protection extends only, if at all, to specifically designated interview rooms
- Many rights in this area, especially rights related to how and what questions are asked and who is present for the interview are not resource dependent

**Investigative Detention**

- Fundamental principles under international law are the use of detention as a last resort and the required separation of juveniles from adults
- Loophole in Cap 44 s. 5(c) facilitates detention of juveniles where “officer has reason to believe that the release of such a person would defeat the ends of justice.”
- Presence of parent(s) or guardian is minimum requirement for granting bail so children whose parents cannot be located or are not notified have no alternative to pre-trial detention
- No police station or FSU has detention facilities designed for juveniles
- Information gathered during monitoring of juvenile detention facilities suggests significant gap between reported practices and reality of police behavior concerning investigative and pre-trial detention
  - In Freetown, 88% and 89% of juveniles at the Remand Home and the Approved School respectively were detained with adults in police custody
  - In Bo, all four boys at the Remand Home spent duration of their time in police custody in cells with adults
  - In Makeni, six boys were found detained with numerous adults in a single cell
- Average length of stay in police detention
  - Remand Home Kingtom: 6 days
  - Approved School: 7 days
- Lack of formal reporting procedures with respect to intake and detention makes it difficult to hold personnel accountable for unreasonable length of pre-trial detention
Without clearly designated responsibilities, lack of funding for food, clothing and medical care in custody was second most frequently cited challenge by SLP. Communal distribution of food in police cells jeopardizes health and wellbeing.

**Juvenile Trial Proceedings**

**Juvenile Courts**
- Only Freetown has established a separate and distinct juvenile court.

**Due Process Rights**

**Right to be Presumed Innocent**
- Legal custom suggests little differentiation between child offender and accused child.
- Court practice of referring to accused person as “offender” suggests prejudgment.

**Right to Privacy**
- International law emphasizes protection of privacy to avoid harm being caused to juvenile accused by undue publicity or process of labeling.
- Despite explicit provisions in domestic legislation, common practice of the courts, especially in Freetown does not allow for adequate protection of child’s privacy.
- In eight visits to Freetown juvenile court, public never asked to vacate the courtroom and spectators never told to wait outside for their matter of interest to be called.

**Right to Legal Counsel**
- Lawyers provided by organizations have limited room in schedule for preparation and representation of juvenile cases and has been focused on Freetown area.
- In reviewed case files, defence counsel present for an average of 35% appearances.
- Children often receive misinformation while in police detention and plead guilty at their first appearance believing it will help secure their release.
- Police prosecutors represent state interest in suppressing crime and as prosecution this interest is made paramount without due consideration of child’s best interests.
- Where defence counsel are absent, police free to advocate unchallenged for custodial sentences on grounds that release will result in reoffending.

**Parental Presence in Court**
- Parents do not always attend court sessions with their children.
  - Belief that children ought to be taught severe lesson.
  - Fear of being asked to provide financial compensation.
  - Unaware of their child’s arrest.
- Limits sentencing options and may contribute to issuance of custodial sentences.

**Right to Have the Matter Determined Without Delay**
- In the absence of legislative guarantees to have matters determined expediently, trial delay has become a critical issue in the administration of juvenile justice.
- Average length of a juvenile trial that continues through to sentencing is 178 days.
- For cases of simple larceny, trials ranged from 81 to 212 days (average of 154 days).
- Average length of trial prior to discharge for want of prosecution is 61 days
- When court is not properly constituted, matters are adjourned to the following week
- Freetown juvenile court not properly constituted during 6 of 8 assessment visits
- Magistrates perform dual role of court reporter, contributing to delayed proceedings as testimony is generally recorded by hand
- Absent prosecution witnesses contributed to at least 30% of adjournments
- Magistrates have complete discretion over number of absences required before discharging a case for want of prosecution
- 83% of discharged cases involved complainants absent on more than five consecutive occasions before discharge granted
- Average number of adjournments for completed juvenile trials is 27
- Each adjournment adds approximately one week to time spent on bail or remand
  - For children on bail, this requires sureties to miss a significant number of working days or risk having bail revoked
  - For detained juveniles, each adjournment represents an additional week of being separated from their families, communities and support networks even before being proven guilty

Right to Trial by Competent Officials
- None of the three Magistrates interviewed have received any specific professional training with respect to the administration of juvenile justice
- JSDP arranged for one Magistrate to receive international training but administrative delays have prevented her from taking over juvenile court in Freetown
- No official training for police prosecutors regarding prosecution of juvenile matters

Dispositions

Sentencing
- Well being and best interests of the child are to be guiding factors
- International law underscores two normative sentencing principles: proportionality and use of deprivation of liberty as measure of last resort

Alternatives to Deprivation of Liberty
- Cap 44 complies in theory with international law by providing juvenile courts with authority to make alternative sentencing orders
- Alternative sentences often come with conditions that can result in a custodial outcome for the juvenile
- Lack of sentencing guidelines affords court much discretion with regards to the amount of fine and to specific conditions of sentence
- Inconsistency across judicial districts, individual magistrates, and offences
  - Example (immediate effect and proportionality): In May, juvenile found guilty of wounding with intent was given sentence involving either the payment of 100,000 LE fine payable to the court with immediate effect and 100,000 LE to the complainant, or alternatively, two years detention at the Approved School. Because juvenile’s guardian did not have the requisite amount with him at the court, the boy was sent to the Approved School.
Example (consistency): Two Magistrate Courts recently issued sentences of 200,000 LE fines, however in one case the consequence for failing to pay the fine was 3 months at the Approved School while in the other case the consequence was two years detention.

Deprivation of Liberty
- Practical reality is that children receive custodial sentences, even for minor crimes

Trials with Adults
- S. 3(1) of Cap 44 provides for one of the most significant lapses in domestic legislation’s compliance with international juvenile justice norms
- Many SLP personnel noted that juveniles are often forcibly recruited by adult criminals thus further victimizing them by failing to recognize the involuntariness of their actions and trying them in an adult court

Juvenile Trials at the High Court
- No guidelines or rules for how juvenile cases are to be treated at the High Court
- Despite s. 7 of Cap 44 which states that “for any offence other than homicide, the case shall be finally disposed of in juvenile court,” there appears to be no consistent baseline for establishing when and what cases and offences might be referred
  - During assessment, young boy found in Makeni had spent 11 months on remand in police detention. Despite being charged with relatively minor offences of larceny of two mobile phones and 100,000 LE cash, the boy’s case had been committed to the High Court and he had yet to receive a trial date. Similarly, a boy detained at the Freetown Remand Home on charges of larceny of a purse had his case committed to the High Court in April 2010 but has also yet to receive a trial date.
- Cases suggest that Magistrates use High Court as convenient means for disposing of cases, not only violating domestic legislation but creating a situation that erodes the juvenile’s right to be tried according to his or her special needs and circumstances

Detention, Reformation, and Reintegration

The ultimate purpose of a child going through the formal justice system is to reform the child and ensure his or her reintegration into society as a responsible and productive citizen.

Remand Statistics
- 86% of children on trial at juvenile court in Freetown are detained at Remand Home
- The only other remand home is in Bo
- Absence of a remand home in Makeni results in children detained in police cells
  - Visit to one Makeni police station revealed two children currently serving their remand period detained with adults
  - One meal per day, no access to education, psychosocial support or recreation
The Remand Home and the Approved School

- Cap 44 anticipates the creation of both types of facilities but the legislation provides little guidance on the management and operations of the programs

Education

- Right to education is one of most basic rights afforded to all children under the CRC and ACRWC
- Children detained on remand and at Approved School are currently denied this right
- Limited cooperation between the MSWGCA and the Ministry of Education
- Facilities have no access to standardized curriculum
- No opportunity for detained children to attend community schools
- At the time of assessment, 10 of 18 juveniles at the Approved School and 10 of 32 at the Freetown Remand Home were student before their arrest.
- Interruption in schooling further compounds effect of their detention and reduces the likelihood that they will continue with their education upon release.

Vocational Training

- By increasing a juvenile’s capacity to generate income, it is anticipated that they will be less likely to engage in future criminal activity
- At the residential facilities, resource shortages have impeded the MSWGCA’s ability to implement comprehensive skills training programs

Welfare, Health and Nutrition

- Detained children have the right to facilities and services that meet all the requirements of health and human dignity
- Many of the facilities at the detention centres violate this right to health and dignity
  - Example: In Bo, the boys currently sleep inside the cement bed frames – only two of which have mattresses
- Regularity and sufficiency of food from the sub-contractor to the facilities is reportedly improving, however in Freetown the remand home and the Approved School both suffered from severe shortages in early May which resulted in children receiving only one meal per day
- Only the Freetown Remand Home has a medical officer, although he is not a qualified medical practitioner and it is reportedly not in his mandate to transfer children to hospital
- No mosquito nets or mesh over the windows in Bo
- In Freetown approximately 12 to 15 beds at the Remand Home and all of the beds at the Approved School have mosquito nets but there is no mesh on the windows

Security

- Major hole in the fence surrounding the Bo Remand Home has resulted in three escapes and has limited the amount of outdoor recreation provided to the inmates because staff are unable to properly monitor them
**Discipline**
- International law requires that children deprived of their liberty are protected from “torture, inhuman or degrading treatment or punishment” which includes corporal punishment, placement in a dark cell and closed solitary confinement.
- Both the Freetown Remand Home and the Approved School rely on solitary confinement as one means of discipline.

**Girl Children in Detention**
- Interviews conducted during assessment suggest that girl children are not coming into contact with the formal justice system as often as boys are.
  - Comments made by staff at Bo Remand Home suggested that the nature of crimes being committed by girls were such that they could be diverted.
  - Since DCI-SL began their involvement at the Approved School in January 2008 there have been no girl children sentenced to detention at the facility.
- Whether because they offend at a reduced rate, or because of the nature of the crimes they commit, or because of case dispositions, girl children are detained less frequently than boys and the reasons for this may be worth further examination.

**Rehabilitation and Reintegration Support**
- Ultimate goal of an effective juvenile justice system is the successful reintegration of juveniles in conflict with the law back into their communities.
- Inadequate programming at all three institutions has resulted in limited meaningful rehabilitation of children in conflict with the law.
- No discharge packages for children released from the Approved School.
- No means of transporting children back to their communities.
- Juveniles released from the facility are largely left to fend for themselves.
- Without an education, without vocational training, and isolated from their families and communities, many find themselves unemployed, living with friends in Freetown.
- Until programs can be developed to provide for meaningful rehabilitation and reintegration of juveniles offenders, custodial sentences will continue to result in discharged youths facing odds that put them at a serious risk of re-offending.

**Immediate Action Points**
- ✓ Age Assessment guidelines should be finalized and formally adopted and implemented at both police and court levels and policies of giving the benefit of the doubt to children should be enforced.
- ✓ SLP should develop a formal policy establishing a clear referral path for juvenile cases from other SLP divisions to the appropriate FSUs. The policy must be enforced at all levels and across all divisions of the SLP, especially within CID divisions.
- ✓ The Ministry of Justice should prioritize the transfer of the trained Magistrate to the juvenile court.
INTRODUCTION

Background and Purpose of the Report

As future leaders, children have a critical role to play in the successful and sustained development of post-conflict societies. In 2002, Sierra Leone emerged from a decade of civil war that killed over 50,000 people and displaced approximately one-third of the population. The children of Sierra Leone were particularly affected by the conflict and as many as 6,845 were recruited to fight as child combatants.1

Currently, Sierra Leone is the third-lowest ranked country on the Human Development Index and the seventh lowest on the Human Poverty Index. An effective juvenile justice system that focuses on respecting rights, rehabilitation, and education has the potential to help improve these standings by empowering future generations with a sense of respect for human dignity, human rights and rule of law. These values will be essential for the peaceful resolution of future conflict and will ultimately help to drive progress and development in the nation.

As the country rebuilds, children’s rights and juvenile justice have gained increasing attention from policy makers, development partners, and non-governmental organizations. As a result, legislation and policies such as the National Child Justice Strategy 2006 and the Child Rights Act 2007 have been implemented and have helped to bring aspects of domestic law in line with international legal standards. Despite these legislative and policy initiatives, however, statistics suggest that there remains a significant gap between theory and practice, especially with regards to children in conflict with the law. In 2007, 2008 and 2009, for example, the number of children facing formal hearings in major towns and cities across the country increased steadily from 3,678 to 4,892 to 5,309.2

In light of these and other figures, DCI-SL identified a need for research addressing not only the gaps between international and domestic legal standards, but also exploring the realities of juvenile justice administration in practice.

The following report is a culmination of DCI-SL’s research in these areas and is designed to highlight inconsistencies between policies and procedures in theory, and their implementation in practice. The purpose of the report is not to place blame for current realities but rather to encourage all stakeholders to acknowledge systemic strengths and weaknesses so as to promote coordinated efforts for future progress. Ultimately, it is hoped that the document will be used to develop strategic policies for the operationalization of the CRA provisions and as an advocacy tool for further legislative reform.

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1 National Child Justice Strategy for Sierra Leone (July 2006).
2 DCI-SL monitoring data.
Background to DCI-SL

Defence for Children International (DCI) is a global movement formed in July 1979, the International Year of the Child. DCI was created as a response to the UN plea for the establishment of international bodies to advocate for the rights of children. DCI’s first major achievement was participation in the drafting of the UN Convention on the Rights of the Child. Since then, DCI, through its national sections, has continued to advocate worldwide for the creation and implementation of national legal systems that are coherent with the international standards outlined in the CRC.

As the local chapter of DCI in Sierra Leone, Defence for Children International – Sierra Leone (DCI-SL) is an independent, non-profit, non-governmental organization dealing with juvenile justice, child’s rights and human rights’ mainstreaming and advocacy. The main thrust of DCI-SL’s work is to provide socio-legal support to children in conflict with the law, children victims of human rights abuse/violations or those at high risk of becoming in conflict with the law (e.g. street children, girl prostitutes and children who are not attending school). To accomplish this goal, DCI-SL focuses on four primary target areas: juvenile justice, access to education for all children, violence against children (including gender based violence), and child trafficking/child labour. The overall programme goal is to ensure that children enjoy their rights in full and are protected in both law and practice. DCI-SL emphasizes the importance of child participation in each activity that it undertakes in order to engage children in issues related to their socio-legal rights and duties.

Since 1998, DCI-SL has been a leader in the children’s rights movement in Sierra Leone. Most recently, DCI-SL was one of the leading local organizations that advocated for the review of outmoded domestic laws in order to pass a new child rights bill that would be in line with the provisions of the UN Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC). As a result of the lobbying activity of DCI-SL and other international agencies and NGOs working in the area of children’s rights, the government of Sierra Leone enacted the Child Rights Act (CRA) in 2007.

DCI-SL operates nationally with regional offices in Freetown, Bo, Kenema, and Makeni. In 2008, DCI-SL realized four major projects, supported by various national and international donors:

1. Justice for Children: Campaign on the promotion and correct implementation of the provisions of the Child Rights Act
2. Legal advocacy for child victims of gender based violence and other forms of child abuse in Bombali, Kenema, and Koinadugu districts.
3. Campaign to stop corporal punishment and other forms of violence against children, particularly in the school environment
4. Reintegration of orphans and vulnerable children into communities
Methodology

Research for the assessment was conducted between May and June 2010, using a combination of qualitative and quantitative data collection and participant observation in four districts: The Western (Urban) Area, Makeni, Bo, and Kenema. These regions represent DCI-SL’s principle areas of operation and were selected for their strategic representation of the four provincial areas in Sierra Leone.

Semi-structured interviews were conducted with a cross-section of stakeholders involved in the administration of juvenile justice. Interviewed personnel included the following:

- Three Magistrates presiding over juvenile trials
- Representatives from 13 Family Support Units
- Representatives from 7 police stations
- Five police prosecutors
- Personnel from the Approved School
- Two development partners (JSDP, UNICEF)
- Representative from JSCO
- Two probation officers
- Four social development officers from the MSWGCA
- Two lawyers representing children in conflict with the law

Additional research was collected through participant observation during visits to key juvenile justice institutions including the Remand Homes in Bo and Freetown, the Approved School in Wellington, police detention cells, and ten juvenile court sessions. Analysis of official court files from completed juvenile trials and intake records from the Approved School was also conducted during visits to these institutions. The data collected through interviews and participant observation was further corroborated and supported by DCI-SL annual and monthly reports compiled by staff social workers monitoring police stations, juvenile courts, and programs at the juvenile detention centres.

Relevant International and Domestic Legislation

Since the second half of the 20th century, international legal discourse has been dominated by a focus on the notion of universal human rights. As this culture of human rights developed and gained strength, support emerged for the extension of many of these rights to society’s youngest and arguably, most vulnerable citizens – children. On November 20, 1989, the UN General Assembly unanimously adopted the Convention on the Rights of the Child (CRC), which today stands as the most widely ratified human rights treaty. Although many of the norms and values of the CRC’s 54 articles were inspired by those of existing

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human rights documents, the CRC established “best interests of the child” (BIC) as the new international benchmark with respect to the treatment of children. As outlined in Article 3:

> In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration.4

Following the adoption of the CRC, the United Nations established a series of guidelines and “rules” designed to assist States Parties in developing juvenile justice systems that comply with the norms and values enshrined in the CRC. Among these “soft law” instruments are: the UN Standard Minimum Rules for the Administration of Juvenile Justice (“Beijing Rules” 1985), the UN Rules for the Protection of Juveniles Deprived of their Liberty (“Havana Rules” 1990), and the UN Guidelines for the Prevention of Juvenile Delinquency (“Riyadh Guidelines” 1990). While these guidelines are technically non-binding on States Parties, “together they constitute a set of universal standards and set out desirable practices to be pursued by the world community.”5 Regional legislative bodies have also developed their own human rights instruments in an effort to encourage member States to incorporate global principles into domestic law. To this extent, the African Charter on the Rights and Welfare of the Child (ACRWC) came into force on November 29, 1999. Although each has a slightly different focus, the overarching theme of all international and regional children’s rights instruments is that the inherent special needs and vulnerabilities of children must be taken into account when developing and implementing domestic legislation. Moreover, the instruments emphasize that rehabilitation and reintegration should be the primary goal of a juvenile justice system.

Sierra Leone has ratified each of the major international treaties and documents pertaining to children’s rights generally and to juvenile justice specifically. Most recently, in an effort to address UN recommendations, the country enacted a series of domestic laws pertaining to children’s rights, including: the Child Rights Act 2007, three gender acts and the Anti-Human Trafficking Act. With respect to juvenile justice specifically, the current laws governing the treatment of children in conflict with the law are the Children and Young Persons Act (Chapter 44 of the Laws of Sierra Leone 1960, “Cap 44”), the Prevention of Cruelty to Children Act (Chapter 31 of the Laws of Sierra Leone 1960, “Cap 31”), and the Child Rights Act 2007. Cap 44 is the original legislation providing for the establishment of a separate and unique juvenile justice system in Sierra Leone and addresses the treatment of children alleged, accused of or suspected to have infringed the penal law. The CRA addresses certain gaps in Cap 44 with respect to juvenile justice by, for example, establishing 18 rather than 14 as the official age of a child. The CRA also established the age

4 CRC article 3(1).
of criminal responsibility which was not provided for in Cap 44. At the time of assessment, the Minister of Social Welfare, Gender and Children’s' Affairs was in the process of reviewing the CRA. Because this review is being undertaken in isolation without the involvement of relevant stakeholders, it is unclear what the focus of the amendments will be. As will be seen throughout the report, Cap 44 and the CRA provide an essential foundation for the juvenile justice system in Sierra Leone, however, continued legislative reform is needed in order to bring domestic legislation into full compliance with international legal standards.
Determining Age

The underlying rationale for the establishment of a separate and distinct juvenile justice system is that there are fundamental differences in the physical, mental and emotional needs and capacities of children and adults. Inherently, in order for a juvenile justice system to function effectively and fulfill its intended purpose of recognizing the special needs of children, a critical prerequisite is that authorities be able to identify who actually is a “juvenile.”

While international law stipulates “every child shall be registered immediately after birth,”\(^6\) the reality in Sierra Leone is that many children do not have any official means of verifying their age. While many families lost documents during the war, many children, especially those born in the provinces, have never been officially registered. In fact, across the country, the birth registration rate of children is only 48%.\(^7\) Moreover, tradition and custom in some villages do not emphasize the recording of specific birth dates and thus even parents may be unaware of their own child’s exact age.

Low birth registration numbers and the absence of registration documents has and continues to have a critical impact on the successful administration of juvenile justice. In the absence of uniform guidelines for determining age when documents are unavailable, decisions are left to the discretion of relevant authorities. The impact of this discretionary approach and the lack of birth registration documents can be seen from point of first contact, to judicial proceedings, and through to sentencing.

Age Assessment at Police Level

For children who come into conflict with the law, the police represent the point of first contact between the juvenile and the formal justice system. Of the 17 stations across the country that responded to the question of how a child’s age is verified, 14 initially reported that they either request birth certificates or have parents or relatives attest to the child’s age. When asked how they approach situations where parents are absent or where there is no proof of birth registration, personnel at five stations reported that in such situations, officers are forced to rely on their own visual assessment of the individual. Among these five respondents, one reported that they will “naturally look at the height of the juvenile”, another that “the face of the child will tell”, a third that they can see from a child’s

\(^{6}\) See CRC Article 7(1) and ACRWC Article 6(2).

\(^{7}\) Multiple Indicator Cluster Survey (MICS) 2005, Statistics Sierra Leone and UNICEF.
“morphology”, and finally a fourth suggested that “you just look at the person and you will see [their age].” Based on such discretionary determinations, individuals under the age of criminal responsibility may be found to be over the age of 14 and vice versa. Likewise, juveniles under the age of 18 may be processed as adults, while individuals over the age of 18 may be mistaken for juveniles. Moreover, the absence of uniform guidelines for determining age creates the potential for age inflation (both intentional and unintentional) with little ability for the accused individual to prove otherwise. The importance of age verification at the police level is particularly significant because it affects how the individual will be processed within the station and also once the case is charged to court. Theoretically, if the age is recorded as being under 18, police obligations concerning interrogation and investigative detention vary substantially from situations where the suspect is an adult. Likewise, if the case is charged to court, whether the accused is transferred to the juvenile court or to the regular Magistrate’s court hinges entirely on their recorded age. Accordingly, inaccurate determinations of age at the point of first contact have the potential to put juveniles at risk of multiple violations of their rights.

**Age Assessment at Court Level**

Due to the lack of formal procedures for ascertaining an accused juvenile’s age at the police/investigative level, research and case studies show that age continues to be a critical issue at the trial level. While Magistrates reported that they might accept alternative means of age verification, such as school reports or parental testimony, it remains at their discretion to order accused persons for age assessment when they are not satisfied by the information before them. This practice of ordering age assessments at the trial level has potentially significant consequences for the rights of the accused juvenile, as Magistrates have at times ordered them remanded at prisons such as Pademba Road pending the completion of the age assessment. Two juveniles detained at the Freetown Remand Home at the time of assessment initially spent 27 and 21 days respectively at Pademba Road pending age assessment before being transferred to the Remand Home. During a recent visit to a juvenile court, the Magistrate called the age of an accused child appearing in court for the first time into question. Because the accused had no birth certificate, bail was deferred until his age could be formally assessed. Initially, defence counsel’s request for the accused to be sent to the Remand Home pending the results of his age assessment was denied on the basis that the Magistrate felt that he may cause trouble and could possibly escape. In the result, the accused was sent to the Remand Home after the probation officer agreed that the Home would accept him.8

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8 CS No 2141/10 (First court appearance 24 May 2010).
The issue of a lack of birth registration documents and Magistrate discretion to determine age can also have significant consequences for juveniles who are under the age of 14. During another juvenile court visit, a fresh matter involving larceny of a mobile phone was brought before a juvenile court. When asked by the police prosecutors, the accused reported that he was 13 years old. The Magistrate refused to accept the age as given and ordered the boy to provide the court with a birth certificate. In the mean time, the Magistrate proceeded to ask a series of questions in an effort to establish the boy’s age. When asked for his birthday, the boy replied, without hesitation, June 18th, 1997. From this statement the Magistrate erroneously calculated that the boy was “13+” when in fact, based on the information given, he was only 12+. Although the accused was granted bail to collect a birth certificate, researchers found him on remand nine days later, coincidentally on his 13th birthday. At the time of assessment, his case continues to be heard in juvenile court and had been adjourned three times by the end of June. In discussion with the juvenile, it was also reported that he spent 5 days in police detention with adults prior to his first court appearance, further highlighting the importance of age verification guidelines at both the police and court levels.9 The point to be taken from this particular case is not that the Magistrate erred in calculating the boy’s age. Rather, what is important is that the system in its current state relies on such haphazard mid-proceeding determinations that inevitably create the possibility for significant, though unintentional, human error.

Finally, provisions within existing legislation make accurate determinations of age particularly critical for juveniles in conflict with the law, as decisions at the court level are considered final and binding. Per s. 18(2) of Cap 44, “No order of judgment of a juvenile court shall be invalidated by any subsequent proof that the age of the person has not been correctly stated to the court.”10

*Medical Age Assessments*

Where age is in dispute at the point of first contact, personnel at nine of 17 police stations reported that medical age assessment was the ultimate determining factor. Similarly, interviews with Magistrates reveal that in the absence of official birth registration documents, medical assessments are taken by the court to be conclusive with respect to establishing an accused individual’s age. In the Western urban area (Freetown), an average of 5 to 6 cases per month involve disputed ages and referrals to the Sierra Leonean Police (SLP) Medical Doctor for morphological age assessment. Of these referrals, 75% come from the courts while 25% come from the SLP.11

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9 CS No 674/10.
10 Cap 44 s. 18(2).
11 Draft Age Assessment Guidelines at page 3.
In Freetown, medical age assessments are currently conducted at Connaught Hospital. While the reports of the age assessment are treated as scientific conclusions, inconsistency among the factors considered in the reports and the interpretation of such factors illustrates their inherently discretionary nature. Not only are different factors considered in different assessments, but interpretation of the same factors appears to vary significantly from case to case. Below are the results of two such age assessments taken from recently completed juvenile case files. Findings appear as they do in the official reports, however the order of certain factors has been rearranged to facilitate comparison of the assessments.

Table 1: Sample Age Assessment Reports[12]

<table>
<thead>
<tr>
<th>Suspect X</th>
<th>Suspect Y</th>
</tr>
</thead>
<tbody>
<tr>
<td>A bit dark in complexion not slim, short</td>
<td>Fair in complexion</td>
</tr>
<tr>
<td>Height about 4 – 4 ½ feet</td>
<td>Height about 5 – 5 ½ feet</td>
</tr>
<tr>
<td>Face is a bit rough, might be due to pimples</td>
<td></td>
</tr>
<tr>
<td>Broadening of the chest and narrowing of the pelvis</td>
<td>Early broadening of the chest and narrowing of the pelvis (early masculine structure)</td>
</tr>
<tr>
<td>Voice box is visible</td>
<td>Adam’s apple (voice box) is visible although not too prominent</td>
</tr>
<tr>
<td>Voice is changed, heavier than that of a female</td>
<td>Voice is getting heavier</td>
</tr>
<tr>
<td>Hairy, but no hairs on the chin due to recent shaving</td>
<td>Recently shaven hairs on the chin</td>
</tr>
<tr>
<td>Hairs on the chest, arm pits along the supra pubic and pubic</td>
<td>Hair on the arm pits and pubic area denser on the latter</td>
</tr>
<tr>
<td>Conscious orientative and communicative</td>
<td>Conscious orientative and communicative</td>
</tr>
<tr>
<td>No musculoskeletal injuries or deformation detected</td>
<td>No musculoskeletal injuries or deformation seen</td>
</tr>
<tr>
<td>Clear heart and lung fields</td>
<td></td>
</tr>
<tr>
<td>Physically and mentally healthy</td>
<td>Physically and mentally healthy</td>
</tr>
</tbody>
</table>

Despite the apparent similarities in these two reports, the conclusion for suspect X was that “These physical features and morphological features detected on X can be associated with a boy age 17 – 18 yrs.” Conversely, the conclusion for suspect Y was that “In view of these physical and morphological features seen on Y his age can be assessed at 16 – 17 yrs.” These two cases highlight the seemingly inconsistent interpretation of factors in medical age assessments.

A final challenge with the scientific validity and legal relevance of the medical assessment process is that some reports contain only minimal information and consider a limited number of factors. For example, one report from August 2008 included only the following four points: “Chest – a bit broaden and narrow pelvic girdle; Smooth face and soft voice;

[12] Juvenile Court completed case files.
Scanty hairs on the chin, arm pits and pubic areas; Normal development of genital organs.” Based on these four factors, the assessment concluded, “The physical features seen on Z are consistent of a teen age between 17 – 18 years.” The implications of age assessment reports on the lives of juveniles in conflict with the law arguably necessitates a more comprehensive and consistent approach then these examples suggest.

Age Assessment Guidelines

In light of the high number of unregistered children and the ethical concerns related to the invasiveness of medical assessments, a key activity in the National Child Justice Strategy for Sierra Leone (2006) and in the Government of Sierra Leone’s Justice Sector Reform Strategy and Investment Plan 2008 – 2011, is the development of guidelines on age assessment.

The draft version of these guidelines highlights seven guiding principles for age assessment:
- Child Rights Approach
- Early (i.e. pre-trial) age assessment
- Benefit of the doubt
- Diversion
- Last resort
- Right to dignity and worth
- Training

The draft document contains guidelines for both formal and informal methods of collecting evidence related to age. According to the guidelines, acceptable formal documentation may include birth certificates, medical records, baptismal certificates and/or naming ceremonies, school records, and past police or judicial documentation. Informal methods of evidence collection may include statements from parents/guardians/other witnesses, and the use of probing questions using historical events and educational background as indicators of a child’s approximate age. Under the draft guidelines, medical age assessments would be used only as a last resort. Not only do medical assessments lead to inaccurate results, but international standards also require giving two years “benefit of the doubt” when making a determination of age on these grounds. Evidently, the constraints associated with this method make it incompatible with the goals of juvenile justice.

Unfortunately, these guidelines have yet to be formally approved and adopted. The guidelines were validated by the MSWGCA and signed by the Minister, but sit currently with the judiciary for further discussion before they are incorporated into a statutory policy document Consequently, age assessment continues to be a critical issue with respect to the successful administration of juvenile justice.

13 Draft Age Assessment Guidelines at pages 7-11.
Age of Criminal Responsibility

Recognizing that children below a certain age are incapable of forming the requisite intent for committing a crime, international law requires States Parties to establish a minimum age of criminal responsibility. Before the introduction of the CRA, the common law of Sierra Leone recognized that children under the age of 10 were “doli incapax” and thus could not be held crimically responsible. This age was revised by s. 70 of the CRA, which brought national standards in line with current international norms by establishing 14 as the age of criminal responsibility.

Despite revisions to the law, research indicates that children below the age of 14 continue to be apprehended and interrogated by police, charged to court, and convicted. According to YMCA’s court monitoring officer, in 2008 and 2009, 28 and 25 children below the age of 14 years were respectively charged to various Magistrate Courts. As per Figure 1, three juveniles detained at the Approved School at the time of this assessment were convicted at the age of 13.

Figure 1: Detainees at Approved School – Age at Time of Conviction

Statistics of cases monitored by DCI-SL in Freetown since March 2009 show that 15 children below the age of 14 years were tried in different Magistrate Courts, six of whom were sentenced to the Approved School. The YMCA court monitoring data in Bo for the same period reported similar levels. In January 2010, the Permanent Secretary of the MSWGCA sent a letter to the Master and Registrar informing him of four underage juveniles detained at the Approved School. Details of the four sentences can be seen below in Table 2.

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14 See CRC Article 40(3(a)) and ACRWC Article 17(4).
15 Approved School inmate intake files as per 8 June 2010.
16 YMCA/SL, Rough Justice for Young People in Sierra Leone (April 2010) at page 16.
Table 2: Details of Underage Cases Sentenced to Approved School

<table>
<thead>
<tr>
<th>Age</th>
<th>Offence</th>
<th>Committal Date</th>
<th>Court</th>
<th>Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>11 years</td>
<td>Larceny</td>
<td>5 January 2010</td>
<td>Makeni Mag. Ct.</td>
<td>5 years</td>
</tr>
<tr>
<td>12 years</td>
<td>Larceny</td>
<td>27 October 2009</td>
<td>Makeni Mag. Ct.</td>
<td>5 years</td>
</tr>
<tr>
<td>13 years</td>
<td>Larceny</td>
<td>22 Sept 2009</td>
<td>Port Loko Mag. Ct.</td>
<td>8 months</td>
</tr>
<tr>
<td>13 years</td>
<td>Larceny</td>
<td>28 Sept 2009</td>
<td>Freetown Mag. Ct.</td>
<td>2 years</td>
</tr>
</tbody>
</table>

As a result of the Permanent Secretary’s letter, all four of the children were discharged by the Freetown juvenile court on March 12th, 2010. While the Ministry’s advocacy and the subsequent release of the children should undoubtedly be seen as positive outcomes, it must not go without noting that these cases should never have gotten past the stage of police interrogation, let alone to the point of children spending between two and six months in state custody. Such interventions by the Ministry cannot be relied upon, especially in the provinces where the detention of children in police cells (due to a lack of remand homes) makes it difficult for the MSWGCA to make similar applications on their behalf. In order to ensure that the rights and special needs of children are respected, increased attention must be focused on preventing children under the age of 14 from entering the formal justice system in the first place.

**Juvenile Courts and the Age of Criminal Responsibility**

Interviews with Magistrates in Freetown, Bo, and Kenema revealed that each Magistrate presiding over juvenile courts was aware of the new age of criminal responsibility. However, cases such as the four listed in Table 1, imply either a low knowledge of or disregard for this age on behalf of some Magistrates. There also appears to be inadequate understanding with regard to the implications of a minimal age of criminal responsibility. The age of 14, as established under the CRA, means that children below this age are not capable of committing a penal offence and, as such, should not have their cases charged to court. In practice, however, not only are such cases being charged to court, but they are also being tried through to completion only to be discharged at the point of judgment. For example, in a case tried by one juvenile court, a thirteen-year-old boy was accused of larceny. Only after five adjournments and a guilty plea by the under-age offender did the Magistrate discharge the case and refer the matter to the MSWGCA. Even more egregious is a matter heard in the same juvenile court involving a child below the age of 14 where proceedings continued for 209 days through 23 adjournments before the Magistrate delivered his verdict. Once again, at the time of judgment the matter was referred to the MSWGCA on the basis of the

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17 Letter sent from Permanent Secretary of the Ministry of Social Welfare, Gender and Children’s Affairs to the Master and Registrar of the High Court (20 January 2010).
18 Letter sent from Permanent Secretary of the Ministry of Social Welfare, Gender and Children’s Affairs to the Master and Registrar of the High Court (20 January 2010).
19 CS No 1952/09.
in both cases, the court expressly noted the provisions of the CRA regarding the minimum age of criminal responsibility and explained that the reason for referral to the MSWGCA was that child panels, as prescribed under the CRA, had yet to be established. Even if the panels were established, however, it would be inappropriate to refer such cases to the panels as international and domestic legislation, when properly applied, requires that children under the age of 14 not be held criminally responsible for their actions. Evidently, increased sensitization as to the implications of the minimum age of criminal responsibility, and heightened enforcement of these implications needs to be conducted so as to avoid children under the age of 14 being put through trial proceedings.

**Police and the Age of Criminal Responsibility**

In recent interviews with personnel at 19 police stations across the country, the majority (13 of 19) accurately identified the age of criminal responsibility as 14. Where the age was inaccurately stated, 13 and 18 were the next most frequently cited responses. The most significantly inaccurate response came from one station in the Northern Province, where the Crime Officer reported that juveniles below the age of eight are referred to as “doli incapax” but that those aged eight and above could be charged to court. It is interesting to note that four of the five inaccurate responses to the question came from stations either entirely without FSUs or from the CID branch of a station with an FSU standing alone. In addition to being asked for the age of criminal responsibility, stations were requested to describe how they would handle children below the age of 14 who were brought to the station accused of a crime. Only 7 of 20 stations specifically stated that they would engage in mediation between the offender, their parents (if available), and the complainant. Four stations, three of whom had correctly stated 14 as the age of criminal responsibility, specifically acknowledged that there may be instances where children under the age of 14 could be charged to court based on the gravity of the offence. Other stations reported that matters involving children below the age of 14 would be “referred” to the MSWGCA, but it was not clear as to what exactly the Ministry could or would actually do in such cases.

The above figures suggest that increased sensitization regarding both the age of criminal responsibility and its implications for children in conflict with the law be conducted with police personnel to ensure that no child under the age of 14 be interrogated, detained or charged to court. Moreover, the variety of responses to the question of how children under 14 are handled by the station, suggests that a clear policy need be developed and disseminated to all police personnel to ensure the uniform treatment of such children.

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20 CS No 505/08.
ARREST, INVESTIGATION, AND PRE-TRIAL DETENTION

Specialization of the Police

In addition to the binding international law of the CRC and ACRWC which require States Parties to recognize children’s rights to special treatment when they come into conflict with the law, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) elaborate on how States Parties are to recognize such rights. Under Beijing Rule 12, “police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crimes shall be specially instructed and trained. In large cities, special police units should be established for the purpose.”

Within domestic legislation, Cap 44 fails to outline rules and/or guidelines for the arrest, detention and treatment of children alleged to have infringed the penal law. Under the CRA however, s. 57 establishes the Family Support Unit (FSU) of the Sierra Leone Police (SLP) as the division responsible for dealing with alleged juvenile offenders.

History and Mandate of the Family Support Unit

During and after the civil war in Sierra Leone, the number of offences against women and children including rape, abduction, child cruelty, and assault both within and outside home settings increased significantly. In April 1999, the Sierra Leone Police (SLP) responded by establishing the Domestic Violence Unit to deal with such crimes. In February 2001, the DVU transformed into the Family Support Unit (FSU). Under the auspices of the Criminal Investigations Department (CID), the FSU acted with a mandate to address child abuse, sexual abuse, and domestic violence in a broader perspective. In 2004, the Ministry of Social Welfare, Gender and Children’s Affairs (MSWGCA) was invited to join the FSU for joint investigations and provision of services for victims/survivors of abuse, and juvenile offenders. Finally, in 2007, the FSU was separated from the CID and became a distinct unit of the SLP. In the same year, the enactment of the new Gender Acts and the Child Rights Act further broadened the mandate of the FSU to include the handling of all offences committed against and by children. The vision of the FSU is to create a violence-free society by eradicating or minimizing the incidences of the sexual and domestic violence, child abuse and child offences in Sierra Leone.

Despite its critical mandate, many police stations in Sierra Leone currently lack a Family Support Unit. Where FSUs are present, they are often confined to one or two offices within

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22 CRA s. 57.
23 FSU Training Manual at pages 10 – 11.
the Police Station, creating significant challenges of space, capacity, and confidentiality. The latter is a particularly serious challenge given the sensitive nature of the topics and complaints being brought before these Units. Moreover, although the FSU’s mandate has expanded to include the handling of juvenile offenders, the units lack the facilities necessary to comply with the provisions of the CRA detailing the detention and processing of children in conflict with the law.

FSU Personnel

At the unit level, the FSU comprises of the SLP and social workers/probation officers from the MSWGCA who together conduct joint investigations. When carrying out joint investigations, the SLP personnel within the unit are solely responsible for focusing on the criminal aspects, while the social worker and/or probation officer is responsible for focusing on relevant child protection issues.24

In practice, many FSUs are understaffed, especially with respect to representatives from the MSWGCA. In the Western urban area (Freetown), only three of eight interviewed FSUs have a social worker on staff. In Bo and Makeni Towns, there is one social worker to be shared between two FSUs, however, in Makeni it was reported that the social worker had not been present at one of the stations for six months. In Kenema Town, the FSU has one social worker. Overall, less than half of the 13 interviewed FSUs (46%) were adequately staffed with personnel from the Ministry. This shortage of social workers is particularly critical to children in conflict with the law, as it is technically the social worker’s responsibility to ensure their proper treatment while in contact with the police.

Coordination Between FSU and Other Police Divisions

Although s. 57 of the CRA clearly establishes the FSU as the SLP division responsible for children in conflict with the law, interviews conducted with personnel from FSU and other divisions of the SLP indicate an apparent tension and/or confusion among the various divisions as to the appropriate handling of alleged juvenile offenders.25

Based on interviews with FSU personnel, whether juvenile cases are transferred to FSU is largely contingent on the integrity, dedication, and/or commitment of the individual FSU Line Manager or OC. Although two FSUs referred to a Memo of Understanding circulated in

24 FSU Training Manual at page 11.
25 This lack of coordination between FSU and other branches of the SLP, and the failure of divisions to refer all juvenile matters to the relevant FSUs was similarly cited as a major challenge by respondent probation officers and social development officers from the MSWGCA.
2008, informing all SLP personnel that FSU should handle juvenile cases, the majority of
FSUs (7 of 11) reported that unless they send one of their own personnel to check for
juveniles in other divisions, such cases would not generally be referred to the FSU. When
juveniles are found in other divisions, it was reported that crime officers or general duties
officers are at times reluctant to transfer the case, even when presented with documents
such as the CRA and the FSU Training Manual which both clearly stipulate the role and
responsibility of the FSUs. One FSU respondent suggested that officers were turning a “blind
eye” to the rules and recommended that information regarding the mandate of FSU be
circulated at the national level to reach the grassroots officers. Similarly, another
respondent remarked that because juvenile offenders used to be the responsibility of other
divisions, it will take a certain amount of time to “change their mindset,” suggesting also
that not all CID personnel have even accessed the CRA. Even within the FSU there appeared
to be uncertainty regarding their own mandate as one respondent reported that when
juveniles are involved in serious crime, “it is only the interview of the offender” that is to be
handled by the FSU.

In practice, even where FSU personnel reported checking other divisions within the station
on a daily basis, the reality is that such monitoring may not actually occur as consistently as
reported and that without FSU intervention, juvenile cases continue to be handled by other
divisions. For example, in early June 2010, following DCI’s interview with one FSU, the
Officer in Charge led researchers on a tour down the hallway of the station to see the three
police detention cells. While touring the cells, the sole detainee appeared to be a juvenile.
When researchers inquired as to his age, the boy reported that he was 16, born in 1994 and
currently attending SS1. The juvenile was being held for suspected theft of 500,000 LE from
a tenant in his building and had been brought to the station two days prior. The juvenile
reported to researchers that FSU had not been involved in his case and that the
investigation was being handled by the General Duty Investigative Branch. This was
confirmed by the FSU’s Officer in Charge, who was unaware of the boy’s presence at the
station. It was also reported to researchers that on the second day of his detention, the boy
had spent the day detained with an adult suspect. Two days later, DCI returned to the
station to check on the juvenile’s status and the Officer in Charge confirmed that the
juvenile had been released later on the day of the initial visit, as there was no evidence to
support the complainant’s accusations against him.

As indicated in Figure 2 (*Processing of Juvenile Detainee Cases by SLP Division*), such cases of
juvenile offenders being handled by divisions other than FSU may in fact be the norm rather
than the exception.
Interviews with personnel from other divisions of the SLP suggest that there is a genuine lack of understanding and/or awareness as to the mandate of the FSU. Comments made by interviewed CID personnel suggest that FSU is responsible only for matters of abuse, and/or criminal matters occurring within the family. In four of the six interviews, respondents reported that matters of a “family nature” were to be referred to the FSU, whereas criminal cases, including those involving juveniles, were to be handled by CID, General Duties, or I Branch divisions. As one respondent explained the difference, “FSU is different from CID because they are dealing with sexual violence and domestic violence, while CID investigates criminal matters.”

An additional issue raised in relation to police handling of juvenile suspects is that of alleged corruption among SLP divisions. According to some interviewed MSWGCA and SLP personnel, there is a belief that various I Branch and CID divisions have accepted financial incentives or “tips” offered by victims in return for treating accused offenders with particular severity. According to interview respondents, this in turn reduces the division or officer’s willingness to refer such cases to the appropriate FSU. While such allegations cannot be confirmed in this assessment, to the extent that they are at all true, such practices systemically undermine the purpose of FSUs and perpetuate a pattern of rights abuses which must not go unaddressed.

The creation of FSUs and the designation of a specialized unit to handle juveniles are important and positive steps towards ensuring the protection of children’s rights. That said, in the absence of uniform and enforced referral systems, and in light of the insufficient

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26 Interviews with children detained at Remand Home Kingtom (18 and 25 June 2010), Remand Home Bo (1 June 2010), Makeni Rogbaneh Police (22 June 2010), and Approved School Wellington (8 June 2010).
number of FSUs around the country, children who come into conflict with the law in many regions continue to be at risk of being treated as adult offenders.

**Training and Competency of Police Personnel**

While the creation of a specialized unit is an important first step towards recognizing the special needs of children in conflict with the law, training the personnel who make up these units is critical to the unit’s ability to carry out their responsibilities. In this regard, the situation in Sierra Leone appears to be increasingly positive. Interviews indicate that since the introduction of the CRA, many personnel within both FSU and other divisions of the SLP have received trainings on how to handle juveniles in conflict with the law. 75% of interviewed FSU personnel reported having received trainings on the arrest and detention of children. Similarly, 83% of personnel from other SLP divisions responded that members of their personnel had received training on juvenile justice. A variety of stakeholders including UNICEF, JSDP, DCI-SL, Action Aid, YMCA and the MSWGCA, among others, have been responsible for the bulk of these trainings and have helped to establish a base level of understanding and awareness with respect to children’s rights among SLP personnel.

One challenge identified in interviews, however, is that trainings are not reaching all personnel, and in many cases only senior officers are participating in the programs. For example, only 25% of FSUs reported that all personnel had received training in children’s rights and juvenile justice. Another challenge is that the ad-hoc style of the trainings has resulted in inconsistencies with respect to the focus and content of the programs. While some trainings have reportedly focused exclusively on specific aspects of juvenile justice such as arrest and detention, others have had a more general children’s rights focus. This inconsistency in trainings may in turn result in inconsistencies with how children in conflict with the law are handled at various stations.

**Notification of Parents/Guardians**

Both the CRC and the ACRWC emphasize that State Parties have an obligation to notify a child’s parent(s) or guardian(s) as soon as possible following the apprehension of that child by the State. Such notification is a fundamental due process guarantee and is reaffirmed in Beijing Rule 10, which stipulates that “parents or guardians shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardians shall be notified within the shortest possible time thereafter.”

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27 CRC Articles 9(3) and 9(4) and ACRWC Article 19(4).
28 Beijing Rule 10.
Neither Cap 44 nor the CRA specify any due process rights for children at the point of arrest. Consequently, police officers in Sierra Leone have no legal obligation to notify parents of the apprehension of their child.

While social workers attached to the FSUs are technically responsible for assisting children in contact and in conflict with the law, the previous section highlighted the significant shortage of such personnel. District probation officers are also responsible for assisting in the tracing process however, they too are limited in numbers and in capacity. Tracing of parents and relatives is therefore a major challenge for police and MSWGCA personnel. Based on responses from 20 interviewed FSU/CID/General Duty stations, the primary issues include: inaccurate information being provided by juveniles, insufficient personnel, inadequate mobility and logistics, and lack of parental responsibility for children who come into conflict with the law.

Mobility of the police, both CID and FSU, is a critical challenge with respect to tracing and notification of parents and guardians, and is an issue that affects police personnel across the country. In Bo, the Eastern Police FSU at the time of interview had no vehicle and only one motorbike. The Central Police FSU had one motorbike in addition to one vehicle that had been out of service for 18 months. Bo Central Police CID had no vehicle at the time of interview and it was reported that Bo District as a whole had only three working vehicles. The implications of this lack of mobility on the officers’ ability to investigate crimes and trace parents or guardians is especially significant given that Bo Central Police Station is responsible for 14 chiefdoms. As one Bo respondent reported, “you cannot work in the absence of a vehicle.” In Makeni Town, there is currently one vehicle shared between both FSUs, however maintenance and fuel were both reported to be an issue. Fuel is reportedly provided on an “as needed” basis, however for 6 months the vehicle could not be used because of a lack of fuel. Moreover, although the social worker attached to the FSUs has a motorbike, it was reported that he has never received fuel from the MSWGCA and is therefore forced to buy fuel with his own money. At least one of the two police stations in Makeni is similarly without a vehicle. In Freetown, none of the eight FSUs interviewed had a vehicle. Five Freetown FSUs reported having a motorbike (although one was currently broken), while two more reported that there were vehicles at the main station that they may at times have access to. Two stations reported having no vehicle at all which is a significant challenge when considering that neither station has an FSU and thus, theoretically, juveniles must be transferred to New England or Lumley Police. Although it was reported that personnel have at times overcome fuel and vehicle shortages by using their personal finances to hire vehicles, it is clearly unreasonable to expect that individuals would or should undertake such practices with any consistency. Ultimately, 67% of FSU

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29 As per interview with social development officer, there are two probation officers in Freetown and only one in every district.
30 Bo Central Police CID.
mobility is limited to a single motorbike, and less than 20% of FSUs interviewed have access to a vehicle. Mobility is similarly an issue for probation officers, who reported having access to motorbikes but noted that given the large geographical areas they are mandated to cover, fuel shortages prevented them from making use of the bikes. For example, in one provincial district the probation officer reported that fuel is set on a quarterly basis but generally only includes approximately five gallons for three months.

**Image 1: Out of service vehicles at one provincial police station**

In order to overcome some of these limitations, organizations such as Timap for Justice, DCI-SL and YMCA/SL have stepped in to trace and notify parents of their child’s apprehension. Unfortunately, such efforts have not always occurred on a regular and consistent basis. Some stations have also developed innovative policies to increase their capacity to trace and notify parents. For example, one respondent Crime Officer recently developed a unique strategic approach to reduce tracing-related expenditure by collaborating with police in the juvenile’s hometown. The Crime Officer will contact police in the home district and request that they conduct the preliminary tracing in order to avoid personnel from Bo traveling to, for example, Makeni or Kenema in an effort to locate a juvenile’s relatives. While the Crime Officer was optimistic that this strategic approach would improve the station’s ability to
conduct successful tracing, he noted that challenges remain with respect to the partner
division having incentive to carry out the tracing as requested.

The importance of notification cannot be understated, and it can make a critical difference
in how a juvenile’s case is handled at the point of first contact with the justice system as
well as once the case is before the courts. For example, 81% of the children whose parent(s)
or guardian were notified of their apprehension by DCI-SL or YMCA/SL ended up being
released or granted bail.\textsuperscript{31} Of 50 juveniles detained at the Approved School and Remand
Home in June 2010, less than half (42%) had parents notified upon their arrest. Moreover,
72% of children who were deprived of their liberty pending or after trial in 2009 was as a
result of their parents not coming to police stations.\textsuperscript{32} Though some parents deliberately
refuse to come, many are never notified. It is essential that tracing be a priority among
service providers, policy makers, and budget planners in order to minimize children’s
contact with the formal justice system.

**Interviewing Juvenile Suspects**

Although international law stipulates that children accused of infringing the penal law have
a right to special treatment consistent with their unique needs,\textsuperscript{33} there are no laws in Sierra
Leone governing the interview process for children in conflict with the law.

Under international norms, the principles that ought to characterize the interview process
for juveniles include: privacy/confidentiality, presence of a parent/relative/social worker, a
child-friendly environment, short interview time, and minimal probing. In practice, these
rights are largely respected when dealing with juvenile victims, however offenders are not
perceived as rights holders and are thus not afforded the same treatment.

The protection of a juvenile’s privacy and identity while in police custody is of critical
concern. Interviews with police and FSU personnel indicate that such protection extends
only, if at all, to specifically designated interview rooms. 75% of respondent FSUs have a
designated interview room where all interrogation of juvenile offenders is reportedly
conducted. The other 25% are FSUs housed within the main station. At such locations, the
FSU consists generally of one or two rooms, and the Line Manager’s office was reported to
be the only room available for interviews, making it impossible to guarantee consistent
privacy. In one busy police station in the East of Freetown, the FSU has only been allocated a
single room, which is used as the Line Manager’s Office. Consequently, personnel at times
have little choice but to conduct interviews in the open, clearly jeopardizing the privacy

\textsuperscript{31} DCI-SL monitoring data (2009).
\textsuperscript{33} CRC Article 40(3(a)) and ACRWC Article 17(1).
rights of the juvenile accused. Within the other divisions of the SLP, some stations have rooms designated for taking statements, however at one Freetown station it was reported that the “infrastructure [to provide private interviews] is not there.” Similarly, in one provincial station, CID personnel reported that there is no privacy for criminal matters, noting, “FSU has a policy for those private interviews, but not CID.” In addition to emphasizing the general lack of privacy afforded to juvenile offenders, this statement further strengthens the point that juveniles whose cases are handled by divisions other than the FSU are not being afforded the same rights, in theory, let alone in practice.

The question of who is present during a juvenile interview is another important issue. The majority of stations reported that only the investigating officer, the child, their parent(s) or guardian (if present), as well as the social worker or probation officer (if available) and a police recorder would be present for the initial interview. In practice, it is unclear whether this policy is strictly enforced. During visits to numerous stations, including FSUs, many interviews were observed being conducted in the open and in the presence of both the complainant and the offender.

The inadequate physical settings and shortages of social workers at some stations, especially FSUs, undoubtedly impede their ability to ensure full protection of children’s rights during the investigative process. That said, many of these rights, especially rights related to how and what questions are asked and who is present for the interview, are not resource dependent.

**Investigative Detention**

A fundamental principle of juvenile justice under international law is that detention be used only as a measure of last resort. With respect to detention pending trial, Beijing Rule 13 expressly stipulates that it shall not only be used “as a measure of last resort,” but also “for the shortest possible period of time.” Similarly, Rule 17 of the Havana Rules states that “detention before trial shall be avoided to the extent possible and limited to exceptional circumstances.” Where investigative detention cannot be avoided, international law, including both the CRC, the ACRWC, as well as the soft law of the Beijing Rules, requires that detained children be separated from adults. Under the Havana Rules, states are also under an obligation to prioritize such cases to ensure expeditious processing and shortest possible period of pre-trial detention. Finally, the norms of international law emphasize that in addition to these pre-trial specific rules, children kept in investigative detention retain the

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34 CRC Article 27(b).
35 Beijing Rule 13.
37 CRC Article 37(c), ACRWC Article 17(2)(b)) and Beijing Rule 13.4.
38 Havana Rule 17.
basic rights afforded to all children such as the right to adequate food and the right to health.39

_Bail_

In Sierra Leone, Cap 44, s. 5 requires that where a young person is apprehended and cannot immediately be brought before a court, the officer in charge shall release the individual on a recognizance entered into either by him, or his parents or guardian or by another responsible person. Under ss. 5(a), (b), and (c), bail may be denied on three grounds: where the suspect is accused of homicide or any other offence punishable with imprisonment for more than seven years; where it is in the accused’s best interest to remove him from associating with any undesirable person; and finally where “the officer has reason to believe that the release of such a person would defeat the ends of justice.” 40 These exceptions, especially the latter, provide a legal loophole for the police and facilitate the detention of juveniles during the investigation period.

Although there are no formal criteria for granting bail to juveniles, all but one of the respondents who provided information as to the criteria used by their station, stated that the presence of parents or guardians was a minimum requirement. At one northern region station, the Crime Officer reported that they would also release juveniles to NGOs and human rights activists who appear at the station to advocate on behalf of juveniles in police detention. When asked how the station can release children to the probation officer, the Crime Officer reported that he believed the probation officer had a house where they can keep such children, which he further believed the government was paying for. To the extent of DCI’s knowledge, no such house exists and the Crime Officer’s response may be telling of a substantial information gap between the various stakeholders in the juvenile justice system (i.e. the police, MSWGCA and NGOs). The implication of having parents or guardians present as a pre-condition for granting bail is that children whose parents cannot be located, or who are not notified of their child’s arrest, have no alternative to pre-trial detention in police custody.

_Separation from Adults_

Under Cap 44, s. 6, the Commissioner of Police is responsible for preventing the association of children with adults (aside from relatives) charged with an offence.41 In practice, however, not a single police station or FSU across the country has detention facilities
designed for juveniles. In fact, the lack of interim detention facilities or custody facilities designed for juveniles was the most frequently cited challenge by interviewed SLP personnel. Consequently, 37% of interviewed stations (including FSU and general divisions) reported keeping juveniles in open detention, while 42% reported that juveniles would be kept in police cells.

Two stations in the Southern region elaborated on the procedure for detention and reported that the choice of location (i.e. cells vs. open detention in FSU) is dependent on the accused’s behaviour at the station and on the nature of the alleged offence.

At two Freetown stations, it was reported that the lack of detention facilities suitable for children has resulted in personnel occasionally bringing accused juveniles home at night during the investigation and pre-trial period. At another Freetown FSU, the former social worker used to engage in the same practice of taking children home with him as needed. At two other Freetown FSUs, the exact treatment of children was difficult to ascertain as interview participants responded that accused juveniles may be released to the MSWGCA if parents could not be traced. Respondents did not, however, elaborate on what such involvement by the Ministry might entail.

In Makeni Town, all three of the respondent stations, reported that juveniles would be kept in separate cells, although at the time of each interview, no juveniles were found to be in detention. At the fourth station, the respondent did not answer this specific question, however, the following day a visit to the station revealed six juveniles detained in a single police cell with adult suspects.

Information gathered during DCI-SL’s monitoring of juvenile detention facilities suggest that there is a significant gap between reported practices and the reality of police behaviour concerning investigative and pre-trial detention of juveniles. For example, at one Freetown police station, the interview respondent was adamant that juveniles were not detained at his station. The next day, however, DCI court monitors reported that a juvenile who had appeared in court that morning had been brought directly from having spent 6 days in police detention at that very station, thus expressly contradicting the participant’s response. In Freetown detention centres, 88% and 89% of juveniles at the Remand Home Kingtom and the Approved School Wellington, respectively, report having been detained with adults while in police custody. All four boys detained at the Bo Remand Home in early June similarly report that they spent the duration of their time in police custody in cells with adults. Finally, in Makeni Town, six boys were found detained with numerous adults in a single police cell.

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42 CS No 358/10 (First court appearance 26 May 2010).
Length of Investigative Detention

Under *The Constitution of Sierra Leone*, individuals alleged to have committed a criminal offence are not to be held for more than 72 hours before being charged to court. Neither the CRA nor Cap 44 however, includes any special provision for juvenile matters.

47% of interviewed SLP personnel reported that juveniles may be detained for up to 72 hours at the station, 20% reported keeping children for only one to two days, while a further 27% reported that the length of investigative detention was dependent on the offence. Of those stations reporting that the term of detention was dependent on the nature of the offence, two reported that juveniles could be held for up to 10 days for felonious offences while another stated that there was “no hard and fast rule.”

In practice, the average length of pre-trial police detention among juveniles at the Remand Home Kingtom at the time of assessment was six days, with the maximum being 14 days and the minimum being zero. At the Bo Remand Home, one juvenile spent 21 days in pre-trial detention, a second spent 17 days, a third spent four days, and the fourth did not report the length of his stay. At the Approved School Wellington, juveniles spent an average of seven days in pre-trial detention, from a minimum of one to a maximum of 30 days.43

A lack of formal reporting procedures with respect to the intake and detention of offenders further compounds the problem of prolonged detention, making it difficult to hold personnel accountable for the unreasonable length of pre-trial detention.

Conditions of Investigative Detention

Neither Cap 44 nor the CRA provide guidelines for the protection of the health and well being of children while in police custody.

In the absence of clearly designated responsibilities, a lack of funding for food, clothing, and medical care of children in custody was a major concern expressed by interviewed SLP personnel. In fact, when asked to list the challenges faced with respect to protecting the rights of children in conflict with the law, this issue was the second most frequently cited challenge. Similarly, one interviewed PSDO noted that although a Memorandum of Understanding has been signed between the SLP and the MSWGCA, certain gaps such as who is responsible for food, medical treatment and clothing of children at police stations needed to be addressed and the MOU revised.44 When children are detained in police cells,
it was reported that they are counted by the custody officer along with other inmates. The custody officer then reports the number of detainees to the Sierra Leone Prisons Services who are responsible for providing food to the stations on a daily basis. Individuals in police custody, including juveniles, receive only one meal per day. Not only is this amount of food insufficient for growing children, the communal distribution of the meal further jeopardizes the health and wellbeing of juveniles who have to compete with grown adults for a satisfactory share of the meal. Inevitably, in such a situation, children are at significant risk of not receiving fair portions and may become malnourished while in detention.

From the above statistics, it is clear that Sierra Leone currently falls short of its international obligation to treat detention, and specifically investigative detention, as a measure of last resort and to observe the special needs and circumstances of detained children.
**JUVENILE TRIAL PROCEEDINGS**

**Juvenile Courts**

Under both the CRC and ACRWC, as well as under relevant soft law norms, a fundamental aspect of a juvenile justice system is the creation of institutions specifically geared towards children in conflict with the law.\(^{45}\) One of the most critical institutions in this regard is a court designed to handle juvenile matters in a way that recognizes the ultimate aims of juvenile justice: reformation, rehabilitation, and reintegration of child offenders.

Cap 44 provides for the establishment of a separate Magistrate’s Court for juveniles, to be presided over by a Magistrate and two or more Justices of the Peace (JPs).\(^{46}\)

Of the four judicial districts covered during the assessment period, only Freetown has established a separate and distinct juvenile court, presided over by a designated Magistrate and two JPs. In Bo, Makeni, and Kenema districts there is one resident Magistrate for each judicial district and thus the same Magistrate presides over both adult and juvenile trials. In each of these three provincial districts, juvenile matters are heard either in the Magistrate’s chambers or in a courtroom closed to the public. There are two JPs available to hear matters in each of Kenema and Makeni districts, however, in Bo the Magistrate sits alone.

**Due Process Rights**

*Right to be Presumed Innocent*

The right to be presumed innocent is a fundamental due process right recognized both in international human rights documents as well as related international norms and rules. While Cap 44 does not expressly state this principle in rights language, ss. 8 -11 of the legislation provide for procedures allowing the accused juvenile to enter a plea of either guilty or not guilty.

In practice, legal custom and tradition in Sierra Leone suggests little differentiation between a child offender and a child alleged, accused, or suspected to have infringed the penal law. The clearest example of this failure to distinguish between offenders and accused individuals is the court’s standard practice of referring to the accused person at trial as an “offender.” The use of such terminology is strictly enforced amongst court officials and during one observed case, a complainant was in fact reprimanded for referring to the

\(^{45}\) CRC Article 40(1), ACRWC Article 17(1), and Beijing Rule 14.1.

\(^{46}\) Cap 44 ss. 3(1) and 4.
Beyond the Law: Assessing the realities of juvenile justice in Sierra Leone

The police prosecutor quickly corrected the witness, insisting “he is now an offender, so call him an offender.” The use of such language by the court implies a degree of pre-judgment of juvenile cases and suggests that individuals in practice are treated as being guilty until proven innocent rather than innocent until proven guilty.

Right to Trial by an Impartial Tribunal

The hallmark of a fair judicial process is the trial of cases by an independent and impartial court. With regard to juvenile trials, this right is enshrined in both the CRC and the ACRWC.

Under domestic legislation, cases at the Magistrate Court level are brought in the name of the Inspector General of Police, rather than in the name of the state. Given that the police are also responsible for conducting criminal investigations and laying charges, the potential for juvenile accused to receive impartial tribunals is called into question. As two DCI-SL lawyers reported, gaining access to the police investigative files is made difficult by the fact that the trials are also being prosecuted by the police, who consider the files to be their own property rather than making them accessible to both the prosecution and the defendant.

Right to Privacy

Juveniles who come into contact or conflict with the law have a right to privacy at all stages of the administration of justice, and in particular, not to have their identity published. International law emphasizes that the protection of this right is essential to avoiding harm being caused to the juvenile accused by undue publicity or the process of labeling.

Cap 44, s. 3(5) recognizes a juvenile’s right to privacy, permitting only officers of the court, relatives of parties, advocates, and “other persons directly concerned in the case” to be present in the courtroom. Moreover, the section further prohibits the publication of any information (including name, address, school, and photo) that is likely to lead to the identification of the child or young person.

Despite explicit provisions in domestic legislation ensuring the right to privacy, common practice of the courts, especially in Freetown, does not allow for adequate protection of this right. In Freetown, juvenile court matters have historically been heard in courtroom number 47 CS No 2141/10.

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47 CS No 2141/10.
48 CRC Article 40(2(b)(iii)) and ACRWC Article 17(c(iv)).
49 CRC Article 40(2(b)(vii)) and ACRWC Article 17(2(d)).
50 Beijing Rule 8.
51 Cap 44 s. 3(5).
seven, centrally located in a busy section of the courthouse. In the eight visits conducted specifically for this assessment, no request or announcement for the public to leave the court was ever made. Consequently, members of the public are free to enter and exit the courtroom at their leisure without verification as to their affiliation with a particular case. In practice the majority of spectators may be family members and witnesses, however, rather than waiting outside the courtroom for their matter of interest to be called, spectators spend the duration of the court session in the courtroom, hearing each juvenile case listed for the day. As of July 2010, the juvenile court began hearing matters in a separate facility outside the main courthouse. The courtroom is self-contained and its location outside the courthouse may help to minimize the presence of non-family members at juvenile hearings. That said, any heightened observance and enforcement by court officials of the child accused’s right to privacy remains to be seen.

In the provinces, a lack of juvenile courtrooms requires individual Magistrates to improvise in order to protect the privacy of children. In Bo, the Magistrate reported that juvenile matters would be heard either in chambers or in the courtroom with the public excluded. The Magistrate explained that if there a lot of people in and around the court on a particular day, matters will be heard in chambers to protect the privacy of the juvenile accused, but otherwise matters may be heard in closed court to expedite proceedings. In Kenema, the Magistrate reported that matters are heard exclusively in chambers. In Makeni, the Magistrate declined to speak with researchers, however DCI-SL court monitors report that juvenile matters are similarly heard in the Magistrate’s chambers.

**Right to Legal Counsel**

While the right to legal counsel is a fundamental right of all individuals accused of committing an offence, the right is particularly important in the context of juvenile justice because of the unique vulnerabilities of children in conflict with the law. This right is enshrined not only in the CRC and the ACRWC, but also in the International Covenant on Civil and Political Rights, which guarantees the right of the accused to be provided with free legal representation where he or she cannot afford to pay. Access to free legal counsel for juveniles is further reiterated in the Beijing Rules. Cap 44 affords juveniles the basic right to have an advocate present in the courtroom during his or her trial, however, there is no provision in domestic law for the right to receive free legal representation.

In practice, many children in Sierra Leone are unable to afford the high cost of counsel and consequently face the court without the assistance of legal representation. In an effort to

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52 CRC Article 40(2(b)(ii)), ACRWC Article 17(2(c)(iii)), and ICCPR Article 14(3(d)).
53 Beijing Rule 15.1.
54 Cap 44 s. 3(5).
address this situation, a few organizations have been providing legal services to juveniles on trial, however, such representation has not been consistent and has been limited in its reach. Most of the lawyers hired by these organizations continue to take on paying adult clients and, while they attempt to split their time between courtrooms, the reality is that they do not have room in their schedules to dedicate sufficient amounts of time to the preparation of juvenile cases. Moreover, with clients’ cases often being heard simultaneously in two courtrooms, counsel is frequently absent from some if not all of a juvenile’s hearing. For example, in the completed case files reviewed for this assessment, defence counsel were present for an average of 35% of a juvenile’s appearances in cases that reached the point of sentencing, while only for 24% of appearances in cases eventually ending in discharge.\(^{55}\) Statistics also show that access to legal representation may depend on the location of the trial. JSDP has recently hired lawyers to represent child offenders and this program has undoubtedly helped improve access to counsel for many young accused. The program however, is currently only operating in Freetown, meaning that juveniles in the provinces continue to face trial without representation. The impact of service providers’ focus on the Western Area can be seen in the following graph, indicating the level of legal representation for young offenders in the first half of 2010.

**Figure 3: Legal Representation of Young Offenders by Region\(^{56}\)**

![Pie charts showing legal representation by region.](image)

Information gathered from juvenile detention centres in Freetown and Bo indicate that at least 50% of juveniles did not or have not had a lawyer present at any point during their trial.\(^{57}\) Without a lawyer present to advocate on their behalf, children lack the knowledge and understanding needed to effectively navigate the court process. As a result, trials and judgments take place in their presence but without their meaningful participation and without consideration of their best interests. For example, children often receive

\(^{55}\) Juvenile court completed case files.


\(^{57}\) DCI-SL monitoring data (2010).
misinformation while in police detention and plead guilty at their first appearance believing it will help secure their release. As one boy sentenced to 18 months at the Approved School revealed, “I thought admitting that I was guilty will let the Magistrate free me for being honest.” Six other young boys are currently serving custodial sentences because they made false confessions or pleaded guilty thinking it would secure their release. 58 This problem is further compounded by the use of police prosecutors at the Magistrate Courts. Police hearing cases for and on behalf of the Inspector General of Police represent the state’s interest in suppressing crime. Accordingly, in the role of prosecution, this state interest is made paramount without due consideration of the child’s best interest. Where defence counsel is absent, police are more easily able to advocate unchallenged for custodial sentences on the grounds that release will result in reoffending. In effect, the denial of legal counsel denies juveniles the opportunity to exercise their right to make a full answer and defence of the charges brought against them. Without an effective legal aid scheme, access to justice for children will continue to be limited by the absence of legal counsel.

**Right to Cross Examine and the Right to be Heard**

The CRC gives children the right to be heard in judicial proceedings and guarantees the right to cross-examine witnesses. 59 In accordance with these international laws, sections 13 and 14 of Cap 44 provide that juveniles have a right to cross-examine and question witnesses. Even where the juvenile is unrepresented by counsel, the court will ask questions of witnesses and is required to ask the juvenile if he or she wishes to do the same. Moreover, Cap 44 provides juveniles with the right to be heard by allowing the defendant to make any statement he or she may wish in their defence. 60

Although domestic legislation protects the right of juveniles to cross-examine and to make a statement of defence, provisions have little practical impact on proceedings where juveniles are unrepresented. Without adequate legal knowledge and experience, children are generally unprepared to ask questions that generate relevant and meaningful information.

**Parental Presence in Court**

Under the CRC, children have the right to have their parents or legal guardians present in the courtroom for their trials. 61 This right is recognized in domestic legislation under Cap 44 which also grants juvenile courts the authority to make orders requiring the attendance of
parents or guardians and the imposition of fines if such individuals fail to attend.\textsuperscript{62} Relatedly, the CRA states that it is the responsibility of parents to provide support to their children in the enjoyment of their rights.\textsuperscript{63}

Despite provisions allowing them to be present in court, parents do not always attend court sessions with their children. For some, this decision reflects a belief that children ought to be taught a severe lesson for having come into conflict with the law, even if he or she has not yet been found guilty of the alleged offence.\textsuperscript{64} For others, the decision not to attend court may stem from the fear of being asked to provide financial compensation and fines on behalf of their child. A final reason for parental absence is the reality that many of the young people appearing in court are street children or have been separated from their parents. In these situations, tracing parents may be complicated by geographical distance as well as by a child’s reluctance to have their parents notified of their arrest. Probation officers lack the resources necessary to conduct successful tracings and the absence of a formal referral pathway and consistent commitment from other organizations, means that only a limited number of referrals are made.

The absence of parents or guardians in court can have a significant impact on the outcome of juvenile cases. Their absence limits the sentencing options available to the courts and may thus contribute to the issuance of custodial sentences for offences that could otherwise have been disposed of using alternative means.\textsuperscript{65} Further support for the importance of parents and guardians being present in court comes from cases where organizations such as DCI (in the North and Western regions) and CAREM and YMCA (in the South), have supported the MSWGCA to successfully trace parents and relatives. Although such tracing occurs only on a limited scale, such efforts have resulted in securing the release of 75\% of children whose parents came to court.\textsuperscript{66}

**Interpreters**

Both the CRC and the ACRWC require that States Parties guarantee a juvenile’s right to the assistance of an interpreter if he or she cannot understand the language used by the court.\textsuperscript{67} Within domestic legislation, this right to an interpreter is not expressly recognized,
however s. 8 of Cap 44 gives juveniles the right to have the substance of the alleged offence explained to them in “simple language.”

While the official language of the court in Sierra Leone is English, many defendants and witnesses speak only Krio, the lingua franca of the country. In order to accommodate such individuals, court clerks serve as interpreters when announcing the charge to the defendant and when explaining the process of swearing oaths and testifying. Krio is also often used to communicate with the witnesses and the defendants throughout the trial, especially when dealing with issues of fact. This practice of court clerks serving as interpreters thereby ensures that language does not generally serve as a barrier for children involved in judicial proceedings.

**Right to Appeal**

The right to appeal is guaranteed in international law and is provided for domestically under s. 41 of Cap 44. Juveniles may appeal from an order or sentence made or passed by a juvenile court within seven days of its issuance. Appeals are heard in the High Court where the judge may choose to sit alone or with two Assessors, unless a juvenile is jointly charged with an adult, in which case the judge must sit alone. Assessors at the High Court have the same function as the Justices of the Peace in the juvenile court – they offer their opinions on the case but such opinions are not binding on the judge. Following an appeal to the High Court, further appeals can be made to the Court of Appeal and then to the Supreme Court as the offence may warrant.

Despite theoretical provisions for appeals, the law has little practical impact on juvenile cases. At the close of their trials, juveniles are not informed of their right to appeal, nor is the process of appeal explained. In the absence of defence counsel, the court does not provide such information to young offenders and even where defence counsel is present, the cost associated with continuing trials at the appeal level is prohibitive for most offenders. In the past five years, no child has launched an application for appeal.

**Right to Have the Matter Determined Without Delay**

The CRC, ACRWC, and the Beijing Rules demand that State Parties ensure that matters involving children are determined without delay. In domestic legislation, however, there are

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68 Cap 44 s. 8.
69 CRC Article 40(2(b(v))), ACRWC Article 17(c(iv)) and Cap 44 s. 41.
70 Cap 44 s. 41.
no provisions regarding the duration of juvenile trials and, in particular, no maximums set for the length of proceedings.

In the absence of legislative guarantees to have matters determined expeditiously, trial delay has become a critical issue in the administration of juvenile justice. Children whose cases are charged to court often face months of proceedings before the matter is finally adjudicated. Based on case files of juvenile matters sentenced in the Freetown juvenile court (Courtroom 7), the average length of a juvenile trial that continues through to sentencing is 178 days. The maximum recorded in the sample cases was 349 days, while the minimum was 70. For cases involving simple larceny, trials ranged from 81 to 212 days, with the average being 154. Even where cases are eventually discharged for want of prosecution, the average length of trial before discharge is 61 days, the maximum being 198 and the minimum being 14.

In 2006, the National Child Justice Strategy attributed the issue of trial delay to a number of factors including: lack of legal assistance, lack of vehicles to transport children to court, and poor cooperation of parents in providing support for their children whilst on trial. In 2009, the Justice Sector Development Program sought to address the issue of transportation by providing the MSWGCA with a vehicle in an effort to increase attendance for juveniles detained at the Remand Home. In addition, a bail policy was adopted in early 2010 to reduce the number of people detained during trials, however non-compliance of parents and guardians has limited opportunities for juveniles to benefit from this scheme and 70% continue to be detained during trials.

In 2000, human rights lawyer Mohamed Pa-Momo Fofanah reported that the main problem with the system was the slow progress of proceedings. According to Fofanah, “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 to the way and manner in which complainants, 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.” Research conducted for this report, along with DCI’s court monitoring data, indicate that many of the factors identified by Fofanah, including institutional constraints, absent witnesses, and multiple adjournments, continue to be significant problems.

72 CS Nos 1200/09 and 912/08, respectively.
73 CS Nos 4370/09 and 1126/09, respectively.
74 CS Nos 478/09 and 2634/09, respectively.
76 YMCA/SL, Rough Justice for Young People in Sierra Leone (April 2010) at page 25.
Institutional Constraints

According to the provisions in s. 4 of Cap 44, juvenile courts are to be presided over by a Magistrate and two Justices of the Peace. Where one of these individuals is absent, however, the court is considered to be “not properly constituted” and proceedings are adjourned to a later date. In practice, in both Kenema and Freetown, cases will be adjourned when one or both of the JPs or the Magistrate is absent. In Kenema, the case will be adjourned to the following Tuesday, while in Freetown the case will generally be adjourned until the following week. During research for this assessment, eight separate visits to the juvenile court in Freetown were conducted in May and June, 2010. Out of these eight days, the court was not properly constituted on six occasions. On two of the six occasions, cases were simply adjourned to the following week. On the four other occasions, the court continued to hear cases (i.e. witness testimonies, examination and cross-examinations proceeded) and the court emphasized to counsel that the bench not being properly constituted did not prevent them from granting bail or discharges, but that determinations of judgment and sentencing could not be made. Ultimately, cases were therefore adjourned until the following week.

When the court is properly constituted, there remain significant challenges regarding logistical support and resources in the courtroom. In the juvenile court, the Magistrate also serves as court reporter. In Bo, the Magistrate is equipped with a typewriter, which helps to expedite the recording process. In Kenema and Freetown however, Magistrates must record the details of each proceeding by hand. During court visits in Freetown, witnesses were often asked to stop during their testimony in order to allow the Magistrate sufficient time to record their statements. It was suggested by the Magistrate that having to handwrite each document and case record contributes to delayed proceedings.

Absent Witnesses

Magistrates and police prosecutors alike have identified absent complainants and witnesses as a “major” problem in juvenile trials.78 Statistics gathered from closed case files and observations from court visits further indicate the prevalence of absent witnesses. On average, prosecution witnesses were absent from court eight times over the course of trials. Given that there was an average of 27 adjournments in this same group of cases, absent prosecution witnesses contribute to at least 30% of these delays.79

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78 See example Kenema Magistrate Court
79 Juvenile court completed case files (sentenced cases).
In the absence of official guidelines with regard to an acceptable number of adjournments, Magistrates have complete discretion over the number required before they will consider discharging a case. Where defence counsel are present, an application may be made to discharge a case for “want of prosecution” under s. 94 the Courts of Justice Act, but Magistrates are under no legal obligation to grant such a request.

Of the interviewed Magistrates, two reported having adopted a personal habit of discharging after three consecutive adjournments, while the third reported that he would generally consider discharging a case after four or five adjournments. In practice, files from cases ending in discharge indicate that 83% involved complainants being absent on more than five consecutive occasions before discharge was granted, and 50% involved seven or more consecutive absences. Clearly, the reported practices of Magistrates do not always accord with the reality of case proceedings and decisions at trial.

Multiple Adjournments

The impact of both absent witnesses and inadequate court infrastructure combined with absent parents/guardians, absent or irregular defence counsel, and limited access to transportation is an excessive number of adjournments in juvenile trials. As noted above, the average number of adjournments for completed juvenile cases is 27. Even when cases of simple larceny are considered separately from other offences, the average number of adjournments remains unreasonably high at 23.

Figure 4: Juvenile Court Monitoring Data May – June 2010

The delay caused by multiple adjournments has a significant impact on the well being of children and jeopardizes their ability to reintegrate back into society once their case is completed. In Freetown, each adjournment adds approximately one week to the length of

80 Data from assessment observation visits conducted on 21, 24, 27, 28 May and 7, 9, 10 June 2010.
time a juvenile spends either on bail or on remand. For children on bail, sureties must present themselves at court each week, thus requiring parents and guardians acting as sureties to miss a significant number of working days. Where sureties are not able to make such a sacrifice, bail will be revoked and children will be placed on remand. For juveniles detained during their trials, each adjournment represents an additional week of being separated from their families, communities, and support networks even before they have been proven guilty. Moreover, for detained juveniles who were students prior to their arrest, lengthy trial proceedings prevent them from attending school and puts them at risk of dropping out entirely as they may be required to repeat a year or more depending on the length of their trial and detention.

Right to Trial by Competent Officials

The right to be tried by competent court officials is guaranteed under Article 40(2(b(iii))) of the CRC. As with other authorities involved in the administration of juvenile justice, the normative rules of international law elaborate on this requirement of competency. Specifically, Beijing Rule 22 states that “Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juveniles cases.” Under domestic legislation, there are no official requirements concerning the training and competency of Magistrates in the field of juvenile justice, however, Magistrates and Justices of the Peace are appointed on the recommendation of the Attorney General and should have some experience in child psychology or sociology.

Magistrates and Justices of the Peace

Presently, Magistrates and Justices of the Peace presiding over juvenile hearings have little knowledge in dealing with juveniles. None of the three interviewed Magistrates has received any specific professional training with respect to the administration of juvenile justice. Similarly, while each expressed familiarity with the CRA, none have received any official training on it or Cap 44.

In an effort to enhance the capacity of the formal justice system to handle juveniles appropriately, the JSDP arranged for one female Magistrate to attend international training sessions on the administration of juvenile justice. To date, however, administrative delays have prevented her from taking over the juvenile court and she continues to preside over adult cases in Freetown.

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81 Juvenile court completed court case files.
82 Beijing Rule 22.
83 Juvenile Justice in Sierra Leone 2000 at page 16.
Police Prosecutors

In the absence of state counsel, police prosecutors prosecute cases at the juvenile court. None of these prosecutors are trained as lawyers, nor is there any component of the police prosecutor training program dedicated to the prosecution of juvenile matters. While the SLP as well as organizations such as JSDP and UNICEF have conducted trainings for prosecutors, these trainings have largely been ad-hoc and have not involved all prosecutors handling juvenile matters. In Freetown, there are prosecutors specifically assigned to juvenile cases, however in the provinces prosecutors handle both juvenile and adult cases.

Beyond challenges relating to a lack of training on juvenile prosecutions, common court practices also inhibit the prosecutors’ ability to effectively review and prepare cases. While prosecutors are theoretically supposed to receive case dockets three days in advance of court sittings, interviewed prosecutors report receiving fresh matters in the morning before court sessions or even once court has begun. As one prosecutor noted, such practices are “very embarrassing” for the prosecution and challenge their ability to do their job effectively.

Dispositions

Sentencing

As with all decisions involving children, international law stipulates that the well being of the child and the child’s best interests are to be the guiding factors in any action taken by the court. Accordingly, international law underscores two normative principles for the sentencing of juvenile offenders: the standard of proportionality and the use of deprivation of liberty as a measure of last resort. In order to give effect to these principles, the Beijing Rules state that court decisions should 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. Authorities responsible for making final dispositions must therefore conduct investigations into the background and circumstances in which the juvenile is living and/or the conditions under which the offence has been committed. Once such an investigation has been complete, authorities must be able to choose from a variety of sentencing options in order to ensure that the final disposition complies with the requirement of proportionality and detention as a last resort.

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84 Beijing Rule 17 and Havana Rule 2.
85 Beijing Rule 17.1(a).
86 Beijing Rule 17(d).
Background of Offender

Within domestic legislation, s. 16 of Cap 44 explicitly incorporates the ‘best interest of the child’ principle and the norms of international law, requiring that the court obtain "information as to the character, antecedents, home life, occupation and health of young person as may enable it to deal with the case in the best interest of the child or young person." Unfortunately, an insufficient number of probation officers in the country, and a significant shortage of resources and mobility currently prevent such investigations from being conducted on a consistent and regular basis. Without such investigations, the court lacks the information necessary to ensure that sentences are proportional to the circumstances of the offence and of the offender.

Alternatives to Deprivation of Liberty

From a theoretical perspective, Cap 44 complies with international law in that it gives the juvenile court the authority to choose from a variety of final dispositions. Although not inclusive of the extensive range of options recommended under the CRC and the Beijing Rules, domestic legislation gives juvenile courts the authority to make the following alternative orders:

- Discharge the child or young person without making an order (s. 25(a))
- Order the child or young person to be repatriated at the expense of Government to his home or district of origin (s. 25(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 (s. 25(c))
- Place him for a specified period, not exceeding three years, under the supervision of a probation officer (s. 20)
- In certain instances a fine, in conjunction with another punishment or standing alone, may be imposed... it is within the discretion of the court to decide whether the parents or the young person will be ordered to pay (s. 23(1))

In practice, the use of these alternative dispositions remains minimal. Even where alternative dispositions are issued, legislative loopholes mean that such sentences often come with conditions that can result in a custodial outcome for the juvenile. This issue is particularly pertinent to the imposition of fines and compensation payments. Firstly, the lack of sentencing guidelines affords the court much discretion with regards to the amount of the fine. This discretion may ultimately result in inconsistency across judicial districts,
individual magistrates, and offences. Secondly, the court retains discretion over the specific conditions of fines and may order that the amount be paid “with immediate effect.”

During a court visit in May 2010, DCI researchers observed a case involving a first time offender who had admitted guilt to the offence of wounding with intent and who had apologized publicly to the complainant. In light of these circumstances, defence counsel appealed to the court for a non-custodial sentence. When the judgment was issued, however, the sentence as handed down by the court was a fine of 100,000 LE payable to the state “with immediate effect” and 100,000 LE to the complainant, or alternatively, two years detention at the Approved School. As the juvenile’s guardian did not have the requisite amount with him at the court, the boy was sent to the Approved School where he will spend the next two years.89

While the court undoubtedly needs a mechanism to ensure that parents or guardians do not default on fines, this particular practice of “now or never” fines creates a significant challenge to the practical effectiveness of alternative sentences and to the principle of detention as a last resort.

Similarly, in January 2010, four street children were convicted of roaming the street at night and sentenced either to $50 US or to three months at the Approved School. Because the children were unable to pay the fine, they were required to serve the three-month detention term. When YMCA/SL offered to pay the fine for one of the boys, he replied that he would prefer to serve the sentence and use the money to pay his school fees.90 This situation illustrates another important challenge with using fines as alternative sentences in that they are of little practical use for children who come from poor socio-economic backgrounds and/or who lack parental support. When such children are detained, they inevitably lose what little opportunity they might have had to improve their circumstances.

The use of detention as an alternative to fines also raises a significant issue of proportionality. For example, a current detainee at the Approved School was convicted of larceny and ordered to pay a fine of 200,000 LE fine or to serve two years detention at the Approved School.91 These two alternatives carry significantly different implications for the offender and it is difficult to see how $50 US (200,000 LE) is equivalent in effect and proportional impact to two years in state custody.

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89 CS No 1729/10.
90 YMCA/SL, Rough Justice for Young People in Sierra Leone (April 2010) at page 27.
91 CS No 480/09.
Deprivation of Liberty

Beijing Rule 17 emphasizes that deprivation of liberty 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.”92 While Cap 44 provides for the use of alternative sentences, it also gives courts the authority to sentence children to detention at the Approved School when they are convicted for an offence punishable by imprisonment for adults.93

The practical reality of juvenile proceedings is such that children in Sierra Leone continue to receive custodial sentences, even for relatively minor crimes. As can be seen from the table below, the majority of children detained at the Approved School at the time of assessment had been found guilty of minor, non-violent crimes and yet have nonetheless been given custodial sentences.

Table 3: Number of Juveniles Detained at Approved School by Offence94

<table>
<thead>
<tr>
<th>Offence</th>
<th>No. of Children Detained</th>
<th>Percentage of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conspiracy</td>
<td>1</td>
<td>5%</td>
</tr>
<tr>
<td>Frequency</td>
<td>1</td>
<td>5%</td>
</tr>
<tr>
<td>Fraudulent Conversion</td>
<td>1</td>
<td>5%</td>
</tr>
<tr>
<td>Larceny</td>
<td>9</td>
<td>47%</td>
</tr>
<tr>
<td>Larceny (Store Breaking)</td>
<td>3</td>
<td>15%</td>
</tr>
<tr>
<td>Malicious Damage</td>
<td>1</td>
<td>5%</td>
</tr>
<tr>
<td>Unlawful Carnal Knowledge</td>
<td>1</td>
<td>5%</td>
</tr>
<tr>
<td>Wounding With Intent</td>
<td>2</td>
<td>10%</td>
</tr>
</tbody>
</table>

In addition to there being no legal obligation for Magistrates to consider alternatives to detention, the lack of sentencing guidelines makes it difficult to ascertain the reasoning behind dispositions. It also contributes to inconsistency in sentences, not only across courts but also across individual cases. For example, in two recent cases from the same juvenile court, two offenders convicted of larceny received exactly the same sentence (6 months detention at the Approved School) even though the value of stolen goods was 300,000 LE in one case and 740,000 LE in another.95 Similarly, while one Magistrate’s Court recently issued a sentence of a 200,000 LE fine or three months imprisonment, another provincial

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92 Beijing Rule 17.1.
93 Cap 44 s. 26(1).
94 Approved School official inmate intake files (8 June 2010).
95 CS Nos 880/08 and 3132/08.
Magistrate’s Court issued a sentence of a 200,000 LE fine or two years detention. This variation in detention term for defaulting in a fine of exactly the same amount highlights the inconsistency in sentences being issued for young offenders.

A final issue with the use of custodial sentences is the practice of sentencing juveniles to terms beyond their 18th birthday. Under Cap 44, juvenile courts may order young offenders committed to the Approved School “until [they] attain the age of 18 years or for a shorter period.” Despite this provision, however, courts continue to sentence juveniles in a manner that requires their continued detention once they are no longer considered a child in the eyes of the law. When detainees reach the age of 18, instead of being released from detention, the Officer in Charge may recommend that the individual serve the remainder of their sentence at the Approved School. The decision to do so is at the discretion of the Officer in Charge and will generally depend on the young person’s behavior while at the School. Where the Officer in Charge decides it is necessary, juveniles who reach the age of 18 will otherwise be transferred to Pademba Road Prison to complete their sentence.

Trials with Adults

One of the most significant lapses in domestic legislation’s compliance with international juvenile justice norms, is the provision of s. 3(1) of Cap 44. This section provides for a separate juvenile court, except where the child or young person is jointly charged with an adult. Under this provision, children who are jointly charged with adults lose any special consideration for their rights, except concerning sentencing, which will be conducted in the juvenile court. The practice of trying juveniles together in an adult court compromises the very purpose of a juvenile justice system and violates the spirit and purpose of international human rights documents by failing to account for the child’s best interest. As noted by many SLP personnel, such juveniles are often forcibly recruited by adult criminals. The situation of trying them in an adult court thus further victimizes juveniles by failing to recognize the involuntariness of their actions and by denying them rights that would otherwise be afforded to them had they committed the crime on their own. The significance of s. 3(1) was recognized by the national government in their second report to the UN Committee on the Rights of the Child where it was proposed that the CRA would provide for separate trials of juveniles charged with adults. Unfortunately, there was no follow through on this proposal and the CRA was released without any such provisions.

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96 Approved School official inmate intake files (8 June 2010) CS Nos 718/10 and 480/09.
97 Cap 44 s. 26(1).
98 Cap 44 s. 3(1).
Juvenile Trials at the High Court

Similar to the lack of protection for juveniles jointly charged with adults, there are no guidelines or rules for how juvenile cases are to be treated at the High Court. Although this issue was identified in the *National Child Justice Strategy 2006*, the CRA, published in 2007, contains no provisions to protect the rights of children at the High Court. The absence of guidelines for juvenile High Court proceedings is particularly significant because of the juvenile (Magistrate) courts’ practice of referring complex cases to the High Court. Despite the provision in s. 7 of Cap 44, which states that “for any offence other than homicide, the case shall be finally disposed of in juvenile court,” there does not appear to be any consistent baseline for establishing when and what cases and offences might be referred. For example, at one Makeni police station, DCI-SL researchers met with a young boy who had spent eleven months on remand in police detention. Despite being charged with relatively minor offences of larceny of two mobile phones and 100,000 LE cash, the young boy’s case has been committed to High Court. Although his case was committed months ago, he has yet to receive a trial date. Similarly, a boy detained at the Remand Home in Freetown on charges of larceny of a trader woman’s purse had his case committed to the High Court in April 2010. He too has yet to receive a date for trial. Although these are just two cases, they are strong support for an argument that Magistrates are using the High Court as a convenient means for disposing of cases. In doing so, courts not only contravene domestic legislation under Cap 44, but also create a situation that erodes the juvenile’s right to be tried according to his or her special needs and circumstances.
DETENTION, REFORMATION AND REINTEGRATION

The CRC demands that State Parties take into account the child’s age, the desirability of promoting the child’s reintegration, and the child’s assuming a constructive role in society when dealing with children in conflict with the law. The Beijing Rules also provide that while in custody, juveniles shall receive care, protection and all necessary individual assistance – social educational, vocational, psychosocial, medical and physical – that they require in view of their age, sex and personality in order to help them fulfill a constructive role in society. Similarly, the Havana Rules address the situations of children deprived of their liberty and reinforce the principle that detention should only be used as a measure of last resort. Where institutionalization is required, appropriate educational services and care should be provided for all young people in the institution. The Riyadh Guidelines further outline processes for rehabilitating and reintegrating the child offender into society. All of these standards demand that juveniles deprived of their liberty pending and/or after trials be provided with necessary educational and psychological services in order to ensure their reintegration into society. Ultimately, the purpose of a child going through the formal justice system is to reform the child and ensure his or her reintegration into society as a responsible and productive citizen. Ensuring the reformation and reintegration of juveniles, however, requires necessary facilities and skill acquisition.

Remand Statistics

In Freetown, children detained during their trials are kept at the Remand Home in Kingtom. On the first day of interviews for this assessment, there were 28 juveniles detained at the Home – 2 girls and 26 boys. On the second day, the number had increased to 32 juveniles in total, with 4 girls and 28 boys, ranging in age from 13 to 17. Overall, 86% of children on trial at the juvenile court in Freetown are detained at the Remand Home during their trial.

The only other Remand Home in the country is located in Bo, and the facility is mandated to handle children from both Bo and Kenema districts. At the time of this assessment, there were four boys detained at the Home. According to the Warden, there have been no girls at the Remand Home since the beginning of 2010 and it was explained that most of the crimes being committed by girls were able to be settled in a diversionary manner.

In Makeni, the absence of a Remand Home means that once juveniles have been committed to trial, they will return to the police station with a remand warrant and will be detained in

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99 CRC Article 40(1).
100 Beijing Rule 13.5.
police cells. As discussed in earlier sections of this report, this arrangement results in gross violations of children’s rights as many will be detained in a single cell with adults. Although three of the interviewed police personnel in Makeni reported that juveniles on remand will be kept in separate cells, a visit to one station revealed two children currently serving their remand period detained with adults. Two others were reportedly also on remand but were not in the cell at the time as they were set to appear in court that day. While on remand in police cells, SLPS is responsible for providing one meal a day for the detainees, although as one police respondent commented, “most times it is not palatable.” Remanded juveniles in Makeni do not have access to educational, psychosocial, or recreational support. As one Crime Officer reported, “when they are here, all their privileges have been cut off.”

Although the scope of this assessment was limited to Freetown, Makeni, Kenema and Bo districts, interviews with PSDOs in the respondent districts suggest that the absence of remand and/or bail homes remains a major concern for authorities in other districts as well. For example, in the southern region, the districts of Moyamba, Bonthe and Pujehuan are far away from the Bo Remand Home and authorities are left with little choice but to detain children in police cells or take them home when they cannot be released on their own recognizance. In the absence an appropriate holding place for children and without funding and adequate security for probation officers and other MSWGCA personnel to take such children home, it can reasonably be assumed that, as in Makeni, police detention is the more common practice.

The Remand Homes and the Approved School

Currently there are two remand homes, located in Freetown and Bo respectively, and one Approved School located in Wellington. The administration of all three facilities falls under the mandate of the MSWGCA, however staff at the three facilities also include representatives from the SLP and SLPS. The remand homes serve as temporary detention facilities for juveniles whom Magistrates determine cannot be released on bail during their trials. The Approved School was established to reform and rehabilitate juvenile delinquents through a combination of skills training programs and formal education, with the ultimate goal being their reintegration as productive and capable members of society. Although Cap 44 anticipates the creation of both types of facilities, the legislation provides little guidance on the management and operations of the programs. In 2006, the National Child Justice Strategy identified poor facilities at both the Remand Homes and the Approved School as a challenge to the successful rehabilitation and reformation of children in conflict with the law. In an effort to improve this situation and strengthen the capacity of the

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104 Provisions for the establishment of Approved Schools are found in Part V of Cap 44 (ss. 31 – 38) and for the establishment of Remand Homes in Part VI (ss. 39 – 40).
Beyond the Law: Assessing the realities of juvenile justice in Sierra Leone

institutions, JSDP supported a substantial renovation of the three national juvenile detention facilities in 2008. Unfortunately, the facilities still lack many of the resources necessary to successfully fulfill their mandate of rehabilitation and reintegration.

Education

The right to an education is one of the most basic rights afforded to all children under the CRC and the ACRWC. Similarly, this right is recognized in s. 26(2) the CRA and was the impetus for the GOSL introducing policies of Universal Primary Education for all and Universal Primary and Secondary Education for girl children in the Northern province. International norms under the Havana Rules establish that this right to an education cannot be denied by virtue of a child coming into conflict with the law. In fact, education is promoted as a critical element to the successful reintegration of the child upon their release from state custody. Consequently, the Havana Rules recommend that states provide access to education outside the detention facility where possible, and otherwise by qualified teachers within the facility delivering a program harmonized with the national curriculum.106 For this purpose, the Beijing Rules emphasize the need for “inter-ministerial and inter-departmental cooperation” to ensure that children detained in custodial facilities do not leave at an educational disadvantage.107

Currently, children detained on remand and at the Approved School are denied the right to an education. There is no cooperation between the MSWGCA and the Ministry of Education to provide access to standardized curriculum within the facilities, nor do children have any opportunity to attend community schools. An interview with the MSWGCA during this assessment indicated that the Ministry was hoping to establish a joint initiative with the Ministry of Education to improve access to education, however it was unclear when such an initiative might be implemented and what exactly it would entail.108

In the absence of formal education programs at the detention facilities, some organizations have stepped in to offer informal educational support. At the Remand Home in Bo, DCI-SL provides basic literacy and numeracy classes to the inmates three times per week. In Kenema, juveniles transferred to the Remand Home in Bo will have access to this informal education provided by DCI staff, however, those who are on remand in police detention are not afforded such services. In Makeni, because juveniles are detained in police cells while on remand, they too are denied access to any education be it formal or informal. At the Remand Home in Freetown, Prisons Watch provides inmates with informal education

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105 Reference CRC and ACRWC right to education
106 Havana Rule 38.
108 Interview with social development officer.
classes several times per week and DCI provides complimentary civic and human rights education on Mondays, Wednesdays and Fridays. At the Approved School, there is no formal education program and no head teacher or educational coordinator. On Mondays and Wednesdays, Prisons Watch provides informal lessons in academic subjects while DCI-SL provides civic and human rights education on Tuesdays and Thursdays. Although these support programs offer a minimum level of education to the detained youth, none of them is being offered by qualified teachers and the lack of integration with the national education system means that upon their release, children detained at these institutions are deprived of the ability to reintegrate back into school. At the time of assessment, 10 of the 18 juveniles at the Approved School and 10 of the 32 at the Freetown Remand Home reported having been enrolled in school before their arrest. For these children, the interruption of their schooling further compounds the effect of their detention and reduces the likelihood that they will continue with their education upon their release.

**Vocational Training**

International norms recognize the critical role skills training programs can play in the rehabilitation of juveniles in conflict with the law, especially as an alternative where formal education cannot be realized. Equipping detained youth, especially those serving custodial sentences, with marketable skills, helps to ensure that they have a means of securing gainful employment upon their release.\(^{109}\) By increasing a juvenile’s capacity to generate income, it is anticipated that they will be less likely to engage in future criminal activity.

At the Remand Homes in Bo and Freetown, resource shortages have impeded the MSWGCA’s ability to implement comprehensive skills training programs. While some organizations offer occasional support in this regard, such contributions are not consistent or regular. At the Approved School, the Ministry has made efforts to improve the training capacity of the facility by collaborating with SLPS to provide weekly skills training and craft making with the juvenile detainees. None of these programs however, offers sufficient training to ensure that juveniles have the ability to be self-sustaining upon their release.

**Welfare, Health and Nutrition**

Under Rule 31 of the Havana Rules, every child detained in state custody, whether on remand or while serving a custodial sentence, has the right to facilities and services that

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\(^{109}\) Havana Rule 42.
meet all the requirements of health human dignity.\textsuperscript{110} In juvenile detention centres both in Freetown and in the provinces, this remains a critical issue.

One example of facilities that violate this right to health and human dignity are the sleeping quarters at the various detention centres. At the Remand Home in Bo, the beds were designed in such a way that they require wooden slats to be placed over a hollow cement bed frame. At the time of assessment, however, these slats had been removed as it was reported by staff that the youth had begun using them as weapons, both amongst themselves and against the staff. Consequently, boys detained at the Home sleep inside cement bed frames. Moreover, only two of the beds had mattresses, both of which were in advanced stages of deterioration. In Freetown, the situation at the Remand Home and the Approved School is somewhat superior in that the beds are designed as solid cement frames with the majority having mattresses, although most are also in various states of disrepair.

\textbf{Image 2: Boys dormitory at Bo Remand Home}

The MSWGCA is responsible for the provision of food and other basic welfare supplies such as soap and cleaning products at all three of the detention centres. The Ministry in turn hires a sub-contractor who is responsible for the monthly supply and delivery of these items to each of the Remand Homes and the Approved School. While the regularity and sufficiency of these deliveries has generally improved over recent months, the Remand Home in Freetown and the Approved School continue to suffer from occasional shortages, allegedly due to delays in payment between the Ministry and the sub-contractor.\textsuperscript{111} In early May 2010, food at both institutions was in such short supply that the youth were only being provided with one meal per day. Clearly this situation impairs not only their ability to focus on rehabilitative programming, but also threatens the health and development of active teenage boys. Along with the issue of delayed payments, the contract bidding process itself poses an additional threat to the stability of food supply at the institutions. According to the current bidding process, bidding is started only once a current contract expires,

\textsuperscript{110} Havana Rule 31.
\textsuperscript{111} Interview with Officer in Charge, Approved School with reports from DCI-SL staff social workers

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rather than during the last few months of the existing contract. Consequently, questions and uncertainty emerge as to who is responsible for the provision of food and other supplies during this interim bidding period.112

Although none of the three institutions is adequately equipped in terms of health and medical facilities, the situation is particularly grave at the Remand Home in Bo. The Home has no medical facilities whatsoever, nor does it have any trained medical staff. Consequently, the Warden reported having to pay out of pocket for treatment when juveniles fall ill while in detention. Moreover, there are no mosquito nets in the dormitories and none of the windows in the facility has mesh screens. In Freetown, approximately 12 to 15 dormitory beds at the Remand Home, and all of the beds at the Approved School, have mosquito nets, however there is no mesh on the dormitory windows. The Remand Home in Freetown also has one staff member in charge of first aid, but he is not a qualified medical practitioner and it is reportedly not in his mandate to take on the responsibility of transferring children to the hospital.113 GOAL Ireland also provides the Remand Home and the Approved School in Freetown with a referral service to a local satellite clinic, however transportation to the clinic continues to be a challenge.

In addition to basic medical care, children detained at state institutions require psychosocial support in order to promote healthy rehabilitation and improve the chances of successful reintegration back into their communities. Currently, DCI-SL offers basic counseling services to the inmates at both the Remand Homes and a number of agencies support the staff social worker at the Approved School. At the time of assessment, Youth for Christ, DCI-SL and Life Line were all providing weekly counseling and psychosocial support at the facility.

Security

At the Remand Home in Bo, security was identified as a key concern. The wall surrounding the facility has a major hole in one side and the staff reported that in the six months before the assessment, three juveniles had escaped from the facility and had not yet been apprehended. The hole in the wall compromises the staff’s ability to monitor the juveniles while they are on the campus and has consequently limited the amount of outdoor recreation provided to the inmates. Although security has reportedly been improved at the Remand Home in Freetown, one current detainee was transferred to Pademba Road within 18 days of his arrival after being attacked by the victim’s family while he was in custody at the Home. As a result, the boy spent over three years detained with adults at Pademba Road Prison and was only able to return to the Remand Home in January 2010.

112 Interview with Officer in Charge, Approved School.
113 Report from DCI-SL staff social worker
Both the CRC and the ACRWC require States Parties to ensure that children deprived of their liberty are protected from “torture, inhuman or degrading treatment, or punishment.”\footnote{ACRWC Article 17(2(a)); See also CRC Article 37(a).} Similarly, the Havana Rules expressly stipulate that “All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned.”\footnote{Havana Rule 67.}

While the issue of discipline was not discussed at the Remand Home in Bo, at the time of the Freetown Remand Home assessment, researchers witnessed solitary confinement being used as a disciplinary measure against one agitated female inmate.\footnote{Assessment visit to Freetown Remand Home (18 June 2010).} At the Approved School, alternative means of discipline such as the removal of privileges are reportedly used in conjunction with the use of a small isolation cell for major or repeat offenders. According to the OIC, juveniles will generally only spend “a few” hours in the cell and definitely no more than 24. While in isolation, it was also reported that juveniles continue to have access to regular food and bathing. Regardless of the frequency of its use, this practice of isolation at both facilities needs to be revised in order to ensure the best interests of the child are being respected while in detention.

**Girl Children in Detention**

In addition to the general protections afforded to all children in detention, the Beijing Rules recognize a need for special consideration to be given to the needs and problems of girl children in detention.\footnote{ACRWC Article 17(2(a)); See also CRC Article 37(a).}
children in order to ensure their fair treatment. Interviews conducted during this assessment suggest that girl children are not coming into contact with the formal justice system as often as boys are. This was noted in comments made by staff at the Bo Remand Home, where it was suggested that the nature of crimes being committed by girls were such that they could be diverted from the courts and custodial institutions. Since DCI-SL began their involvement with the Approved School in January 2008, there has been no girl children sentenced to detention at the facility. The School is not adequately equipped to handle the needs of the girl child and it has been suggested by DCI-SL staff social workers at the School that the courts avoid custodial sentences for female children in conflict with the law. Whether it is because they offend at a reduced rate, or because of the nature of the crimes they commit, or because of how Magistrates dispose of their cases, girl children appear to come into state detention less frequently than boys do.

Rehabilitation and Reintegration Support

The ultimate goal of an effective juvenile justice system is the successful reintegration of juveniles in conflict with the law back into their communities. Ideally, the rehabilitative programs offered in custodial institutions will capitalize on the potential of juveniles to change their circumstances and grow into productive and capable adults. Per Havana Rule 79, “all juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release.” As discussed above, a lack of effective and regular programming at all three of the existing institutions has resulted in limited meaningful rehabilitation of children in conflict with the law.

In addition to inadequate rehabilitation, the issue of reunification and reintegration for juveniles discharged from the Approved School is critical. The location of the Approved School in Freetown means that many young offenders from other parts of the country will be separated from their families for the duration of their sentences. This separation further strains the possibility of positive reintegration upon release and prevents families from being part of the rehabilitation process. The facility also lacks the resources necessary to contact parents or relatives and have them come to the School to discuss reintegration plans. Moreover, the School is not mobile and does not have the capacity to provide personnel to bring discharged offenders back to their home communities. Discharge packages, which should theoretically include transport fare, basic tools, and seed money to foster self-reliance among released offenders, are not forthcoming. As a result, juveniles released from the facility are largely left to fend for themselves on the streets of Freetown. Without an education, without vocational training, and isolated from their families and

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117 Beijing Rule 26.4.
118 The Officer in Charge of the Approved School acknowledged that there was one motorbike attached to the School, however, at the time of the assessment the former OIC was still in possession of the bike (8 June 2010).
communities, many find themselves unemployed and living with friends. Until programs at the Approved School can be developed to provide for the meaningful rehabilitation and reintegration of juvenile offenders, custodial sentences will continue to result in discharged youths facing odds that put them at a serious risk of re-offending.

**Custodial Sentences Served Elsewhere**

During this assessment it was indicated that not all children receiving custodial sentences serve their sentences at the Approved School. In Bo, staff at the Remand Home reported that at times juveniles who had been convicted of offences end up serving their entire sentence at the Remand Home. Similarly, a visit to one of the police stations in Makeni revealed a young boy sentenced to the Approved School but detained in police cells with adults while he awaited a transfer. In the case of the Remand Home, it was not clear whether juveniles serving their sentences at the Home was due to a lack of transportation to transfer them to the Approved School or because the MSWGCA was actually reducing sentence lengths for first time offenders who displayed positive behaviour while at the Home. Irrespective of the reason, staff noted that this arrangement deprives juveniles from discharge and reintegration packages, although as per the preceding section, such packages are not currently being provided to inmates even at the Approved School.

To the extent that children are being detained in facilities other than the Approved School or Remand Home, this constitutes significant negligence of due process and ultimately puts the rights of such children at risk of exploitation.

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119 Report from DCI-SL staff social worker attached to the Approved School.
DIVERSION

In as much as the protection of children’s best interests necessitates a separate and distinct justice system, it also necessitates the creation of alternatives to formal judicial proceedings. Article 40(3(b)) of the CRC emphasizes the need for States Parties to establish measures for dealing with children without resorting to judicial proceedings. Building on this principle, the Beijing Rules encourage states to empower relevant authorities, including the police and prosecution, to dispose of cases without recourse to formal proceedings.

The process of diversion as promoted in international legal norms and instruments does not require that juvenile offenders be released without penalty. What it does involve, however, is a formal process of preventing minor cases and first time offenders from the full judicial process on the condition that they undergo some form of rehabilitation program and/or compensate for the damage caused by their actions. Although the most basic form of diversion is a police caution, other diversionary measures may include community programs such as temporary supervision and guidance, restitution and/or compensation for victims.

In Sierra Leone, both Cap 44 and the CRA, in compliance with international standards, explicitly provide for the diversion of juvenile matters. The CRA further provides for the establishment of child panels to act as separate structures with “non-judicial functions to mediate in criminal and civil matters which concerns a child.”

The reality of juvenile crime in the country suggests that effective diversion programs could have a significant impact on the number of cases being charged to court. As indicated by Figures 5, 6, 7, and 8, the vast majority of crimes being committed to trial are relatively minor offences such as larceny, making them well suited to diversion and alternative treatment.

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120 CRC Article 40(3(b)).
121 Beijing Rule 11.2.
122 CRA s. 71.
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Figure 5: Offences Tried During Assessment Visits at Freetown Juvenile Court

Figure 6: Offences from Monitored Cases Tried at Freetown Juvenile Court May 2008 – June 2010

Assessment data collected 21, 24, 27, 28 May and 7, 9 June 2010.
DCI-SL routine court monitoring data of 190 cases tried between May 2008 and June 2010.
Figure 7: Number of Children Detained at Remand Homes and Approved School (By Offence)

Figure 8: DCI-SL Monitored Court Cases January – June 2010 (By Offence)

Despite provisions for diversion in national legislation, measures needed to give practical effect to such provisions have yet to be implemented. Consequently, police are left with little choice of alternatives other than releasing a child without charge or committing what may likely be a minor offence to a lengthy trial in the formal juvenile court. The lack of formal diversion structures also make police officers reluctant to honour requests by probation officers and NGOs to divert minor offences such as disorderly behaviour and loitering, even with the victim’s support.

Another challenge created by a lack of formal diversion structures is the practice of parents, relatives and traditional leaders of victims and offenders settling minor cases in police stations, customary courts and within communities. Many of these informal processes do not follow guidelines for diversion and have been criticized by the MSWGCA ad child rights NGOs for failing to respect the basic rights and best interests of juvenile offenders.

Although the requisite structures for an efficient and effective diversion program have yet to be operationalized, there are some indications that doing so is a priority of both the MSWGCA and other key stakeholders in the field of juvenile justice. Interviews with both the Justice Sector Coordinating Office and the MSWGCA reveal that in mid June 2010, the process of creating formal diversion guidelines began. Terms of reference for the project have been developed and currently positions for a foreign and national consultant to design the guidelines are being advertised. Moreover, local councils in Bo, Makeni, and Kenema are undertaking to establish pilot child panels in their respective areas.
CONTRIBUTION OF KEY DEVELOPMENT PARTNERS AND GOVERNMENT

Justice Sector Development Program (JSDP)

The Justice Sector Development Program (JSDP) has been an active donor in the field of justice reform generally and juvenile justice reform specifically. Since the end of the war, JSDP has supported total justice sector reform and with respect to juvenile justice, their goal has been to ensure that children in conflict with the law are handled appropriately. To this end, JSDP has supported the MSWGCA’s National Child Justice Strategy, and has focused particular attention on reformative and preventative elements of the strategy. Although not an exhaustive list, JSDP’s involvement in these areas has included the following:

- Establishing a child-friendly juvenile courtroom in Freetown
- Training of Magistrates in the administration of juvenile proceedings
- Development of standardized forms for use by court officials
- Rehabilitation of Freetown reformatory institutions
- Construction and furnishing of a national resource centre for collection of data related to juveniles
- Funding and facilitation of trainings on juvenile justice
- Support for the Ministry of Justice’s 2008 – 2010 Justice Sector Reform Strategy and Investment Plan

In an interview conducted with JSDP during this assessment, the capacity of the MSWGCA was highlighted as an ongoing challenge with respect to juvenile justice in the country. In an effort to address the issue of poor engagement and commitment from staff at the reformatory centres, JSDP has lobbied successfully for an increase to the Ministry’s budget which should translate into improved remuneration. JSDP is also currently awaiting Ministry approval of a training and procedures manual for staff at both the Remand Homes and the Approved School.

Justice Sector Coordinating Office (JSCO)

As JSDP’s involvement in the country is set to terminate in March 2011, the Justice Sector Coordinating Office (JSCO) was established in 2007 as a new government organization under the Ministry of Justice. As JSDP phases out its programs, JSCO has begun operationalize as a governmental office responsible for coordinating justice-related issues, including the implementation of the national Justice Sector Reform Strategy. JSCO’s involvement in juvenile justice thus far has been limited as the current Strategy contained few provisions
specific to children in conflict with the law, except for the development of diversion guidelines.

In interviews with both separate entities, JSDP and JSCO, a number of recommendations were made with respect to the future focus of government and development partners in the field of juvenile justice:

- **Strengthening the capacity of the Government and the MSWGCA**
  - Despite the level of donor investment in the field of juvenile justice, it was suggested that reciprocal efforts have not gone into ensuring that the government has the capacity to monitor the implementation of established systems. There is a significant need for Ministry staff to be trained in modern forms of social work, and it was emphasized that such trainings must not be conducted in the current ‘ad hoc’ fashion as “it takes more than a week or two to change someone’s mindset.” Following these trainings, funding and financial support must follow, especially to probation units who currently face extremely broad mandates. It was also noted that Government personnel must also receive trainings on juvenile justice in order to understand the importance of developing effective policies.

- **Improve information dissemination between NGOs, development partners, and government to facilitate evidence-based planning**
  - Juvenile justice is a complex field, with issues that cut across a diverse number of government ministries and mandates. As such, successful initiatives in this field require coordinated planning among all stakeholders. It is also essential that policies be developed on the basis of evidence and research which, it was suggested, is not currently common practice among policy makers. A critical element needed to facilitate such policy development is the improved dissemination of information and statistics from NGOs and other child-rights agencies. The trends and data collected by such agencies is vital to informing government policy. As one respondent from JSCO reported, “we cannot develop if we do not use information to develop our policies.”

- **Increase focus on preventative and alternative measures to avoid contact with the formal justice system**
  - In an effort to improve the conditions at the juvenile reformatory centres and the treatment of children before the courts, the development of measures to prevent children from coming into conflict with the law in the first place has not been prioritized. Going forward, such efforts to prevent juvenile crime along with the establishment of formal diversion guidelines for minor offences will help reduce the number of children in contact with the formal justice system.
Historically, UNICEF’s involvement in the area of juvenile justice in Sierra Leone has been focused on children in contact rather than in conflict with the law. Specifically, a major focus of the child protection department has been to support the MSWGCA in the protection of child victims of sexual and gender based violence. Much of the rationale for not engaging in issues of juvenile crime in the past has been based on UNICEF’s preference for alternative measures of handling young offenders. As a result, the organization has been reluctant to participate in initiatives focused on the reformatory institutions and juvenile court proceedings. More recently, however, UNICEF has become increasingly involved with the implementation of elements of the CRA that directly impact juvenile offenders. Specifically, UNICEF is currently involved in supporting the establishment, operationalization, and capacity building of diversion and support structures such as the child panels, child welfare committees, and child welfare departments.

UNICEF has been promoting the concept of “Justice for Children” or “Child Justice” which is a more holistic approach for children come in contact with the justice system beyond conventional approach on juvenile Justice126. Specifically, a major focus of the child protection section has been to support the MSWGCA in the prevention and response for child victims of sexual and gender based violence. Much of the rationale for not engaging in issues of formal juvenile justice system in the past has been based on UNICEF’s stand point to facilitate diversion and alternative measures of handling young offenders and detention of children as a last resort. As a result, the organization has been reluctant to participate in initiatives focused on the reformatory institutions and juvenile court proceedings. More recently, however, UNICEF has become increasingly involved in Child Justice as part of creating protective environment for children and based on Child Protection system approach, specifically with the implementation of elements of the CRA that directly impact juvenile offenders. UNICEF is currently involved in supporting the establishment, operationalization, and capacity building of diversion and support structures such as the child panels, child welfare committees, and child welfare departments (within Local Councils) and district referral system for children in contact with justice system (victims and children in conflict with the law) which ensures synergy between formal and traditional system.

126 According to the Guidance Note of the Secretary- General, UN Approach to Justice for Children, September 2008, the goal of the justice for children approach is "to ensure that children, defined by the Convention on the Rights of the Child as all persons under the age of eighteen, are better served and protected by justice systems, including the security and social welfare sectors. It specifically aims at ensuring full application of international norms and standards for all children who come into contact with justice and related systems as victims, witnesses and alleged offenders; or for other reasons where judicial, state administrative or non-state adjudicatory intervention is needed, for example regarding their care, custody or protection."
CONCLUSION AND RECOMMENDATIONS

Conclusion

Since ratifying the CRC, Sierra Leone has gradually increased its commitment to the principles of children’s rights and has established domestic legislation that provides for the foundation of a juvenile system compliant with international legal standards. Although further legislative reform is necessary, especially with regards to the protection of due process rights for children in conflict with the law, research conducted for this assessment suggests that future efforts must increasingly focus on the operationalization of such legislation. To this extent, an important finding of the research was the identification of an apparent gap between what service providers like the SLP and juvenile court officials know to be their responsibilities in theory, and what records show to be their practices in reality. This was particularly significant with regards to critical aspects of juvenile justice administration such as implications of the minimum age of criminal responsibility and conditions of investigative detention.

The operationalization of an effective juvenile justice system is a broad and crosscutting issue, requiring commitment and coordination among a wide spectrum of government ministries, policy makers, and service providers. While resource shortages will inevitably act as a constant challenge, research suggests that a lack of finances cannot and should not be blamed for all implementation failures. First, the current absence of institution-specific policies and guidelines with respect to the administration of juvenile justice allows for a significant amount of discretion on behalf of authorities in the handling of children in conflict with the law. From point of first contact, through to investigation and judicial proceedings, this discretion contributes to inconsistency of treatment across cases and across geographical region. Second, despite recent legislative initiatives, the Government of Sierra Leone has not shown the same commitment to the operationalization of such legislation and to the provisions and principles of the CRC, ACRWC and CRA. More specifically, there is a critical lack of support structures for the implementation of these key children’s rights instruments. Third, there appears to be a persistent lack of awareness, knowledge, and understanding of the principles of children’s rights generally but of juvenile justice specifically among the population. Interviews with MSWGCA and police personnel suggest that this is particularly true amongst rural communities, traditional leaders, and the grass roots levels of formal justice service providers. Unless efforts are directed at addressing this lack of understanding and the prevalently held views that children’s rights are a foreign import, such attitudes may continue to pose a significant challenge to the successful establishment of an effective juvenile justice system. Finally, and related to this latter point is the current absence of evidence-based policy making which hinders the development of policies and legislation that address the true causes of implementation failures.
It is often remarked that children are Sierra Leone’s most important resource. In this respect, all children, including those in conflict with the law, have the right to be treated with dignity and respect and in a manner which promote their best interests. Planning and designing policies that recognize these values is planning for the future of Sierra Leone. By investing in juvenile justice, children in conflict with the law are given the chance to change their lives and, if they can change their lives, they can change the future of the country.

Immediate Action Points

✓ Age Assessment guidelines should be finalized and formally adopted and implemented at both police and court levels and policies of giving the benefit of the doubt to children should be enforced.
✓ SLP should develop a formal policy establishing a clear referral path for juvenile cases from other SLP divisions to the appropriate FSUs. The policy must be enforced at all levels and across all divisions of the SLP, especially within CID divisions.
✓ The Ministry of Justice should prioritize the transfer of the trained Magistrate to the juvenile court.

Recommendations

Age

✓ Government should develop a national birth registration scheme that is accessible to parents across the country and that provides for free registration within the first year of a child’s life.
✓ SLP and the Ministry of Justice should develop a clear policy and/or standard operating procedures with regards to the treatment of underage children who come into conflict with the law.
✓ Development partners and NGOs working in the field of children’s rights should conduct sensitization and training campaigns to heighten understanding of the age of criminal responsibility and its implications among authorities and court officials.

Arrest, Investigation and Pre-Trial Detention

✓ SLP should develop and implement comprehensive standard operating procedures for all officers detailing the appropriate handling of juveniles in conflict with the law.
✓ Government and SLP should increase and/or redirect budget allocations for FSU to accommodate their expansive mandate. Once additional allocations are given to
increase FSU capacity, the FSU must have independent control over resources designated to the division.

- Government should prioritize budget expenditure for the MSWGCA to facilitate the protection of children in conflict with the law and the MSWGCA should in turn develop comprehensive plans for the execution and enforcement of their responsibilities.
  - Increase number and capacity of social workers/probation officers to improve tracing/diversion practices.
  - Develop comprehensive rehabilitation and reintegration programs for children detained in state custody.
- SLP should develop clear ledger system for recording the intake, processing and length of detention for juvenile offenders.
- Government should prioritize the refurbishment and reopening of the National Training Centre in order to increase the number of qualified social workers.
- Government should investigate alternative means of dealing with juveniles to avoid their detention in police cells. To this extent, research into international practices should be undertaken.

**Juvenile Trial Proceedings**

- Government and the Ministry of Justice should pursue legislative reform to ensure the protection of all due process rights for juvenile offenders and to provide for separate trials of juveniles jointly charged with adults.
- The Ministry of Justice should develop a formal policy with regards to the enforcement and protection of existing due process rights for juvenile offenders, especially the right to be presumed innocent and the right to privacy. The Ministry should also address the practice of referring non-murder cases to the High Court and prioritize the processing of juvenile cases committed to High Court.
- Sentencing guidelines should be developed to encourage consistent and proportional sentences.
- NGOs and development partners should develop a comprehensive training program on the administration of juvenile justice for Magistrates in the provinces.
- National legal aid schemes should include legal counsel for children in conflict with the law.

**Detention, Reformation and Reintegration**

- The MSWGCA should work in cooperation with other relevant ministries (especially the Ministries of Education and Health) to develop integrated education, skills training and health programs for children detained in state custody.
The MWGCA should ensure that probation officers are given sufficient logistical support to facilitate the consistent tracing of parents for children detained in state custody.

The MSWGCA should prioritize the development of a comprehensive reintegration program for children released from state custody.

**Diversion**

JSCO in consultation with relevant stakeholders should prioritize the development of diversion guidelines and emphasize restorative justice practices to reduce the number of children coming into contact with the formal justice system.

**Development Partners**

In the development of their Strategic Plan for 2011-2013, JSCO should prioritize coordination between various stakeholders (i.e. Between police, court officials, MSWGCA, as well as Approved School and Remand Home staff).