PROTECTING THE RIGHTS OF CHILDREN IN CONFLICT WITH THE LAW: A COMPARATIVE STUDY OF THE ADMINISTRATION AND PRACTICE OF JUVENILE JUSTICE IN SOUTH AFRICA AND SIERRA LEONE

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Executive Summary

This study compares the administration and practice of juvenile justice of South Africa and Sierra Leone. Both countries recognise the vulnerability and malleability of children in spite of there being right holders, and attempts to create a separate system and specific safeguards in their current legislations meant for the protection of these children on conflict with the law. However, the South African legal systems seem more advance than the Sierra Leone system. The study seeks to establish this.

The work is divided into five chapters. Chapter one defines the concept of juvenile justice and shows how it evolves as a practice internationally demonstrating the ideological shift back and forth between the punitive and welfare approaches to responding to youth crimes in the relevant period. It also discusses international and regional instruments relevant to the administration of juvenile justice. The chapter reveals the granting of due process rights to children as the significant turning point in the protection of children's right in conflict with the law. It terminates with the discussion of the development of children's right with regards to juvenile justice in international law and highlights key provisions relevant to the administration of juvenile justice.

Chapter two discusses the administration and practice of juvenile justice in South Africa. The chapter reveals that the country lacks a cohesive justice system. Rather, limited provisions specifically meant for dealing with children in conflict with the law are spread in a number of legislations. Also, there exists a tendency of practices of child justice that is compatible with international standards to evolve faster than legislation. The current practice of diversion in merely a legislative vacuum attests to this fact. Finally, it is also reveals that the courts have been

proactive enough in sanctioning practices that are not codified into laws. This is evident by the availability of case laws on prohibitions of corporal punishment, death sentences and also the practice of pre-sentence reports.

Chapter three reviews the legislation and current practice of the child justice system in Sierra Leone. It reveals that certain provisions governing the current juvenile justice system are rife with inconsistencies. There is, for example, a clear lack of uniformity in the concept of childhood within the different legislations. There is also a lack of adequate guarantees that protects the rights of children in conflict with the law. This is particularly evident in the pre-trial phase.

Chapter four assesses the current legislations and practices of juvenile justice systems in the two countries. It reveals the existence of gaps between the current practices and what the law uphold in the two systems, and also inconsistencies between practices and provisions enshrined in the international treaties relevant to juvenile justice, regarding crucial principles of juvenile justices. It also discusses provisions of the two reform documents of the juvenile justice of the two countries and also highlights some weaknesses therein.

Chapter five summarises and concludes the work pointing out some differences between the two systems and suggests possible solutions with the view of remedying the current weaknesses in the two legal systems.

TABLE OF CONTENTS

LIST OF ABBREVIATION

ACRWC – African Char of the Rights and Welfare of the Child

Cap 44 – Children and Young Person's Act, Chapter 44 of the Laws of Sierra Leone 1960

CPA – Criminal Procedure Act

CRC – Conventions on the rights of the Child

ECtHR- European Court of Human Rights

HCR- Human Rights Committee

ICCPR- International Covenant of Civil and Political Rights

MACR – Minimum Age of Criminal Responsibility

NGO- Non-Governmental Organization

NICRO- National Institute for Crime Prevention and Reintegration of Offenders

NPA- National Prosecuting Office

OAU- Organization of African Unity

P.I – Preliminary Investigation

UNJDL – United Nations Rule for the Protection of Children Deprived of their Liberty

INTRODUCTION

Though the notion of children being right bearers have gained a wider acceptability on the international plane, yet their immaturity and vulnerability means that they require special needs and protection when they are in conflict with the law. Consequently specific rules applying to these children have emerged over the years that protect them from the full rigours of the criminal justice system until such children attain certain age when they are deemed capable of taking personal responsibility of their actions.[1] These rules should characterize a juvenile justice system of any society that strives to combat youth crimes within acceptable international standards.

South Africa and Sierra Leone, the focus of this study are both faced with the quandary of dealing with rising juvenile crimes. The fact that both countries have in the past been faced with prolonged internal wrangling has provided a basis for rising youth crimes. This also means that both countries maintain a criminal justice system that responds to their respective situations. However, there exist notable similarities between the two systems. Firstly, both countries are signatories to key children's right treaties including the Conventions on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC). Both of these treaties provides for a comprehensive framework within which the issue of juvenile justice must be understood. The mutual ratification of these treaties by the two countries provides a point of departure for comparison of their respective juvenile justice systems.

[1] Jane Fortain, Children's Children's Rights and the Developing law, Butterworths, London, 1998 p. 435

Secondly with the end of the conflicts in both countries, efforts have been garnered to reform of the different sectors including the justice sector, including the juvenile justice systems. South Africa for example has in place a drafted Bill purposely labeled Child Justice Bill, to emphasize the focus on children's right and avoiding the stigmatization inherent in the word "juvenile"[2] The bill was envisaged to create a separate justice system in accordance with international human rights standards and referred for the first time to entrenched, diversion and aspects of restorative justice.[3] The government of Sierra Leone on has launched a National Strategy for protecting children who are involved in the criminal justice system as offenders, victims, witnesses, and promotes the monitoring and evaluation of all key institutions involved in the process.[4] In addition, the Child Rights Act 7 of 2007 has been enacted. Both of these documents aims to give effect to children's rights enshrined in international treaties at domestic level.

This not withstanding, South Africa appears to avail more protection to children in conflict with the law than the Sierra Leonean juvenile justice system. This work, which is comparative in nature, will therefore seek to highlight this fact. It will also seek to enquire whether domestic legislations and practices are in conformity with international standards. Efforts will also be made to establish whether the post-crisis juvenile situations in the two countries have in any way brought innovations into the existing juvenile justice practice at international level.

The work is divided into five chapters. Chapter one embodies an overview of the juvenile justice system, in which juvenile justice as a concept will be defined. It will also unravel how juvenile

[2] Julia Sloth-Nielsen, Children's Right and Law Reforms in South Africa: An update from the juvenile justice front. Available at: http://www.dci-au.org
[3] Ibid
[4] National Child Justice Strategy for Sierra Leone, July 2006

justice as a practice evolved generally in the west and at international law level. The chapter will as well highlight some international and regional treaties and related soft norms that are relevant to the administration and practice of juvenile justice in the two countries. Chapters two and three will discuss the entire child justice systems of both South Africa and Sierra Leone in the light of the current legislations and practices. The juvenile justice legislative reform documents of both countries will also be discussed highlighting their weaknesses (if any). Chapter four will constitutes the core of the study as will review juvenile justice systems in both countries highlighting inconsistencies between what the law upholds and the actual practice on one hand; and compatibility or incompatibilities of the current domestic legislation and practices with international standards enunciated in the international and regional treaties. The study is summarized and concluded in chapter five. The chapter will be terminated with recommendations as to how to remedy current weaknesses in the juvenile justice systems in the two countries.

CHAPTER 1: OVERVIEW OF JUVENILE JUSTICE

This chapter makes an overview of juvenile justice as concept. An attempt is made to define the concept. It also highlights how juvenile justice as a practice evolved in the West particularly the United State and Europe taking note of the ideological shift back and forth between welfare and justice approaches to juvenile justice practices. It finally discusses the international and regional instruments relevant to the study of juvenile justice.

1.1 Juvenile justice defined

The need for an appropriate response to increasing juvenile crimes has always prompted legislators and policymakers in countries across the world strive to adopt a separate justice system for the protection of children who though involved in crime will still have the potential of developing into a productive member of his society. Hence the concept of a juvenile justice evolved. What then is this very concept about?

Juvenile justice is a term that has been used in varied contexts denoting different meanings. It has been used as an umbrella term that has encapsulated references to the juvenile court- the institutional linchpin of the innovation; and to a stream of affiliated institutions that carry responsibilities for the control and rehabilitation of the young; including the police, the juvenile court itself, its auxiliary staff; prosecuting and defense attorneys; juvenile detention centers; and the juvenile correctional facilities. [5] When used in a wider context it has included the provision of services for the welfare and well-being of children in general that are in need of protection and care, while in the formal sense it also deals with those who are caught within the web of the

[5] Margaret K. Rosenheim et al, A century of Juvenile Justice, University of Chicago press, Chicago and London, 2002, p. 341

law or those who would likely be caught because of various reasons. [6] In a general criminology sense, it has been used to imply "justice to the delinquent or near delinquent child in various stages of the formal process such as arrest and apprehension, adjudication, sentencing, custodial care, and detention and after care.[7]

Because of the varied usage and interpretations given to it, when the term was sought to be clarified during the preparatory meetings of the Sixth UN Congress on the Prevention of Crime and the Treatment of Offenders, the working paper produced stated with regards to the subject matter the following:

> *"Juvenile justice after the onset of delinquency referred to justice in its normal juridical sense and that juvenile justice before the onset of delinquency referred to social justice. Thus the concept of social justice was to be seen as relevant to the development of children and young persons generally and to endangered children particularly, while the concept of juvenile justice applied to accused or adjudicated young offenders. The two were closely related but could not be separated for the purposes of discussion and training*." [8]

The above clarification then suggests that the usage of the term "juvenile justice" is not only limited to young offenders who are caught up with the long arms of the laws, but it also refers to those children who lack adequate parental care or who are unaccompanied street kids, and whose situation provides the likelihood of them becoming involved in crime. If juvenile justice connotes a reference to an embodiment of institutions (the juvenile court, juvenile detention and correctional facilities), and actors (police, prosecuting and defence lawyers, the court's auxiliary

[6] Ved Kumari, The Juvenile Justice System in India, From Welfare to rights, Oxford University Press 2004 p.4
[7] Ibid
[8] Ibid

personnel), then it becomes a systems, when these sets of institutions and groups of actors make a series of interrelated decisions regarding a state's intervention into the children's lives. Juvenile justice system therefore encompasses the manner in which police arrest or interrogate children; the attitude of lawyers and prosecutors; the way that judges make decisions about guilt or sentencing; handling by prison staff; the living, educational, recreational and safety conditions in detention facilities; and programmes for rehabilitation and reintegration.[9]

In order to fully have an insight into the concept, contemporary issues and practices of juvenile justice systems, it is but important to trace its development. This shall be discussed in the next section of this chapter.

1.2 The Development of Juvenile Justice

The historical development of juvenile justice which could be traced from western countries reflects an ideological shift in the perceptions of the needs, rights and capacities of adolescents and children.

The idea of a separate juvenile justice system is a relatively new phenomenon in the history of human kind. Prior to the nineteenth century, in most cultures including Europe and the Americas, there was very little social or legal recognition of the special needs and particular capacities of children and adolescences. Children were expected to enter the adult world at younger ages which explain the existence of child labour at the material time.[10] Similarly, the criminal justice systems did little to formally separate the children from adults. Common law infancy doctrine at

[9] Juvenile Justice-Modern Concepts of working with Children with the Law, Save the Children, UK p 16, Available at http://www.crin.org/docs/save_jj_modern_concepts.Pdf
[10] Ved Kumari, Supra note 6 p. 6

this period presumed that children younger than seven were incapable of committing crime, while those between seven and fourteen were deemed to be fully responsible for their crime though the presumption that children between ages seven and fourteen lacked criminal responsibility was rebuttable. (*Doli Incapax*)[11]

Punishments for crimes were thought necessary by penal reformers who were convinced that penal criminal approach will deter offenders.[12] Not surprisingly though, this idea failed to eliminate crime and the idea of placing the young in the same penitentiaries with adult criminals proved counter-productive as they became hardened criminals afterwards. A report of the Inspector of Prisons filed in 1836 in England confirmed this by stating that: *"[t]he boy is thrown among veterans in guilt... and his vicious propensities cherished and inflamed…He enters the prison a child in years, and not infrequently also in crime; but leaves it with a knowledge in the ways of wickedness*"[13] This factor, combined with some others which will be highlighted, prompted child-friendly reformers to search for a suitable solution to the looming rise of juvenile crime, a solution that will place the interest of the child at its helm.[14] The houses of refuge, features of which subsequent juvenile courts maintained, constituted the first specialized institutions for the social control of youths. They were followed by the establishment of reformatories and industrial schools.

The shift to a separate system for youth offenders can be ascribed to firstly; industrialization which led to the migration of people from rural areas to cities, thus weakening the traditional

[11] Barry C. Feld, Bad Kids Race and the Transformation of the Juvenile Court, Oxford University Press, New York, 1999, 48
[12] Ibid
[13] Ved Kumari., Supra Note 6, p. 11
[14] Barry C. Feld, Supra note 11 p. 49

social control.[15] There was then the shift and reliance on formal social control which could only be provided by state-control institutions. Early nineteenth century Americans for example attributed rising juvenile crime to "environmental corruption" caused by immigration, urbanization, poverty and the disintegration of the earlier, stable social order.[16] The second factor was the emergence of the idea of childhood vulnerability and the social construction of adolescence malleability.[17] Enlightenment ideas about children were that they were born innocent, with a blank mind (*tabula rasa*) and were only corrupted by outside influence.[18] There was also the belief that children who failed to receive family discipline more often than not fall easy preys to the vices and disorder that was rampant in the community and hence become criminals.[19] Reformists then saw it as an obligation to intervene to control the youth deviance and to separate adolescent from adult criminals.

Consequently, the houses of refuge literally became sanctuaries and safe havens, where the children being rescued from social vices within the communities, were placed to be reformed. Their main function though was to remove offenders from the community, isolate then from contaminating influences, and imposed a strict discipline to inculcate obedience and respect for authorities.[20] The houses maintained an open policy in the recruitment of their clients. Clients were received from sources including judicial systems; referrals from overseers; from constables who arrested street kids, and from parents who sought to control their wayward children. [21]

[15] Ibid
[16] Ibid
[17] Ibid
[18] Ibid
[19] Ibid p50
[20] Ibid, p 53
[21] Ibid

The houses serviced a wide range of clientele that was not only limited to criminal offenders, but those who were orphans, children who lacked parental control, dependent, and neglected children as long as they were aged sixteen and below.[22]

In the mid nineteenth century child reformers both in Europe and America developed reformatories and industrial schools as the new institutions for youths when it became clear that discipline could not be achieved through punishment, but rather, through allowing the young person to change internally.[23] This was succinctly expressed by Mary Carpenter, one of the thinkers behind the establishment in Britain; when she noted that reform in the child occur "only when the child's soul is touched, when he yields from the heart."[24] The reformatories and industrial schools were therefore established to shelter and reform young deviants. They provided a special form of prison discipline for young people to aid their transformation from delinquency to good youths. The differing feature of the reformatories and industrial schools from earlier houses of refuge were their location which was in rural settings, far removed from urban so as to insulate the children from the corrupting city influences.[25] The placement of young people in these reformatories were to become a precursor for contemporary child welfare and foster-care policies and establishing that acting in a child's 'best interest' took precedence over the interest of the child's parents.[26]

[22] Ibid
[23] Ibid p. 54
[24] Chris Cunnen and Rob White, Juvenile Justice; an Australian Experience, Oxford University Press, Melburne 2000 p. 16
[25] Barry C. Feld , Supra note 11 p. 15
[26] Ibid

The introduction of reformatories and industrial schools effected some change into the reign of the juvenile justice system during the period. It led to a separate procedures for dealing with young people for some offences; different penalties for juveniles and adults; different criteria for intervention between adults and juvenile; an overlap between welfare and criminal intervention; high levels of administrative discretion over those young people within the juvenile penal regime etc. [27] It was within the context of these changes that the development of a specialist juvenile court took place which shall be dealt with shortly.

The doctrine of *Parens Patriae* provided the justification on which the early nineteenth century houses of refuge and mid-ninetieth century reformatories and industrial schools alike were operated. By definition, it meant the "right and responsibility of the state to substitute its own control over children for that of the natural parents when the latter appeared unable or unwilling to meet their responsibility or when the child posed a problem for the community."[28]

The doctrine formally paved its way in the American legal system in the landmark supreme court of Pennsylvania decision in *Ex parte Cruise* in which a father challenged the commitment of a juvenile to a house of refuge without a jury trial. The court dismissed the complaint holding that the Bill of Rights was inapplicability to minors and stated the right of the refuge to take charge of the care of the juvenile where the parents failed to do so. In the decision the court noted that:

> *"… The object the of the charity [referring to the house of refuge] is reformation, by training its inmates to industry; by imbuing their minds with principles of morality*

[27] Chris Cunnen and Rob White, Supra note 24, p 17
[28] Barry C. Feld, Supra note 11, p.52

and religion; by furnishing them with the means to earn a living; and above all, by separating them from the corrupting influences of improper associates. To this end, may not the natural parents, when unequal to the task of education, or unworthy of it, be superseded by the parens patriae, or common guardian of the community?...” [29]

This decision was to become the guiding light to shape the juvenile justice system as it formalized the right of the state to intervene in the welfare of the child. It also reflected the legal and cultural views at that time such as children, especially of the poor had few legal rights; that poor parents lacked morality and were incapable of rearing children in the best way possible, and any action of government to instill discipline in the children of these poor was done for the better.[30]

The close of the nineteenth century witnessed another monumental stage in the development of juvenile justice, when in 1899; a separate court was created in Chicago, in the United State for dealing with juvenile offenders as well as non-offenders but with specific circumstances. Shortly afterwards, at the turn of the twentieth century, similar courts were established in Europe between 1905 to 1912 in countries such as the Netherlands, United kingdom, Belgium and France, and on an experimental basis in Germany.[31] The creation of this new court was owned firstly to the ideological changes in the cultural conceptions about childhood and strategies of social control at the close of the nineteenth century. New disciplines such as psychology, child psychiatry had introduced a new categorization of young people as adolescents, a distinguishing stage of human development, a stage that is thought to be vulnerable and unstable; provided the

[29] Ibid p. 53
[30] Ibid
[31] Lode Walgrave and Jill Mehlbye, Confronting Youth In Europe-Juvenile Crime and Juvenile Justice, Institute of Local Government Studies-Denmark, August 1998 at http://www.akf.dk/eng98/juvenile.htm

legal impetus to separate young offenders from criminals and to create a social welfare alternative to respond to criminal and non-criminal misconduct by youths.[32] There was also a shift in the attitude towards penal laws from mere incarceration as a deterrent measure for crime to the imposition of a long-term 'training' through open-ended sentences for young people. [33]

Secondly there was the growth of positivist criminology which led to the reformulation of the ideologies of crime. Prior school of thought represented the classical criminal law theory which presumed that a person has a free will to make choices in their action and therefore deserve prescribed consequences for his acts.[34] Criminal law in essence reflected a retributive jurisprudence, blaming and punishing offenders for the quality of their choices. In the late nineteenth century, positivists reformulated this ideology of crime, attributing criminal behavior to certain antecedent forces that are biological, psychological, social or environmental.[35] These determinist factors were thought to compel the offender rather than mere free will and hence reduced moral responsibility for their crime. Penologist then sought to reform offenders rather than to punish them for their offences.[36] The Positivist model demanded that the criminal's background and personal trait be considered as part of an intelligent disposition. They demanded a system of individual justice in which punishment and deterrence should be of limited relevance.[37]

[32] Barry C Feld Supra note 11, p. 53
[33] Ibid
[34] Ibid p. 57
[35] Ibid
[36] Barry C. Feld, Supra note 11, p. 57
[37] Ibid

The powers of the new juvenile court varied from country to country. In the United State where if was first created, the court was tasked to determine the legal status of 'troublesome' or 'pre-delinquent' children and to investigate various behaviors.[38] The court defined delinquency as "acts that would be if committed by adults; act that violated county, town or municipal ordinances; and violations of vaguely defined catch-alls-such as vicious or immoral behaviour, incorrigibility, truancy, profane or indecent language, growing up in idleness, or living with the vicious or disreputable person"[39]

The court's proceedings were conducted informally and in privacy to prevent the children from carrying the stigma of a criminal record. Children were also not accused of a crime but were there to be offered assistant and guidance and the concept of *Parens patriae* authorized the court to exercise a wider discretion in resolving the problems of the juvenile.[40]

The court established in England and Wales under the Children's Act 1908, exercised both criminal jurisdiction over criminal matters and civil jurisdiction in relation to welfare matters of the child. This situation became a recipe for divergence, as aptly stated by Harris and Web: "*[I]t made the juvenile court itself a locus for conflict and confusion, a vehicle for the simultaneous welfarization of delinquent and the judiricization of need.*" [41]

An important feature of the modern juvenile justice system that became an adjunct to the new court was the practice of probation which became a sentencing option for the juvenile. The use

[38] Ibid
[39] Chris Cunnen and Rob White, Supra note 24, p. 18
[40] Ibid
[41] Ibid, p.19

of probation predated the court and it developed from voluntary charitable and religious work.[42] These bodies initially attended courts in cases dealing with children and consequently took a third of the children under their guardianship for supervision.[43] Similarly in the United Kingdom, the First Offender Act of 1887 allowed missionary workers to take children that were minor first offenders in their custody for supervision.[44]

Even though the new juvenile court had new features as innovations to the juvenile justice system within that period such as a separate judiciary, earlier reformers of the refuge and reformatory house era developed most of the element of a separate juvenile justice system. These include specialized penal institution to separate youth offenders from adults; expansive legal authority over no criminal offenders, and a denial of the criminal procedural safeguards.[45]

The new court maintaining these features, especially the latter, attracted criticism, one of which was its arbitrariness as it denied young offenders procedural safeguards. This led to a series of legal challenges that once more shifted the juvenile justice system from its welfare and rehabilitative nature to a balance between welfare and rights coupled with some punitive measures. Notable of these legal challenges were in *Kent v. United State* which considered valid waiver of the exclusive jurisdiction of the court[46] and the Re *Gault Case* which had an enormous impact of the juvenile justice system.[47] In the latter decision, the court held that the due process

[42] Ibid p. 19
[43] Ibid
[44] Ibid, p.20
[45] Ibid
[46] Jessica Hanna Garascia, "The Price we are all willing to pay for punitive justice in the Juvenile Detention System: Mentally ill Delinquents and there Disproportionate share of the burden." Indiana Law Journal, Spring 2005 Westlaw
[47] Ibid

of the fourteenth amendment guaranteed the child a right to counsel, before being sentenced. [48] This due process guarantee helped to erode the flexibility that was a distinguishing feature of the juvenile system from its adult counterpart. The third important case that helped in the transition of the system was the *Re Winship* in which the court ruled that the criminal justice system's principle of proof beyond a reasonable doubt must be utilized in juvenile court trials. The court noted that *"'[I]ntervention cannot take the form of subjecting the child to the stigma of a finding that he violated a criminal law and to the possibility of institutional confinement on proof insufficient to convict him were he an adult*." [49] The court's concern in this decision was that the system was not doing much to protect the interest of the child. The court's solution was for the juvenile court to utilize the same standard of proof accorded to the adult.[50] Again, at issue was the tension between affording children adequate due process rights and maintaining the flexibility that differentiated the original juvenile court

The Gault decision particularly kick-started the debate between the welfare theory of the court and the right of child, a tension which continued with a search for a balance between the two rather than discarding one for another. [51] Davis, in his work "*The rights of Juveniles: The Juvenile Justice System (1974)* commented with regards to this:

> *"Procedural reform while altering the most visible part of the juvenile process-the procedural setting-have not prevented the juvenile court from attaining ameriorative purposes…. Only by assuring a child of procedural fairness will a court that purports to represent that child's interest impart to him an unjaundiced view of a system of justice that is fair and benevolent. This goal, after all, was one of the*

[48] Ibid
[49] Ved Kumari, Supra note 6, p.53
[50] Ibid
[51] Ibid

original purposes sought to be achieved by application of the principle of parens patriae."[52]

Some countries have either vacillated between these two different paradigms of the justice and the welfare models or have striven to construct a synthesis or compromise between the two. Such is the case with South Africa and Sierra Leone whose juvenile justice system garnered from the British system[53], conflated both the Welfare and justice model in their respective child justice systems.

1.3 The development of juvenile justice in international law

While due process rights of children had found its way in the juvenile justice systems in several western countries, it recognition on the international plane still remained quite elusive. The general trend however was that children were perceived as objects and not as subjects of international law.[54] This idea had been reflected in provisions of earlier declarations regarding children's right such as the 1924 and 1959 Declarations of the Rights of the Child respectively. The 1924 and 1959 child rights declarations only stopped short at enhancing 'the best interest of children' but no further provisions were made that was relevant to juvenile justice. However, it was the European Conventions of Human Rights that initiated the extension of a specific safeguard for the juvenile's right to a fair trial.[55]

The incorporation of specific rights into international treaties respecting the administration of juvenile justice was only done in 1966 with the adoption of the International Covenant of Civil

[52] Ibid, 52
[53] Both the South African and Sierra Leone inherited the common law practices in their legal system.
[54] Geraldine Van Bueren, The International Law on the Rights of the Child, International Studies in Human Rights Vol. 35, Mautinus Nijhoff Publishers, Dordrecht, The Netherlands, 1995, 8
[55] Section 6 (1) ECHR, Note that the ECHR is regarded as the earliest detailed regional convention to enshrine fundamental Human into a single instrument.

and Political Rights. In spite of the usefulness of its provisions enshrined, it only covered a narrow aspect of juvenile justice. The covenant called for the expeditious trial of juvenile offenders, and their separation from adults (Art.10 (2) (b) and the consideration of their age in a trial proceedings and with the desirability of promotion of their rehabilitation (Art. 14 (4). [56] Finally, Article 24 provides for the right to measures of protection without discrimination based on the various grounds. The idea of rehabilitation was premised on the view that the juvenile offender should be spared the stigma attached to crime and that the ultimate measure to combat juvenile offending was educational measures not punishment.[57]

A proper administration of juvenile justice is guaranteed in the number of international and regional instruments. For the purpose of this essay, the CRC, ACRWC and the relevant soft norms such as the Beijing Rule, the United Nations Rule for the Protection of Juvenile Deprived of their Liberty (UNJDL) and the Riyadh Guidelines. This shall now be review.

1.3.1 The Conventions on the Rights of the Child (CRC)

The Convention on the Right of the Child was to become the first international treaty with provisions specifically governing juvenile justice. It adoption was an overdue response to the urgent need to elaborate a legally binding document that would focus exclusively on the specific needs and interest of the child.[58] It formulation owns itself to key considerations which amongst others is the state's recognition of the immaturity and vulnerability of children, which requires a

[56] Gane, Christopher and Co, Human Rights and The Administration of justice, Kluwer Law International, The Hague, 1997 p. 453

[57] Manfred Nowak, UN Convention on Civil and Political Rights CCPR Commentary, 2nd Edition, N.P Engel Publisher, Kehl, Germany, 2005, p. 347-348

[58] Human Rights in the Administration of Justice: A manual on Human Rights for Judges, Prosecutors and Lawyers, Professional Manuals Part 6, Office of the Commission of Human Rights and the International Bar Association p. 400

higher standard of protection in some areas of their lives than that which was found in the existing international law.[59]

Adopted by the UN General Assembly in 1989, and coming into force a year later in September 1990, [60] the Convention has become the most widely ratified international treaty, which as of February 8 2002 has been ratified by 191 states.[61]

The specific articles in the Convention that deals with the administration of juvenile justice are articles 37 and 40. Article 37 exclusively provides rights which should be accorded to children alleged to have committed or accused of a crime during their sentencing or when such children are deprived of their liberty. They include prohibition of torture, inhumane or degrading treatment, unlawful or arbitrary deprivation of liberty, and the treatment of the child with respect and dignity and the right of access to legal or other appropriate assistance.

Article 40 is often read in the light of articles 3 (the best interest principle), 12 (respecting the views of the child) and 39 (the need for rehabilitation and reintegration).[62] It obliges state parties to treat the juvenile offender in a manner with the view of promoting the child's "sense of dignity and worth which reinforces the child's respect for the human right and fundamental freedoms of others and which take into account the child's age and desirability of promoting the child's reintegration and the child's assuming a constructive role in society"[63] Article 40 (2)

[59] Geraldine Van Bueren, Supra note 54, p. 13
[60] Sharon Detrick, A Commentary on the United Nations Convention on the Rights of the Child, Martinus Nijhof Publishers, The Hague, 1999, p. 18
[61] Geraldine Van Bueren, Supra note 54, p. 400
[62] Pa. Mo-Momo Fofanah, Juvenile Justice and Children in Armed Conflict: Facing the fact and forging the future via the Sierra Leone Test, May 2004, p.28
[63] Article 40 (CRC

enumerates due process guarantees that children facing criminal charges should be accorded with. This includes the presumption of innocence, the rights to non-retroactivity of the law, legal or other appropriate assistance, to an interpreter, to a speedy trial, to examine and call witnesses etc.

Note worthy of article 40 also is its provision for the necessity of diverting juvenile cases from the criminal justice system. Article 40 (3) (b) seeks for appropriate and desirable measures for dealing with children in conflict with the law "without resorting to judicial proceedings". This should however be conditioned upon the respect for human rights and legal safeguard. Article 40 then suggests a number of disposition alternatives to be considered in order to "ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence."

1.3.2 The African Charter on the Rights and Welfare of the Child (ACRWC)

The ACRWC was the first regional body to adopt a binding instrument focusing exclusively on the rights of the child.[64] It was adopted by the Organization of African Unity (OAU) shortly after the CRC's adoption in July 1990 and was put in force in 1999.[65] The Charter was conceived out of the sentiment of African states for what they noticed of the Convention as an omission to the socio-cultural and economic realities of the African experience.[66] However, both treaties have similar provisions and were meant to compliment each other. In relation to the administration of juvenile justice, one would note that the Charter is a blue print of the Convention provisions.

[64] Geraldine Van Bueren, Supra note 54, p. 22
[65] Solange Rosa and Mira Dutshke, Child Rights at the Core, A Commentary on the use of International Law in South African Cases on Children's Socio-Economic Rights, Project 28 Working Paper, May 2006. Available at www.ci.org.za/depts/ci/pubs/pdf/rights/workpap/CHILDRIGHTATTHECORE.pdf
[66] Ibid

Article 17 of the Charter specifically covers juvenile justice making provision for children accused of having committed a crime to be treated with dignity and respect, the prohibition of torture, inhumane and degrading treatment for such children, their separation from adults in the legal systems and a host of procedural rights etc.

1.3.3 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rule)

Prior to the adoption of the Convention, the UN General Assembly had adopted the United Nations Standard Minimum Rules for the Administration of Juvenile Justice in 1985 named the Beijing Rules. Its intended purpose was to provide a framework through which national juvenile justice systems should be molded to ensure state's fair and humane response to juvenile crimes.

The Beijing Rule is divided into six parts, namely general principles, investigation and prosecution, adjudication and disposition, non-institutional treatment, institutional treatment, and research planning, policy formulation and evaluation.[67] Although not a treaty, some of the provisions of the Beijing Rule has become binding on states because of their incorporated into the latter laws.

1.3.4 United Nations Rule for the Protection of Juveniles Deprived of their Liberty (UN Rules)

The United Nations Rule for the Protection of Juveniles Deprived of their Liberty, which was adopted in 1990 was specifically meant to "counteract the detrimental effect of deprivation of

[67] Geraldine Van Bueren, Supra Note 54 p. 177

liberty by ensuring respect for human rights of juveniles"[68] They have since served as a generally accepted framework within which states are suppose to regulate the deprivation of children found in conflict with the law.

The Rules are based on the following principles: firstly, that the deprivation of liberty as a disposition should be a measure of last resort, of a minimum period, and used only in exceptional case; secondly that such deprivation should be in accordance with the principles and procedures of international Law; thirdly establishing facilities geared towards the individualized treatment of the juvenile and to prevent a negative effects that deprivation may cause. Fourthly, that facility should guaranty activities that will promote the heath, self-respect and sense of responsibility of the juveniles and assist in fostering their skills that would mold them in becoming viable members of their communities. Finally, the deprived should maintain contact and access to their families and allow them integrate into their society etc. [69] Just like its Beijing counterpart, the rule is in the form of a non-binding recommendation. However, some the rules have been transformed to binding laws by virtue of their being incorporated into the CRC.

1.3.5 The United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)

The United Nations guidelines for the prevention of juvenile delinquency were adopted in 1990 with the aim of preventing juvenile delinquency within states. In contrast to the Beijing rules which is reactive in its application and aimed at protecting children who come in conflict with

[68]Geraldine Van Bueren, United Nations Rules for the Protection of Juveniles deprived of their Liberty-Introduction, Defence for Children International, Available at www.child-abuse.com/childhouse/childrens_rights/dci_prot.html
[69] Ibid

the law, the Guidelines focuses on "early protection and preventive intervention" particularly targeting children in situations of "social risk".[70] It espouses a comprehensive list of methods that could assist in the prevention of juvenile delinquencies and includes policies for general prevention of juvenile delinquencies; social processes; social policy, legislation and juvenile justice administration and research; policy development and coordination.[71]

It's weakness in respect of crystallizing itself into a legally binding document is inherent in the very fact that it is merely a guideline as could be noticed from its very title. In addition to this guideline 8 recommends that states to implements them "*with the[ir] particular economic, social and cultural context.*"[72]

1.4 Conclusion

The development of the rights of children in conflict with the law over the century reflected an ideological shift back and forth from the punitive approach to responding to youth crime to a welfare based approach. The recognition of the due process rights of children was a significant turning point in the protection of the rights of children in conflict with the law. Furthermore, the development of international and regional norms on children's rights ensures that the advancement of children's right does not remain static, but evolves to meet the changing needs and circumstances. The next two chapters will discuss the administration and practice of juvenile justice in South Africa and Sierra Leone respectively in the light of both their substantive and procedural considerations.

[70] Geraldine Van Bueren, Supra note 54, p 195
[71] Ibid
[72] Ibid

CHAPTER 2: THE ADMINISTRATION AND PRACTICE OF JUVENILE JUSTICE IN SOUTH AFRICA

This chapter discusses the administration and practices of the current juvenile justice system in South Africa. Given that the operation of any justice systems entails both substantive and procedural consideration; the former referring to factual elements that are embodied in within the justice system and the latter being the legal method used to deal with persons before the law, a review of the South African system in this chapter will be done in the light of these considerations. I shall therefore examine legislations governing the current child justice system, the current practice and the proposed Child Justice Bill 49 of 2002, which is the main child justice reform document.

2.1 Current Legislation in South Africa

In South Africa, the administration of juvenile justice is regulated by a wide array of legislations namely the 1996 Constitution, the Criminal Procedure Act 51 of 1977, the Correctional Service Act (Act 8 of 1959) amended in 1996, the Probation Services Act 116 of 1991 and the Child Care Act 74 of 1983

The calls for the recognition of the rights of children were among the various clamours for constitutional reform process after the transition to democracy.[73] This was to result to the inclusion of a specific clause in the constitution (Act 108 of 1996) that dealt with children. The clause accorded particular rights and protection in addition to those granted them as citizens within the Bill of Rights. Consequently, Section 28 creates a 'mini charter' of children's rights

[73] Louise Ehlers, "Comparing the South Africa child justice reform process and the experiences of juvenile justice reform in the United States", Open Society Foundation for South Africa p.1

that domesticates certain key rights in the CRC that is relevant to juvenile justice. It grants children the right to parental or family care or an alternative care when removed from family environment[74], right to be protected from maltreatment, abuse, neglect or degradation[75], right not to be detained except as a measure of last resort or for a shortest possible period, right to be separated from adults and in manner that takes into account their age[76]. It also provides that a child's best interest should be of paramount importance in everything concerning him[77], and it finally defines "child" to mean a person under the age of 18.[78]

In addition to the rights enshrined in Section 28 that specifically deals with children in conflict with the law, Section 35 provides for a litany of procedural safeguards that protects "everyone who is arrested for allegedly committing an offence". These includes the rights to remain silent and to be informed promptly of such right, and the consequence of not doing so; to be brought before a court as reasonably as possible, but not later than 48 hours after arrest; to fair trial; to legal representation and the right to be provided one at the expense of the state etc.

The Criminal Procedure Act (CPA) largely governs the South African criminal process from arrest to conviction for both children who come in conflict with the law and their adult counterparts. It does not however recognize the special needs of children, neither was it designed to protect their rights.[79] This notwithstanding, a small array of criminal procedure particularly relating to children below 18 years are found in the Criminal Procedure Act 51 of 1977. The Act

[74] Sec 28 (1) (b)
[75] Sec 28 (1) (d)
[76] Sec 28 (1) (g)

[77] Sec 28 (2)
[78] Sec 28 (3)
[79] Supra note 73

provides for any person under the age of 18 convicted to be sent to a reform school instead of imposing punishment on such a person,[80] for children awaiting designation into the reform schools to be sent to places of safety,[81] and for a review of such a sentence where it is found that the child is "not fit" to be sentenced in a reform school.[82] The Act further provides for a correctional service to be imposed as a sentence,[83] and finally, for a criminal proceedings to be put to a halt and converted to a children's court inquiry or the court to refer a child offender to a children's court.[84]

The Child Care Act 74 of 1983 also covers certain areas relevant for the administration of Juvenile Justice. The Act establishes a juvenile court used as a diversionary option, the appointment of a Commissioner for Child Welfare, [85] the establishment of certain institutions such as the places of safety, secured care centres for the reception of children and the treatment of such children after such reception.

Section 29 of the Correctional Service Act provides guidance for the detention of children pending trial. Whilst the earlier version of the Act prohibits the detention of children below the age of fourteen beyond 24 hours, the 1996 amended version allows the detention of ju juveniles accused of committing serious offences in prison whilst awaiting trial. Such children are however brought before the court every fourteen days for their detention to be reviewed. The new Correctional Service Act 111 of 1998 also contains limited provisions for the specific need

[80] Sec 290 (1&3) of the CPA
[81] Sec 290 (4)
[82] Sec 276A
[83] Sec 276 (h) (i)
[84] Sec 254
[85] Sec 6

of children namely the entitlement of children not on compulsory education to educational programmes, their entitlement to social Work, religious care, recreational and psychological services, and finally their right to maintain contacts with their family through additional visits and other means.[86].

The Probation Services Act 116 of 1991 makes provision for programmes aimed at the prevention and combating of crime and for rendering of assistance to and treatment of certain persons involve in crime. The Amendment Act 2002, further extends the power and duties of probation officers, provides for duties of assistant probation officers and above all provides for a mandatory assessment of arrested children.[87]

2.2 The Definition of the Child and the minimum age of criminal responsibility in South Africa

In South Africa, section 28 of the 1996 Constitution defines a child as any person under the age of 18.[88] As noted earlier, the same section (28) further provides specific safeguards for the treatment of persons below the age of 18 years who come in conflict with the law. The Child Care Act 1983 similarly defines a child as any person under the age of 18.

The Criminal Procedure Act which generally covers procedural safeguards for persons accused of a crime makes specific provisions for children. These special provisions deal with procedures after the arrest and before the court for adjudication of the matter. Stipulated in the Act are the rights for the notification of parents or guardians of persons under 18 after arrest or for the notification of probation officers for such person, the rights of persons under 18 to be assisted at

[86] Section 19
[87] Preamble, Probation Services Amendment Act 35 of 2002
[88] Sec 28 (3)

by parents or guardians at criminal proceedings, and for proceedings for persons less than 18 years to be held in camera. Finally the new Correctional Service Act 111, 1998, defines a child as a person under the age of 18.[89]

The minimum age of criminal responsibility in South Africa is governed by two Common law presumptions which are based, either fully or partially, on physical age limit.[90] The first one provides that a child who has not yet reached the age of 7 is irrefutably presumed to be *doli incapax* which means that the child lacks the capacity to commit a crime. The second presumption is that the child between the ages of 7 and 14 is refutably presumed to be *doli incapax*, that is, a child who has attained the age of 7 but has not yet exceeded the age of 14 is deemed to lack criminal capacity unless the state proves beyond reasonable doubt that the offender can distinguish between right from wrong, and that s/he knew the wrongfulness of the offence by the time of its commission.

The test of criminal capacity in the second prong of the presumption has often been conducted in two ways. The first is determined by two psychological factors: the child's ability to distinguish between right and wrong, and to conduct himself/herself in accordance with the insight into the right or wrong.[91] Thus the centrepiece of the test is to be determined by an answer to the enquiry as to whether the child in the circumstances did have the capacity to appreciate the wrongfulness

[89] Sec 1(b)
[90] Karoline Johansson and Therese Palm, "Children in Trouble with the Law: Child Justice in Sweden and South Africa", International Journal of Law, Policy and Family, Westlaw, December 2003 p.3
[91] Ibid

of his/her conduct, and if the answer is in the affirmative, then she did have the capacity to act in accordance with such appreciation.[92]

The second way of determining the criminal capacity that is frequently practice is letting the mother of the offender to testify whether her child is capable of distinguishing between right or wrong. An answer in the affirmative is sometimes used as a sufficient ground to rebut the *doli incapax* presumption

2.3 Procedural Considerations

The child alleged as or accused of infringing the penal law goes through three stages from his encounter with the arresting officer, save for a decision of his matter to be diverted. These stages include pre-trial, trial and post trial stages. Each of these stages involved the application of rules enshrined in the various legislations governing the process.

2.3.1 Pre-trial Stage

A juvenile in South Africa that is accused of having infringed the penal law is generally secured to face the justice system through arrest. Other options include the issuance of a written notice by the police to attend court and the use of summons. Once arrested, every effort must be made to notify the parent or guardian of the arrest as soon as possible,[93] and about the time, place and date on which the child will appear in court.[94]

Several mechanisms exist in South Africa legislation that ensure and facilitates pre-trial release once the child has been arrested. This is supported by the constitutional provision for the arrested

[92] Ibid
[93] Section 50 (4) of the Criminal Procedure Act 51 of 1977
[94] Ibid , Section 74 (2)

child's right not to be detained except as a measure of last resort. Hence, in terms of the CPA, bail can be granted to the juvenile by the arresting officer before his or her first appearance in court where the offence is minor,[95] or by a judicial officer after the child's first appearance in court.[96] In addition to this, the police are required to notify a probation officer of the juvenile's arrest,[97] or where the probation officer is absent; an available correctional officer must be notified of the arrest. The essence of the latter steps is to avail the juvenile the services of assessment.

Section 4b of the Probation Service Act 35 of 2002 provides for an assessment of the child as soon as is reasonable, but before his or her first appearance in court, with the proviso that if a child has not been assessed before first appearance, such assessment must take place within a period as specified by the court, which may not exceed seven days after his or her first appearance in court. At the completion of the assessment, a report is prepared that must contain recommendation regarding the need for diversion, the release of the juvenile into the care of a parent of guardian, possible options for placement and information relating to the child's age. [98]

Despite legislative provisions to prevent pre-trial detention of children, Section 29 of the Correctional Service Acts (Act 8 of 1959) as amended in 1996 still provides "for the extended detention of children in prison who are 14 years or older and who are charged with a scheduled offence or in circumstances of such as serious nature to warrant such detention."[99] However,

[95] Ibid, Section 59
[96] Ibid, Section 60
[97] Ibid Section 50 (5)
[98] Raeside Tladi, "A reflection on Child Justice legislation, policy and practice", in Conference Report on Child Justice in South Africa- Children's Right Under Construction", Compiled by Jacqui Gallinetti et al, August 2006, p.33
[99] Amanda Dissel, "Children in Detention pending trial and sentence", Part 2 conference paper, p111

such children are to be brought before the court every fourteen days for the decision leading to their detention to be reconsidered. It is worth mentioning at this stage that the 1996 amendment to the Correctional Service Act did not alter the position of children below the age of 14. They can be only held in prison or police cell for a maximum period of 24 hours before their release into the care of their parents or guardians.

The Child Care Act which provides for the protection and welfare of children kept in residential facilities was also amended to make way for the establishment of secure care facilities with the view of providing reception and accommodation of children awaiting trial.[100] The secure care facilities offer a less restrictive alternative in comparison to prison where detained juveniles are not released in care of their parents or guardians.[101] Though the Child Care Act makes provision regarding the treatment of the children in the facilities, they were of a limited scope. In view of this, the Department of Social Development developed a Minimum Standard for the South African Child and Youth Care System in May 1998, which provides that "children should live in a safe, healthy, well-maintained environment which provides for access to the community and which meets their needs in terms of privacy, safety and well-being."[102]

2.3.2 Trial Stage

The trial stage commences when a juvenile accused of having infringed the penal law is formally arraigned before the court after a charge is levied against him or her. The trial involves the determination of his or her liability of the offence committed. In effect, the future of the child may depend on the outcome of the proceedings during trial. The general norm in international law therefore is that such a child accused of a criminal offence is to be "*treated in a manner*

[100] Ibid, p. 112
[101] Ibid, p. 113
[102] Ibid p. 114

consistent with the promotion of his or her sense of dignity and worth,… and which takes into account the child's age and the desirability of promoting [his] reintegration into [his]… society."[103] Achieving this means granting the child certain rights that is peculiar to his or her circumstances as a child whilst the matter is adjudicated before the court.

In South Africa, no separate court exists for the trial of children who come in conflict with the law.[104] The setting up of specialized courts with specially selected and trained staff designated as "juvenile Court" is warranted by the substantial number of person below 18 years charged with criminal offences. This is mostly possible in urban areas. In rural areas where there are limited number of such offenses involving persons under 18, it is difficult of justify the creation of such cases.[105]

This not withstanding, the current legislations provides for a number of safeguards stipulated in the Criminal Procedure Act meant for the treatment of children in conflict with the law. Cases involving juveniles are heard in camera. The law further forbids persons from attending the court, except the parent or guardian or an individual selected in *loco parentis*, or an authorized individual.[106] Persons are also forbidden from publishing any information that would disclose the identity of the accused juvenile.[107]

The accused juvenile is also entitled to legal representation from the moment of arrest to his or her arraignment before the court and also his or her right to be assisted by his or her parents

[103] Article 40 (1) of the CRC
[104] South African Law Commission, Issue Paper 9, Project 106, 1997, Para. 8.1
[105] Ibid, para 8.17
[106] Section 153 (4) of the CPA
[107] Ibid, Section

during the proceedings.[108] It has been noted by the court that accused child's right to legal representation stipulated in Section 73 (1) and his or her right to assistant by his or her parent or guardian should be treated separately.[109]

The right to legal representation is also reinforced in the 1996 South African Constitution which provides all accused persons including children to be assigned a legal practitioner by the state; at its expense "if substantial injustice would otherwise result"[110] The accused persons are to be informed promptly of this right. The legal Aid Board, an independent institution created by statute,[111] is charged with the responsibility of providing legal services to accused persons who are unable to hire legal aid. However, large numbers of accused children often appear in court unrepresented owing to several factors amongst which are, their lack of trust in 'government lawyers'; the claim that they are innocent and therefore do not need a lawyer; allegations of being coerced by the lawyers to enter a guilty plea etc. [112]

In addition to the right of legal representation, Section 35 of the constitution further provides for accused persons before the court including juveniles, the rights to have the trials begun and concluded without unreasonable delay;[113] to be tried in the language which one understands or to have the proceedings interpreted in the language one understands;[114] to appeal to, or review by a higher court[115] etc.

[108] Ibid, Section 74
[109] South African Law Comm. , Supra note 104, para 4.1
[110] Section 35 (3) (g)
[111] Legal Aid Act
[112] South Africa Law Comm., Supra note104, para 4.2
[113] Section 35 (3) (d)
[114] Section 35 (3) (k)
[115] Section 35 (3) (o)

It is important to note however, current practices in the South African system dictates that the juvenile jointly charged with an adult co-accused loses the specific provisions consistent with their situation such as their trial in camera and assistant from parents or guardian.

2.3.2.1 The Children's Court

While juvenile cases are generally channelled through the ordinary courts, there exists a children's court created by the Child Care Act 74 of 1983, for protecting and seeking the welfare of certain children in need of care. Hence the children's court is independent from the traditional criminal justice system.

Proceedings before the children's court take the form of an inquiry presided over by a Magistrate who automatically becomes a Commissioner of Child Welfare as stipulated by Section 6 of the Act. Matters before the court are usually disposed of by an order which places the child under parental supervision, with foster parents, in children's home or in schools of reformation.

Matters are channelled through the Children's Court in three ways: firstly when the prosecution decides that the matter should be heard in the Children's court when children are charged with less serious offence; when the child appears physically to be in need; when the motive of the crime is less serious or based on the prosecutor's acquaintance with the child from his first appearance, would think the child is mischievous or still too young to be convicted.[116]

Secondly, matters may be referred to the children's court when it appears during the proceedings or is revealed in information given under oath that the child has no parent or guardian or that the child in his or her own best interest be taken to a place of safety, such an order will be issued to

[116] South African Law Comm., Supra Note 104, para 8.6

that respect. Thirdly, a magistrate in terms of Section 254 of the CPA may stop a proceeding and order the accused child to be brought before the children's court if it appears that the accused may be a child in need of care as stipulated in Section 14 (4) of the Child Care Act[117]. Where the child has already been convicted before the court's proceeding is halted, such verdict will be rendered ineffective.[118]

The importance of a children's court in the South African system can not be overemphasised but the fact that it provides a useful conduit through which matters can be diverted from the criminal justice system can be considered a laudable idea. However, it is contended that it is grossly under-utilized.[119]

2.3.3 Post-trial Phases

The post-trial phase usually involves the disposition of the matter based on the evaluation of the facts as to the law and evidences that is placed before the court. In reaching the decision, international norm governing sentencing requires obtaining information regarding the background and circumstances in which the juvenile is living and the conditions under which the crime was committed. The presiding panel relies on the said information to dispose of the matter taking note of the twin principles of proportionality and the duty of on the state to take into account the child's wellbeing.

[117] Section 14 (4) of the Child Care Act lists attributes which helps the court to determine if a child is need of care and includes when the child: has no parent or guardian or cannot be traced even if they exist; if the child has been abandoned, displays behaviour which cannot be controlled by his parent, in circumstances in which he can be sexually exploited, in a state of physical or mental neglect etc.
[118] South Africa Law Comm., Supra Note 104, para 8.7
[119] Ibid, para 8.9

In South Africa, there exists no mandatory provision requiring pre-sentence report before the imposition of a sentence.[120] However, this problem has been remedied by a number of court decisions that has articulated the importance of the sentencing judge to be fully apprised of the accused's personal circumstances to aid him/ her with handing down the appropriate sentence. An Appeal Court in *S v D*[121] reversed a six year prison sentence imposed on a child who committed a rape offence whilst at the age of sixteen. The court highlighted as reasons the magistrate's failure to call for the probation officer's report and the fact that the defence attorney could only submit measly information about the accused person's personal circumstances. The court maintained that the starting point should be that no child should be sentenced without a pre-sentence report. Similarly, a High Court in *S v Van Rooyen*[122], set aside a sentence of two years imposed on a first time juvenile offender in the absence of a pre-sentence report to enable the magistrate to call for and consider a report from a probation officer.

Once a pre-sentence report have been received and considered, the Criminal Procedure Act 51 of 1977 provides for a wide range of sentencing options which may be considered for children or those who at the time of committing the offence, were below 18. They include discharge and caution with reprimand;[123] postponement of sentence either unconditionally or with one or more conditions;[124] suspension of sentence with or without condition;[125] placement under the

[120] Daksha Kassan, "First baseline study monitoring the current practice of the criminal justice system in relation to children: some preliminary findings", Part 2 Conference Papers, P. 96
[121] S v. D 1999 (1) SACR122 (NC)
[122] S v Van Rooyen (Unreported)
[123] Section 297 (1) (c) of the Criminal Procedure Act 51 of 1977
[124] Ibid Section 271 (a)
[125] Ibid Section 271 (b)

supervision of a probation officer or correctional official;[126] placement in the custody of a suitable person designated by court;[127] correctional supervision;[128] sentence to a reform school;[129] a fine which the court may suspend or allow to be a paid by instalment;[130] imprisonment including periodic imprisonment etc.

The CPA provides for certain conditions that should where necessary be attached to suspension and postponement of sentences. They include: compensation; rendering of some benefit or service in lieu of compensation; submission to instruction or treatment; submission to the supervision or the control of the Probation Officer; promise of good conduct etc.[131]

Correctional Supervision has been used as an alternative where imprisonment is not considered. It is described in Section 1 of the CPA as Community Based form of punishment and used as a collective term to describe a wide variety of measures that can be imposed on a child for any offence and which have in common the characteristics of them all used outside prison. These measures include monitoring, house arrest, community service and placement in employment.[132] Two types of Correctional Service are imposed: the first type can be imposed after a consideration of a report from a probation or correctional officer and the second type provides for a conversion of a prison sentence into a correctional supervision.[133]

[126] Ibid Section 290 (1)
[127] Ibid Section 290 (1) (b)
[128] Ibid Section 276 (a)
[129] Ibid Section 290 (1) (d)
[130] Ibid Section 297 (5) (a) & (b)
[131] Section 297 of the CPA
[132] Karoline Johansson and Co, Supra note 90
[133] Ibid

Though it is not a soft sentencing option as it constitutes among other measures a restrain on the freedom of the offender, it has been argued that correctional supervision has a greater potential of rehabilitating the offender than imprisonment. This was underscored in the *S v Williams* decision of the South African Constitutional Court which opined that correctional supervision was a "milestone in the process of humanizing the criminal system"[134]

Reform schools sentences are also ordered for children who are convicted after the adjudication of their matter. It is regarded as a severe punishment which is in no way dissimilar to imprisonment.[135] Thus, sentencing children to the reform school require the consideration of probation officer's report. This report which must assist the court in the determination of the most appropriate sentence, usually undergo a critical evaluation of the court in the presence of the offender, his or her parents of at least the mother.[136] Reform schools have often being criticised for falling short on the task of reforming the child.

Worth mentioning also, is the removal of two sentencing options by the South Africa Constitutional Court were available to Courts that and were applicable to juvenile offenders. In *S v Makwanyane and others*,[137] death penalty which was applicable as a capital punishment was ruled out as unconstitutional. The same court, in *S v Williams*[138] declared corporal punishment as a sentence for juvenile as unconstitutional.

[134] S v Williams 1995 (3) SA 632 (CC) para.67

[135] Karoline Johansson and Co, Supra note 90
[136] Supra note, 66
[137] 1995 (3) SA 868 (A)
[138] South African Law Comm Supra note 94

Finally, current practice in South Africa provides for a post-conviction measure that retains the possibility of converting a criminal matter into the Children's Court in terms of Section 254 of the Criminal Procedure Act. The criminal conviction would then fall away, consequently making available a range of options enshrined in the Child Care Act 74 of 1983 such as placement of the child in the custody of a foster parent, in the children's home; sending him /her to schools of industries and returning him/her to a parent or guardian under the supervision of a Social Worker.

2.4 Diversion in South Africa

For any juvenile justice systems to successfully protect the rights of children in conflict with the law, measures should be sought to deal with such children without resorting to judicial proceedings. This theory is underscored by the inclusion of diversion in the international norms governing the juvenile justice namely; the CRC and the Beijing Rules[139]. I shall now examine the South African system in the light of this.

In South Africa, there is no formal legislative framework for diversion.[140] This has however not thwarted an evolution of the practice in its child justice system. At the initial stage of its practice, the key role player was the prosecution authority who *dominus litis* under South African law, held the sole power of withdrawing charges before the accused pleads or may stop the proceeding after the accused may have pleaded. After successfully going through the programme and the court is informed about it, the charge is withdrawn and the prosecution does not proceed. The child in this case would not have a criminal record. Where the child

[139] Article 40 (3) (b) of the CRC and Rule 11.1 of the Beijing Rules
[140]South African Law commission Supra note 104

fails to successfully go through the programme, the matter is referred back to court for trial and the prosecution may be resumed.

Further development regarding diversion in South Africa took place when the National Institute for Crime Prevention and Reintegration of Offenders (NICRO), an NGO opted to provide alternatives to serve as diversionary and sentencing options. The alternative measures were aimed at "promoting the emerging Restorative Justice concepts specifically focused on youths."[141] Thus, the measures included amongst others family group conferencing which is a forum of conflict resolution involving the victim as well as the offender. NICRO's early efforts were supported on ad hoc basis by the offices of the Attorney-General in the respective division who issued circulars on how diversion should be implemented.[142]

The establishment of a single National Prosecuting Authority was another milestone in the progress of diversion in the South African child justice system. Established under the National Prosecuting Authority Act 32 of 1988, the NPA was guided in its work by international instruments such as the CRC and the Beijing Rules and sort to implement the provisions enshrined in the Act. Articles 18 and 19 of the Act specifically deal with alternatives to prosecution. Article 18 provides for prosecution to consider the waiver of prosecution, discontinuance of proceedings with or without condition, or the diversion of criminal cases from the formal criminal justice systems. It obliges states to "explore the possibility of adopting a diversion scheme not only to alleviate the excessive court loads, but also to avoid

[141] Supra note 104
[142] Maggie Tserere, "The Development of Diversion within the National Prosecuting Authority", in Part 2 Conference paper, p 37

the stigmatization associated with pre-trial detention, indictment and conviction as well as possible adverse effects of imprisonment."[143]

Following the guidelines, the NPA embarked on a number of activities namely the issuance of a policy manual which included a chapter on diversion. The chapter particularly defined diversion, how it should be implemented, the selection criteria and the process to be followed.[144] It also conducted a national audit on diversion and started a multi-disciplinary training which has to date culminated into the training of 403 prosecutors and other role-players in the implementation of diversion.[145] The returns for NPA's work were encouraging with records indication the diversion of 115, 582 matters between July 1999 and December 2005.[146] This figure might have increased.

Irrespective of the fact that diversion is not embodied in a legislative framework in South Africa, it appearance in case laws, provides a scope to argue that it must be applied relatively consistently within a jurisdiction.[147] However, the downsides of its implementation so far has been the fact that it has only involved minor offences, and the practice is limited in rural areas.

2.5 Juvenile justice Reform in South Africa: The Child Justice Bill 49 of 2002

The proposed Child Justice Bill 49 0f 2002 was designed to give effect to the rights enshrined in international law treaties governing juvenile justice as well as constitutional procedural rights contained Sections 28 and 35 of the 1996 Constitution. The Bill outline as part of its

[143] Ibid
[144] Ibid
[145] Ibid
[146] Ibid
[147] Karoline Johonnson, Supra note 90

objective clause: the promotion of Ibuntu in the child justice system through fostering a sense of dignity and worth, reinforcing respect for human rights of others, supporting reconciliation through restorative justice, involving families victims and communities in the outcome for children, and promoting co-operation between departments and other organizations.[148]

Key highlights of the bill includes the alternatives of arrest which includes summon or written warning, a compulsory assessment of each child by a probation officer and a mandatory appearance at a preliminary inquiry within forty-eight hours of the arrest.

The preliminary inquiry, which is quite an innovation in the child justice system in South Africa, is intended to be the centre-piece of the new child justice system. It "provides a distinct phase in the criminal procedure to ensure the sifting of cases from serious matters, and of divertible matters from those which must proceed to trials."[149] The inquiry is presided over by a magistrate and takes the form of a multidisciplinary case conference but the decision whether to divert the matter or not rests with the prosecutor.

The bill dedicates a whole chapter on diversion denoting it as a core component of proposed system. Three levels of diversion are provided for by the bill. The first includes non-intensive programmes and are short-lived – usually not to exceed three months. The second and third levels contain programmes of higher intensity which can be offered for longer periods but not exceeding six months. The rationale behind the setting of a wider range of options is to encourage implementers to use diversion in varied situations, even in relatively serious

[148] Section 2, Child Justice Bill 49 2002

[149] Julia Sloth-Nielsen, "The Juvenile Justice Law Reform Process in South Africa: Can children's rights approach carry the day?" 1999 Law Review Association of the Quinnipac College School, Westlaw 18 QLR 469

offences.[150] Family group conferences, victim-offender mediation and other restorative justice processes are utilized in the second and third levels.

Key highlights of the bill includes the alternatives of arrest which includes summon or written warning, a compulsory assessment of each child by a probation officer and a mandatory appearance at a preliminary inquiry within forty-eight hours of the arrest.

The preliminary inquiry, which is quite an innovation in the child justice system in South Africa, is intended to be the centre-piece of the new child justice system. It "provides a distinct phase in the criminal procedure to ensure the sifting of cases from serious matters, and of divertible matters from those which must proceed to trials."[151] The inquiry is presided over by a magistrate and takes the form of a multidisciplinary case conference but the decision whether to divert the matter or not rests with the prosecutor.

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[150] Ann Skelton, "Restorative justice as a framework for juvenile justice reform, the South African Perspective", British Journal of Criminology, Westlaw, 2000
[151] Julia Sloth-Nielsen, "The Juvenile Justice Law Reform Process in South Africa: Can children's rights approach carry the day?" 1999 Law Review Association of the Quinnipac College School, Westlaw 18 QLR 469

offences.[152] Family group conferences, victim-offender mediation and other restorative justice processes are utilized in the second and third levels.

In a bid to strike a perfect balance between the protection of children's right and that of diversion, the bill in Section 44 provides that a child may only be considered for diversion if "(a) such child voluntarily acknowledges responsibility for the alleged offence; (b) the child understands his or her right to remain silent and has not been unduly influenced in acknowledging responsibility; (c) there is sufficient evidence to prosecute; and (d) such child and his or her parent or an appropriate adult consent to diversion and the diversion option."[153]

The Bill also provides for the establishment of a child justice court which is placed at the lowest echelon of jurisdiction within the South African Court hierarchy. Such a court must be "conducive for the privacy and the dignity and well-being of children; and informality and participation by all persons involved in the proceedings"[154] Additionally, the child justice court would have an increased sentencing jurisdiction of up to five years of imprisonment, thus ensuring that many children would be dealt with in a specialized forum at the lower level. The Bill also empowers the Justice Minister to establish one stop child justice centers meant to provide an integrated services such as probation, police and diversion services under one roof and monitoring to occur at all levels.[155]

[152] Ann Skelton, "Restorative justice as a framework for juvenile justice reform, the South African Perspective", British Journal of Criminology, Westlaw, 2000
[153] Section 44
[154] Section 50 (2a&b)
[155] Section 51 Child Justice Bill

In a bid to ensure speedy trials for children in conflict with the law, the Bill initiates series of measures prominent of which includes children awaiting trial in prison to be brought before court every 30 days and, every 60 days in cases where the children are kept in secure care centers, instead of the current system that is every 14 days. This is to allow more time for the police to properly investigate the offence. Also the Bill provides for a six months time limit within which cases should be finalized, with the exception of certain cases of a serious nature such as murder or rape.

With regards to sentencing, the Bill provides for sentencing options which reflects a restorative justice approach and is categorized under four heading namely community-based sentencing, restorative justice sentence, sentence requiring correctional supervision and sentence with residential requirement. Community-based sentencing ranges from placement under supervision, referral to psychosocial services to the performance of community service under supervision without receiving remuneration. A restorative justice sentence entails the referral of matters involving the convicted child to either a family group conference or for victim-offender mediation. Section 48 of the bill provides a detail about the procedures for setting up and the running of family group conference, its composition and also provisions empowering the family group conference to regulate its own procedure.

There is also a possibility of the postponement and suspension of sentences under the Bill that is very similar to that provided for in the Criminal Procedure Act. Such postponements and suspensions are imposed with conditions which include restitution, compensation or symbolic restitution or an apology etc.

Worthy of mentioning also is the Bill's proposition that subjects sentences ordered by Magistrate/ child justice Courts involving correctional supervision and sentences with residential component to an automatic review. Finally the bill addresses the issue of expunging of criminal record by the presiding officer. The rule gives a full and discretionary power to the presiding officer to decide on expunging cases save some few exceptions.

A notable shortcoming of the bill however, is the setting of the minimum age of criminal responsibility at age 10.

2.6 Conclusion

A review of the child justice system of South Africa revealed that the country lacked a cohesive justice system. Rather, limited provisions specifically meant for dealing with children in conflict with the law are spread in a number of legislations. Also, there existed a tendency of practices of child justice that is compatible with international standards to evolve faster than legislation. The current practice of diversion in merely a legislative vacuum attested to this fact. Finally, it is also revealed that the court had been proactive enough in sanctioning practices that were not codified into laws. This was evident by the availability of case laws on prohibitions of corporal punishment, death sentences and also the practice of pre-sentence reports.

In my next chapter, I shall discuss the administration of juvenile justice in Sierra Leone in the light of both substantive and procedural considerations.

CHAPTER 3: THE ADMINISTRATION AND PRACTICE OF JUVENILE JUSTICE IN SIERRA LEONE

This chapter discusses the normative framework governing the current juvenile justices system in Sierra Leone as well as the practices from the juvenile's first contact with the juvenile justice system up to the disposition of his matter in court. It seeks to highlight inconsistencies with regards to the provisions enshrined in the legislations as well as the gaps between practices and what the law obtains.

3.1 Current Legislation in Sierra Leone

In Sierra Leone, Chapter 44- The Children and Young Person's Act (herein referred to as CAP 44) adopted from Britain, largely governs the treatment of juveniles in conflict with the law. Though it forms part of the many colonial ordinances that were adopted and compiled into several volumes of the Laws of Sierra Leone, 1960, it has been endorsed and sometimes been clarified by post-independence statutes.[156] One of such statute is the Criminal Procedure Act 1965 which provides for the trial of Children and Young persons accused of having committed a crime to be tried in accordance with the provisions set forth in the CAP 44.[157]

The Act embraces both the justice and the welfare models of juvenile justice systems as it firstly, provides for the basic due process rights of children alleged to be in conflict with the law, including those who are under police investigation or awaiting formal arraignment before the court, and secondly, it applies to a broad category of children in difficult situations, including those given their circumstances, have the potential of being caught in the web of the justice

[156] Mohamed Pa-Momo Fofanah, Supra Note, p.30
[157] Section 210 of the Sierra Leone Criminal Procedure Act 1965

system as well as those who are vulnerable to abuse and rights violation. Consequently, street children and those found begging or receiving alms etc could in their best interest be secured by either probation officer, police officers in the rank of sub-inspector, or any authorise person for possible reunification with their parents, or placed in foster cares or at an approved school.[158]

Cap 44 applies to anyone below the age of 17, meaning anyone who is 17 years and above is treated for the purpose of criminal law, as an adult. Important to note also is the distinction between a child and a young person under Cap 44. This shall be further discussed.

3.2 Definition of a child and the Minimum Age of Criminal Responsibility under Sierra Leone Law

Under the Sierra Leone legislations, the definition of the child often varies based on the legislation and the purpose for which it is used for. As earlier on indicated, Cap 44 distinguishes between a 'child' defined as a person below 14 years, and the 'Young person' defined as a person between the ages of 14 and 17. [159] In the Prevention of Cruelty to Children Act, a child is defined as a person under the age of 16, whereas the Corporal Punishment Act defines a Child as aged 15 and below.[160] The inconsistency deepens further when the Adoption Act defines a juvenile as any person under the age of 17, while the Interpretation Act adopts the term 'infant' to refer to persons below the age of 21.[161]

[158] Sect 27 (1) (a) of Cap 44
[159] Section 2 of Cap 44. Section 19 stipulates that a person above 17 should not be deemed to fall in the category of a Child or Young Person.
[160] Melron Nicol-Wilson, Juvenile Justice in Sierra Leone: Law and Practice- Report by the Lawyers Center for Legal Assistance (LAWCLA) Sierra Leone
[161] Section 1 of the Adoption Act

Furthermore, the Criminal Procedure Act 1965 defines a child as a person under the age of 14.[162] Also, the Constitution of Sierra Leone 1991 makes an exception to public hearing, including announcement of decision in court proceedings in matters involving persons under the age of 21 for the welfare of such person.[163] Thus it appears that for the purpose of fair hearing, the constitution perceives a child as any person under the age of 21. However, the same constitution pegs the eligibility for voting at age 18 and above.

These inconsistencies in defining a child and assessing childhood highlighted above are further exacerbated by the variations between statutes and customary law.[164] Under Customary law, the concept of the child in relation to physical age is unknown. An individual is deemed to progress from childhood to adulthood by the mark of physical changes which is largely determined by puberty signs. This is used to assess whether the person is ready for initiation, marriage and the formation of a separate household. There is therefore always a danger of mistaking a child who has a more developed physiognomy for adulthood even when such a child would be mentally immature.

These inconsistencies and lack of uniformity has however been solved by the newly enacted and promulgated Child Rights Act 2007, which defines a child as any person below the age of 18.[165]

Though the minimum age of criminal responsibility is not stated in Cap 44, it is by virtue of common law practice established at 10. It implies therefore that those falling below the age of 10

[162] Section 2 of the CPA
[163] Sec 23 (3)
[164] Sierra Leone has a two-tier legal system made up of statutes / common law based on the British system, practiced in western area and other urban towns and Local Customary Law generally practiced in the interior.
[165] Section 2 of the Child Rights Act 2007

are deemed not to be capable of committing a crime and therefore would have no criminal liability. The Committee on the rights of the child in its response to Sierra Leone's initial report[166] criticised the age of 10 as 'too low' and recommended that Sierra Leone raises it minimum age 'to meet acceptable international standard'[167] The Child Rights Act 2007 has again addressed this issue by establishing the age of criminal responsibility to 14.[168]

3.3 Procedural consideration

3.3.1 Pre-trial stage in Sierra Leone

In Sierra Leone, the lack of an adequate rules governing pre-trial treatment of children and young persons at the pre-trial stages of the juvenile justice system is one of the major weaknesses of Cap 44. The Act provides for only two recognized rights; the first being the arrested juvenile's right to be granted bail.[169] However, the same section lays down some conditions under which a bail may be denied such as; if the child is charged with homicide or any offence with a fix term of seven years (Sec 5a), where it is necessary in the interest of the child to be dissociated from an undesirable person (Sec 5b), and lastly, if the arresting officer is made to believe that granting the child a bail would "defeat the end of justice" (Sec 5c). The condition laid down especially the latter, makes the juvenile's right to a bail much more discretional to the arresting officer, and has often led to the frequent denial of bail thus engendering lengthy pre-trail detentions.

[166] Sierra Leone submitted its initial report on 03/06/2000 in which its stated that MACR for children is 10
[167] CRC/C/15 Add.116 para. 29
[168] Section 70, Child Right Act 2007
[169] Section 5 Cap 44

The other provision found in Section 6 of Cap 44 imposes the duty on the Commissioner of Police to separate the young person charged with an offence from adults "other than a relative charged with an offence" "in so far as it is practicable".

The noticeable absence of some key provisions such as a stipulated length of time for which children should be detained; the right to a legal counsels, contact with family members or probation officers are inadequacies that beg that question whether Cap 44 actually seeks to protect the right of children at this stage in the justice system. One might however argue that the enunciation of these safeguards in Chapter III, Section 17 (2) of the constitution of Sierra Leone would serve as an appropriate remedy to the inadequacies as the rights enshrined therein are applicable to both adults and children. However, the fact that the laws of Sierra Leone provides for children arrested and arraigned before the court are to be dealt with exclusively in accordance with Cap 44,[170] is sufficient to point out the shortcomings of Cap 44.

3.3.2 Trial Stage in Sierra Leone

In contrast to the South African criminal justice system where there is no separate court meant for the adjudication of juvenile cases, Cap 44 of Sierra Leone establishes a system of juvenile justice that is distinct from that of their adult counterpart, and that is required to be housed in a different building or room from where the ordinary trials takes place.[171] It is presided over by a magistrate that is assisted by two or more Justices of Peace (JPs) in the adjudication process.[172] The Justices of Peace are not qualified judges, but are expected to have some experience in child psychology and are appointed by the president with the recommendation of the Attorney-

[170] Section 210, Criminal Procedure Act of Sierra Leone
[171] Section 3 (1) of Cap 44 of the Laws of Sierra Leone
[172] Ibid Section 2

General.[173] The Juvenile Court's subject matter jurisdiction is limited only to offences of a non-capital nature.[174]

A close examination of Cap 44 regarding the trial proceedings of children arraigned before the juvenile Court reveals that it is rife with inconsistencies. This is because it postulates different procedures and treatment for juvenile offenders depending on whether the child is charged alone or jointly charged on one hand, whether the juvenile is charged with homicide or any other offence. I shall now take a look at these scenarios individually.

3.3.2.1 Juveniles charged jointly with Adult / Charged with Homicide

Where a juvenile is charged with an adult co-accused, s/he loses his or her rights to be tried in privacy as obtained in the juvenile court. S/he is arraigned and tried openly with the adult co-accused in magistrate or higher courts.[175] During the proceedings, the accused juvenile is treated equally as his or her adult counterpart except for sentencing. After his conviction, the presiding magistrate is obliged to revert to the sentencing requirements enunciated under Cap 44 applicable to juvenile offenders.

When a juvenile offender is charged together the adult co-accused, the usual practice is for the magistrate to conduct a preliminary investigation (P.I.)[176] into the matter. The P.I. is governed by the Criminal Procedure Act which states that all preliminary investigations should be held in

[173] Rachel Harvey, Juvenile Justice in Sierra Leone, An analysis of Legislation and Practice, September 2000
[174] Section 7 of Cap 44
[175] Ibid Section 3 (1)
[176] Preliminary Inquiry is an initial investigation of charges of serious offences to determine whether there is substantial evidence to commit the matter to a court of a higher jurisdiction.

camera.[177] This is rule is usually ignored by the magistrate who is generally charged with the responsibility of conducting the P.I.

The same procedure applies to juveniles who are charged with homicide. Cap 44 sanctions the disposal of all offences committed by the juvenile save homicide, in the juvenile court. However, juveniles charged with a capital or serious offence such as treason and robbery with aggravation has often been tried in magistrate court thereby acting in contravention to what is stipulated in Section 7 of Cap 44.

3.3.2.2 Juvenile trials in High Courts

Trial of juvenile in high court takes place either as a result of a committal from the magistrate after the P.I or by an appeal from the juvenile court pursuant to Part IV Section 41 of Cap 44. Trials involving juveniles in high court takes place in the juvenile chamber of the high court which is presided over by the judge who can choose to sit alone or be assisted by two assessors. If tried alone, protections accorded to the juvenile in the juvenile court, i.e. in camera trial is again granted to him. This gives rise to another inconsistency regarding procedures and practices in the trial process, for the juvenile would have been denied privacy during the P.I proceedings in the magistrate court.

[177] Section 109 of the Criminal Procedure Act

3.3.2.3 Juveniles charged and tried alone

Cap 44 attempts to accord juvenile offenders who are charged and arraigned before the juvenile court a wide array of due process guarantees consistent with that provided for in both International and domestic law.[178] Apart from the juvenile's rights to closed hearing already discussed, the act prohibits the publication of any information that would lead to the identification of the accused juvenile. This is to prevent the juvenile from being stigmatised. The parents or guardian of the accused juvenile are also required by the legislation to be present in the court room.[179] To ensure the attendance of parent or guardians in the trial of the juvenile, the court can make an order requiring their presence[180]. However, parents have sometimes failed to attend court sessions with their children. "The... *disinclination of the parents/guardians... centers on their view that the offender ought to be taught a severe lesson for an offence for which he only stands accused of"*[181] Anticipating this scenario, the Act makes an attempt to forestall it by providing for the imposition of fines on any parent or guardian who fails to attend the court[182], based on the accepted tradition that parents should bear the responsibility for the proper upbringing of their children.

Juveniles before the court are also entitled to be represented in court by a legal practitioner.[183] The shortcoming of the Act in this vain however is its failure to sanction the provision of a free legal assistance. Nevertheless, it provides that where the juvenile does not have a legal representative, the court will cross examine witness, and is obliged to ask the juvenile if s/he

[178] Section 23 of the 1991 Constitution of Sierra Leone highlights rights granted to accused persons tried before the court of law.
[179] Section 3 (5) of Cap 44
[180] Ibid Section 17
[181] Rachel Harvey, Juvenile Justice in Sierra Leone, An analysis of Legislation and Practice, quoting Mohamed Pa-Momo Fofanah in Challenges of Juvenile Justice, Defence for Children Sierra Leone
[182] Section 23 (2)
[183] Section 3 (5)

wishes to cross-examine the witness. Furthermore, regardless of whether the juvenile is represented by a counsel or not, he reserves the right to cross-examine the witness. [184]

It is apparent from the latter provisions highlighted above that Cap 44 attempts to compensate for its failure to consider free legal assistance for juveniles before the court. However, it will in no way serve as an adequate substitute for a due process rights as fundamental as the provision of a free legal assistance.

Other due process rights enshrined in Cap 44 includes juvenile's rights for a free interpretation service, his right for his matter to be determined without delay and his rights to appeal. At the concluding stage of his trial, the court is obliged to inform the juvenile of his or her right of appeal and the process of appeal.[185] However, it is contended that this information is rarely conveyed.[186]

Cap 44 also has welfare considerations that cover the juvenile whist his or her case being heard. In the instance where s/he was not granted bail, he is supposed to be remanded in custody at a remand home,[187] where he is subject to supervision and inspection.[188]

[184] Ibid Sections 13 &14
[185] Ibid, Part VII Section 41
[186] Rachel Harvey, Supra note 171.
[187] Part VI of Cap 44
[188] The remand home is not a prison as articulated in Section 39 (2) and 40 (3)

3.3.3 Post Trial Stage in Sierra Leone

Where a court finds the juvenile guilty of the charges levied against him/her, part III of Cap 44 which governs post-trial treatment of juveniles is applied. In order to dispose of the matter, the court must obtain background information about the juvenile's 'character, antecedents, home life, occupation and health' to enable it dispose of the matter in the best interest of the child.[189] Under the Act, imprisonment of a child is prohibited,[190] while a young person shall be imprisoned only "if the court considers that none of the other methods in which the case may be legally dealt with…is suitable."[191] Where the young person is sentenced to imprisonment, s/he shall "so far as circumstances permit, not be allowed to associate with adult prisoners"[192] Imprisonment here could be defined as the locking up of the juvenile in a detention meant for adults.[193]

The Cap also bestows power on to the magistrate to commit both the child and young person to an approved school until he or she attains the age of 18 or for a period not below two years except where he or she is over sixteen years in which case, the juvenile is expected to serve until he or she is 18. Thus a child of 10 could be committed to the approve school for eight years. The approve school is not a prison. It is meant to serve the welfare function of caring and training of the juvenile and further supervise him/ her even after reformation at the school.[194]

[189] Section 16 of Cap 44
[190] Ibid, Section 24 (1)
[191] Ibid, Section 24 (2)
[192] Ibid, Section 24 (3)
[193] Rachel Harvey, Supra note 117
[194] Cap 44, Sections 35&36

Cap 44 provides for a number of alternatives to the deprivation of liberty of the juvenile convicted of a crime. They include the discharge of the child or young person without making an order;[195] order that he or she be repatriated to his/her home district at the expense of the state;[196] order that the juvenile be handed over to a fit person or institution where such person or institution is ready to undertake such a care;[197] placing the juvenile under the supervision of a probation officer for a period not exceeding three years.[198] In certain instance, a fine or compensation is ordered on the parent or guardian where the juvenile is below fourteen. Where the offender is a young person, then the court is granted the discretion to decide whether the parent or the young person him/herself is to pay.[199]

With regards to capital punishment such as death penalty where applicable in cases involving juvenile, Cap 44, which applies to persons below 17 years, does not provide any assistance. However, section 216 of the Criminal Procedure Act prohibits the imposition of death penalty to all persons of eighteen years and below, which follows implicitly that convicted juveniles are absolve from its application. The section however further provides that the affected juvenile should be kept in a safe and secured custody at the order of the president. The section is not very clear as to whether a safe and secure custody could be referred to an approved school or a prison, but records in Sierra Leone have pointed to the fact that convicted juveniles are sentenced to imprisonment and incarcerated together with adults.[200]

[195] Ibid S 25 (a)
[196] Ibid S (25) (b)
[197] Ibid S (25 (c)
[198] Ibid S (20)
[199] Ibid S 23 (1)
[200] Sierra Leone Country Reports on Human Rights Practices 2005 available at hppt://www.state.gov/g/drl/rls/hrrpt/2005/61591.htm

Finally, another important issue regarding the disposition of the case involving juveniles is the application of corporal punishment. Though rarely used today, its application is still enshrined in the Sierra Leone legislation.[201] The Corporal Punishment Act provides for corporal punishment to be administered in lieu of any other punishment and not in conjunction to. Section 6 limits the number of strokes to be administered to twelve whether for one or a joint offence. It must be administered within six months of the judgement and should not be inflicted by instalments. The law further states that juveniles should be medically examined to ascertain their fitness to receive the punishment and finally, it prohibits its application on all females.

3.4 Diversion in the Child justice system in Sierra Leone

As in the case of South Africa, diversion is absent in Cap 44 which largely governs the child justice systems in Sierra Leone. The difference however is that where in the South Africa situation, the practice has gained foothold over the years albeit of its operation in a legislative vacuum, through pro-activity of various NGOs, chief of which is NICRO, and in collaboration with government agencies such as the National Prosecution Authority, the same cannot be said of the Sierra Leone situation. This is not to say however that the practice is completely absent. The practice of settling of minor cases involving parents, relatives, care givers of victims and juvenile offenders in police stations, customary courts or even with community and religious leaders are pointers to its existence.[202]

The hearing of cases involving juvenile in customary court is mostly predominant in the provinces. However, these have often been criticised by child advocates for their heavy-

[201] Corporal Punishment Act, Cap 41 of the Laws of Sierra Leone
[202] Child Justice Strategy, Sierra Leone Supra note 3, p. 21

handedness in handling the cases involving the children. They have often labelled them as 'kangaroo courts'. They have to an extent even labelled them as 'kangaroo courts'. A case in point is a law promulgated by the chiefs in Makeni (one of the provincial headquarter towns), that if a child is caught stealing, the parents of such a child should be asked to pay Le 30,000 (an equivalent of 0.01 dollars), which most parents can not afford. [203]

Again, the fact that diversion is not formalized, request by probation officer for minor offences such as loitering and disorderly behaviour to be diverted from the criminal justice system are sometimes turned down by the police.[204] This has led to the clustering of cases in the juvenile courts resulting to undue delay in the trials.

However, it is hoped that the setting up of a the Family Support Unit by the Sierra Leone Police within the police divisions, who are charged with the responsibility of addressing the problems encountered by the children at risk including juvenile suspect will enhance the diversion of status offences like loitering and other misdemeanours out of the juvenile court.

3.5 Juvenile Justice Reform in Sierra Leone: The Child Rights Act 7 of 2007

The Child Rights Act was enacted to promote the Rights of the Child compatible with the Convention on the Right of the child and the African Charter on the Rights and Welfare of the Child. The Act covers a wide array of children's rights issues ranging from parentage custody and maintenance of children, institutionalized care, the employment of children, quasi-judicial and judicial child adjudication to the establishment of child welfare functionaries at local level.

[203] Ibid
[204] Ibid

It also establishes a National Commission for children for monitoring and coordinating the implementation of the convention and charter; overseeing the implementation of the rights enshrined in the Act as well as parental and governmental responsibilities; and also advising the government on policies aimed at improving the conditions and welfare of the children in the country.

With regards to juvenile justice, Part V of the Act incorporates substantive provisions that characterises welfare methods of dealing with children in conflict with the law similar to that of Cap 44. Hence, the Act provides for the creation and use of a child panel in every community which shall have non-judicial functions, but mediate in criminal and civil matters at first instance with the view to facilitating reconciliation between the offender and the offended. Noteworthy also is that children under the Act are accorded with participatory rights consistent with the ideals of the Convention. Section 73 (5) of the Act provides for children before the child panel to express their opinion and to participate in a way that is commensurate with their level of understanding in any decision regarding their welfare.

The child panel has at its disposal a limited array of disposition options which includes the issuance of a caution as to the implication of the child's action, and an admonishment that a repeat of such an action may subject him or her to the juvenile justice system; the imposition of a community guidance order[205] not exceeding six months, but with the consent of the parties concerned; and the proposition of an apology, restitution to the victim or the rendering of service by the child to the offended.[206]

[205] A community guidance order involves the placing of the child under the guidance and supervision of a person of good standing within the community.
[206] Section 75 (2-5) Child Rights Act 7 of 2007

Although the Act can be lauded for addressing certain crucial defect of the current juvenile justice system such as setting the minimum age of criminal responsibility at 14, the repeal of the Corporal punishment Act, and most importantly, its emphasis on diversion which ensures criminal proceedings for children as a measure of last resort, some few shortcomings could be detected. The practical reality that results from the Child Panel's use of mediation is the tendency of the child being coerced to accept the guilt as a precondition for mediation. This effectively means sacrificing crucial due process rights of the child such as the rights to remain silent, to be presumed innocent until proven guilty and the child's right to legal representation. The absence of these rights in the proceedings of the Child Panel should be a matter of serious concern. Additionally the Act's failure to correct the inadequacies of Cap 44 with regards to procedural guarantees such as the right to fee legal assistance implies its ignoring the reality that some children may commit serious offences that should warrant their channelling into the criminal justice system.

3.6 Conclusion

A review of the legislation and current practice of the child justice system in Sierra Leone revealed the entire system being rife with inconsistencies particularly with regards to the definition of the child. There was a clear lack of uniformity in the concept of childhood within the different legislation. There was also a lack of adequate guarantees that protected the rights of children in conflict with the law. This was particularly evident in the pre-trial phase.

In the next chapter, I shall endeavour to assess the two systems in the light of legislation and practice; highlighting whether a gap exist between legislation and practice within the systems

of the two countries, on one hand, and whether the legislations and practice are consistent with standards as enunciated in the international norms governing juvenile justice.

CHAPTER 4: ASSESSING THE JUVENILE JUSTICE SYSTEMS OF SOUTH AFRICA AND SIERRA LEONE

In this chapter, an attempt will be made at assessing the administration and practice of juvenile justice as highlighted in the last chapter, taking cognizance of legislation and what obtains in practice. The chapter will focus on whether there exist a gap between the practices in the and what the law upholds in the two countries, and also whether the laws and practices are consistent with provisions enshrined in the international laws governing juvenile justice together with its complementing soft norms. In the light of this, comments will be made regarding some issues as the age of criminal responsibility, separate juvenile courts, pre-trial practices, some fair trial guarantees and the use of sentencing options in the two countries.

4.1 Minimum Age of criminal responsibility (MACR)

With regards to legislations and practices concerning the MACR in the two systems, few comments can be drawn. Firstly, it can be submitted that the Minimum age of criminal responsibility for both South Africa and Sierra Leone which is 7 and 10 respectively does not conform to the age range that the CRC Committee has guided state parties on. Though provisions of international law regarding the MARC[207] falls short of prescribing an exact age, thus pointing the lack of standard on the age at which criminal capacity should be imputed, the CRC Committee, relying on the on the recommendation of the Beijing Rule 4, has criticised states for setting their MACR at 7 or 10.[208] It has instead encouraged state parties to increase their MARC

[207] Article 40 (3) of the CRC requires state to establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law. This obligation is also reiterated in Article 17 (4) of the African Charter on the Rights and Welfare of the Child.

[208] As in the case of India (7 years) see UN. Doc CRC/C/94, CRC Committee: Report on the 23rd session 2000, para 58, Sierra Leone (10 years) ibid para 143 and commenting on draft South African Legislation; Committee's concluding Observation, UN Doc. CRC/C/15/Add 122 (2000) para. 17

to 12 as the "absolute minimum age"[209]. Furthermore, the Committee appears to be in favour of considering the upper age of the *doli incapax* as the effective age of criminal responsibility. This could be noticed from the committee's reaction to the abolition of the Isle of Man's rule which presumes that children between the ages of 10 to 14 are *doli incapax*. The Committee interpreted this move as lowering of the MARC from 14 to 10.[210] In fact, referring again to the Committee's recent general Comment, it noted that higher MARC of 14 or 16 years of age "contributes to a juvenile justice system which, in accordance with article 40 (3) (b), deals with children in conflict with the law without resorting to judicial proceedings…"[211]

As earlier stated, Sierra Leone seem to have responded to the committee's recommendation by setting the minimum age to 14 years in the newly enacted child Right Act, irrespective of whether the juvenile committed a homicide offence or not. In this vain, it can be submitted that while there is need for the protection of children in conflict with the law, it should not be one at the expense of accountability and responsibility for serious crimes committed.

The second issue worth discussing is the method of rebutter of the presumption in the case of children between the ages of 7 and 14 in South Africa, and the determination of age in the South African and Sierra Leonean systems respectively. Usual practices in South Africa regarding the rebutter of the presumption have been, the prosecution asking the mothers of the children whether their children know the difference between rights from wrong. An affirmative answer in this case would be considered as a sufficient ground a rebutter. This method employed usually

[209] CRC Committee's General Comment No. 10, UN. Doc. CRC/C/GC/10 (2007) para. 32
[210] Concluding Observation of the CRC Committee, United Kingdom of Great Britain and Northern Ireland- Isle of Man, U.N. Doc. CRC/15/Add.134 (2000) para. 18
[211] Cocluding Observation, Supra note 207, para 33

leads to an easier rebutter more especially when dealing with an illiterate mother and juvenile. This again begs the question as to whether the exercise is meant to actually achieve its desired objective of protecting the child. The situation becomes even more aggravated when the prosecuting officer takes the shortcut by asking the child whether s/he knew that his/her action was wrong.[212] Such practices often lead to the prosecution making the wrong decision culminating sometimes into convictions of juveniles who may otherwise be treated outside of justice system. Additionally, even where the child may have been declared criminally incapable, the fact that the rebutter of criminal incapacity presumption takes place in a court where s/he is faced with the ordeals of a criminal process may not serve in the child's best interest.

The problem with age arises in the Sierra Leone situation because of the lack of a standardized method of age determination within the Courts. Age determination is left in the hands of the police who are less trained to do so and who often records ages supplied to them by the children without proof of birth certificates, medical papers etc. This has affected children in two ways. Firstly, they have been put in prison awaiting trial and tried as adults. Secondly, adults have often given false ages to evade being sent to prison awaiting trial. They are a result sent to remand home and kept together with children. These adult have either influenced the children in the use of drugs or instigate them to be riotous. In September 2007, there was a reported incident of damages done on the remand home facility which led to the escape of inmates and the subsequent closure of the facility for repairs. Consequently, 40 children were transferred to the maximum prison to await trial.[213]

[212] Karoline Johannson and Therese Palm, Supra note 90
[213] Interview with Sheik Sawaneh, Social Worker attached to the Remand Home in Freetown. Interview conducted on 20th October 2007

The problem becomes exacerbated when children accused of serious crimes like homicide, wounding or rape are left at the mercies of the police who often treat them harshly and increase their ages to18 in the absence of a birth certificate.[214] Such children are refused bail and sent to adult prison pending trial and are finally tried as adult thus losing every protection accorded to juveniles under Cap 44. A case in point was the sentencing of a 17 year old child mother together with her 7 month old baby, by a Justice of Peace with the approval of the magistrate in Kono, (a district headquarter town) in Sierra Leone. The child was said to have died.[215]

It is no gainsaying that the practices discussed above in both the South African and Sierra Leonean systems would inadvertently engender discriminatory practices as children who would have otherwise been treated in a manner that befits their real circumstances as their other colleagues, are either tried or convicted like adults. This contravenes the very principle of non-discrimination enunciated in Article 2 of the CRC. It is in the light of this that the CRC committee has urged state not to hold a child criminally responsible if "there is no proof of the age of such child or if it cannot be established that child is at or above the MARC."[216]

4.2 Comments on the Pre-trial stages

At pre-trial level, rules on the international plain points to the undesirability of pre-trial detention of children. Both the CRC and the ACRWC provides for the deprivation of liberty of children to be used as a measure of last resort and for the shortest possible time.[217] States are therefore urged to put in place legal mechanisms to facilitate the minimum use of pre-trial detention and where

[214] Child Justice Strategy, Supra note 3, p.14
[215] Ibid
[216] Supra note 207, para 35
[217] Article 37 (b) of the CRC, Article … of the ACRWC

possible, that child friendly alternative measures such as close supervision, intensive care etc, be utilized.

A practice in both in the South African and Sierra Leonean child justice systems reveals a stark incompatibility with international standards on one hand, and even with provisions in their domestic legislations. This situation is engendered by the unfettered discretion and wide detention powers accorded to key role players such as the police and prosecuting officers, and the lack of adequate provisions governing pre-trial procedures particularly in the case of Sierra Leone. These factors have often resulted in the inappropriate use of custodial detention for children who await trial in the juvenile justice systems in both South Africa and Sierra Leone.

In South Africa, while the CPA includes several mechanism designed to facilitate pre-trial release of children, it is the Correctional Service Act 29 1959 (as amended in 1996) which deals with detention in prison pending trial. The Act allows the pre trial-detention of children above 14 in prison, though with some conditions namely if the magistrate has reasons to believe that the juveniles detention is necessary for the administration of justice, as well as for the safety of the community. It also includes a schedule of offences that warrants the detention of children in prison, but left open an option for the discretionary referral where "offence committed in circumstances [are] so serious as to warrant detention"[218] This particular clause has been subjected to numerous interpretation which has led to a breach of the provisions of the Act.[219]

[218] South Africa Law Reform Comm. Supra note 104, Project 106
[219] Ibid

Thus, children have been placed in detention in prison instead of less restrictive alternatives such as secure care centres as provided for in the Child Care Act for minor crimes such as shop lifting, theft of minor items etc, which are not enumerated in the scheduled offence list. Consequently, there have been reports of overcrowding of prisons with more unsentenced children than sentenced children with 52% of the total being children awaiting trial.[220] Most of the children are under the age of 14 which breaches the provisions in the CSA. Worst even is the fact that these children are placed together with adults. The prison conditions are said to be appalling with infectious diseases such as scabies evident on prisoners.[221] Furthermore, there were complaints of inmates being sold for sex to other prisoners with the accomplice of correctional officials.[222] Though the Correctional Services Act further provides for access to developmental opportunities for children, no rehabilitation services are available for children, thus rendering the condition more conducive for the hardening of the attitudes for the children rather than rehabilitating them.[223]

More worrying is the length of time children spend in prison awaiting trial. "On 7th of March 2006 the average length of time that 1173 unsentenced children held on that date had been awaiting trial was 48.8 days- almost seven weeks" Some children are held for a longer time of more than even a year.[224]

The situation highlighted above is enough to point out that despite the wide array of provisions in the South Africa child justice systems, coupled with efforts made at inter-sectoral level, the

[220] Amanda Dissel in Conference Papers 2 2006 Supra note 99, p.114
[221] Ibid
[222] Ibid
[223] Ibid
[224] Ibid

country still has a long way before it comes in line with its own constitution and international instruments that provides for children to be detain as a measure of last resort and for the shortest possible time.

While the South African child justice systems boasts of adequate legislations governing the pre-trial procedures meant for children in conflict with the law, the problems with regards to pre-trial procedures and practices in Sierra Leone emanates from the fact Cap 44 is quite superficial on the safeguards at pre-trial for children in conflict with the law. Only the juvenile's right to bail and his /her separation from adults constitutes the safeguards in the pre-trial phase. The wide discretionary power accorded to the police or magistrate for denial of bail where they think it will "defeat the end of justice" has been used with an undisturbed frequency. This has consequently led to the detention of children awaiting trial.

The above-mentioned situation is even aggravated by the conditions of sureties imposed by magistrates before bails are granted to juveniles, though Cap 44 sanctions the granting of bail to juveniles with or without conditions. The common practice by magistrate usually is the requirement of a surety who is a property owner and resident in the western. Such bail conditions are usually difficult to meet especially in the circumstances where most of the children caught in conflict with the law are street Children. Even kids having parents or guardians have in some occasions not met such stringent bail conditions. A case in point was a juvenile who after been charged with larceny, was denied bail by a magistrate, who after a brief interview with the accused juvenile's surety, realized that she was a student.[225] Larceny can be regarded as a minor

[225] "Juveniles sent to Pademba Road" Available at http://www.concordtimessl.com/humanrights.htm

offence under Sierra Leone law, and where found guilty of it; a punishment not exceeding five years is usually imposed.

According to Cap 44, children who are not granted bail should be sent to the remand home. As earlier noted the remand home is not a prison, but designed to serve as reformation centre for children. There are however two remand homes in the country located in Freetown the Capital and Bo, the second capital. When detained in the remand home, juveniles had lacked adequate access to food, education or vocational training, and recreational facilities. Health facilities are also lacking. Only child aid agencies such as GOAL Ireland provides weekly medical services, which in fact is limited to minor ailments.[226] Transporting children from the remand home facilities to attend court proceedings poses another problem due to the lack of vehicle.[227] These have often led to the frequent adjournment of cases and have thus precipitated the lengthy deprivation of the liberty of the children while awaiting trial.

Security is also porous at the remand home in Freetown. This has often resulted in the escape of children from the facility. Instances of reported escapes involving forty-four children out of the remand home in 2005 and another thirty-two in the first half 2006 respectively are pointers to this fact.[228] Children awaiting trial are also sent to the maximum prison were they are held together with adults in the same cell. As at October 2007, there were an estimated total of 40 juveniles locked up in the Pademba Road maximum prison.[229] Prisons in Sierra Leone are

[226] Sheik Sawaneh Interview, Supra Note 211
[227] Country Reports on Human Rights Practices, Sierra Leone, 2006 Released by the bureau of democracy, human rights and labour, March 2007, available at http://www.state.gov/g/drl/rls/hrrpt/2006/78756.htm
[228] Child Justice Strategy Supra note 3, p.14
[229] Interview with Emmanuel Sowa, Social Worker working with the Defence for Children International- Sierra Leone on October 15, 2007

severely overcrowded, including the Freetown maximum prison which held an estimated 944 prisoners in 2006 even though the facility was designed to hold 325 prisoners.[230]

The fact children are held in detention for minor offences in both South Africa and Sierra Leone, at the whim and caprice of the respective officials contravenes the "detention as a measure of last resort" principle. It is contended that pre-trial detention hinders the fair trial process of juveniles. Besides the fact that it violates the presumption of innocence as pointed out by the committee,[231] it also inhibits the juvenile's access their parents or guardians or above all a legal representative.

The juvenile's access to his/her parent during detention is of utmost importance as it ensures a "general psychological and emotional assistance"[232] to the child. It is not surprising therefore that the Committee on several occasions have expressed concern regarding children's right to maintain contact with parents and families during detention, [233] and have recommended for instance, in the case of Benin that it "ensure that children remain in contact with their families while in the juvenile justice system"[234]

The juvenile's access to legal assistance whilst in detention or at any time during the trial is a right fundamental to ensuring the fair trial of the juvenile. It is often regarded as a corollary to the principle of equality of arms, as it ensures the adequate preparation of the juvenile's defence. The Committee on the Rights of the Child has in the past raised its concern of the lack of

[230] Supra Note 195
[231] General Comment No. 10, Committee on the Rights of the Child, forty-fourth session, CRC/C/GC/10, 2007 para. 80
[232] Commentary on Rule 15 (1) of the Beijing Rules
[233] para 23
[234] UN Doc. CRC/C/87, Report on the twenty-first session (1999) para 165

provision regarding legal assistance during pre-trial detention, and recommended that the state party in question systematize the provision of legal assistance to all juvenile during pre-trial detention.[235] The Human Rights Committee in its opinion in the matter of *Setelich on behalf of the Antonaccio v Uruguay* noted that the fact that the author of the communication was unable to communicate with his court appointed counsel amounted to a violation of the right to fair trial.[236]

Where deprived of his or her liberty, international law provides that such a child should be "treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age"[237] The JDL Rule even recommends an ideal place of detention that should be "*equipped with facilities to guarantee meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society*"[238]

The rules flagged above points to the expression of the 'best interest' approach that permeates the entire convention. Where implemented, it will help to counter the detrimental effect of detention and foster the child's integration into society. Conditions in which children are held in prison and remand homes in South Africa and Sierra Leone as described earlier, surely compromises their basic safety and well-being and also their potential to remain free of crime and to successfully reintegrate into society after their release. Such practices no doubt are

[235] CRC/C/15/add. 182, Concluding observation of the CRC Committee, Switzerland, 2000 paras. 56 & 58
[236] Communications No. R.14/63 , UN Doc, Supp. No. 40.262 (A/37/40) at 114 (1982) Para. 20
[237] Article 37 (c) CRC
[238] JDL II Guideline 12

inconsistent with international standards as well as some provisions of the Correctional Services Act 111 off 1998 with regards to South Africa

Noteworthy also is the non-separation of children from adult during pre-trial detention that is evident in both South Africa and Sierra Leone. In addition to the practice contravening the provisions of their respective domestic laws, it also violates the provisions enshrined in various international treaties respecting child justice including the CRC, the African Charter on the Rights and Welfare of the Child and the ICCPR.[239] It is contended that such practices does help to contaminate the juvenile. Hence state parties engaged in this practice has not evaded the attention of the Committee. The Committee for instance, was concerned about the holding of minors in adult detention.[240] It also responded in like manner about the fact that some state parties found it necessary to make reservations to provisions compelling them to separate juveniles from adult while kept in detention or imprisonment and suggested that the reservation be withdrawn.[241]

4.3 Comments on Trial stages

With regards to the trial stages in the juvenile justice systems in both countries, the starting point will be an examination of the juvenile Court Structures that obtains the two countries. As noted earlier there exists no separate court for the trial of children in conflict with the law. Rather, makeshift court housed in an ordinary court, though with specially selected and trained staff are created depending on the number of juvenile offenders in a location. In fact, such courts are hardly established in rural area where less number of juvenile offenders is found and therefore

[239] Articles 37 (c) of the CRC, 17 (2) (b) of the ACRWC and 10 (2) (b) of the ICCPR
[240] UN Doc. CRC/C/15/Add.122 (2000), Concluding observations: South Africa, Para 42 (e)
[241] UN Doc. CRC/C/Add. 37, Concluding observations: Canada, paras 10 and 18

difficult to justify the creation of such court with train staff.[242] The situation appears to be different however in Sierra Leone, where Cap 44 provides that the court sit in a separate building or room from where ordinary trial takes place. However, in practice children are tried in the same building or room where ordinary courts sit. This state of affairs is perhaps helped by section 3 (2) of the same legislation that provides for a magistrate court to transform itself into a juvenile court upon ascertaining that the person whose matter is dealt with has not attained the age of 17.

The fact that children are not tried in a friendly and conducive environment but in a court room that maintains its formality in the two child justice systems, disadvantages the child as s/he may not participate freely in a process that determines his or her well-being and reintegration into society, and his development as person. In the ECtHR decision of *T v The United Kingdom*, although the Court recognized the special measures taken by the Crown Court with respect to the accused's age, yet it noted that the "*formality and ritual of the Crown Court must at times have seemed incomprehensible and intimidating for a child of eleven… [and], in particular the raised duck… had the effect of increasing the applicant's sense of discomfort during the trial.*" [243]

4.3.1 Application of fair trial principles in South Africa and Sierra Leone

Attention must now be drawn to the application of the rights of fair trial in the two systems. The rights of fair trial refers to set of minimum guarantees that every child alleged as or accused of having infringed the penal law has entitlement to in international human rights law. While some of the guarantees are applicable as general principles under international human right law, others are designed to meet the specific needs of the children. Article 40 (2) (b) (ii) enumerates a list of

[242] South Africa Law Commission, Supra note 104, para 8.17
[243] ECtHR Appl. No. 24724/94, para 86

minimum guarantees that are meant to ensure that children in conflict with the law receives fair treatment and trial once they have been arraigned before the juvenile court. These rights are also found in the Articles 14 of the ICCPR and 17 (c) the African Charter of the Rights and Welfare of the Child. A review of the child justice systems in both South Africa and Sierra Leone reveals inadequacies in the implementation of some of the specific rights enshrined in these treaties and they can be highlighted as follows:

4.3.1.1 The right to a speedy trial

General trend in international human rights law suggests a time frame as short as possible for dealing with accused persons in the juvenile justice system; from the time of the commission of the offence to the final response to the act. The provisions may be enunciated in varied ways based on different treaties, such as the child's matter to be determined "without delay" as in Article 40 (2) (iii) of the CRC; "as speedily as possible" as in Article 17 (c) (IV) of the ACRWC, but it points out to the whole process being held within a reasonable time, as a very slow and laborious judicial process would be tantamount to a denial of justice.[244] What constitute a reasonable time after a charge has been proffered against the accused depends on "the circumstances of each case, the conduct of the accused, and the manner in which the matter [is] dealt with by the administrative and judicial authorities."[245] But usually where a person is held in detention pending trial, a speedy trial becomes more and more necessitated. Hence in *Sextus v Trinidad and Tobago,*[246] the HRC held that the detention of the author for one year, ten months from the time of the murder to trial in a straightforward murder case, was a violation of Articles

[244] Rhona K.M Smith, Textbook on International Human Rights, Oxford University Press, 2nd Edition, 2005, p 264
[245] General Comment 32, Human Rights Committee, Ninetieth Session, July 2007 para. 35
[246] UN Doc. CCPR/C/72/D/818/1998 (2001)

9 (3) and 14 (3) (c) of the ICCPR. It was the Committee's view that "substantial reason" must be given to justify such detention.[247]

Generally, the clock starts ticking from the time the charge is levied up to the time of final disposition. Hence, the HRC again suggest that the guarantee "relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgement on appeal."[248] The guarantee is even more mandatory in cases involving the children as the longer the trial drags on the more likely it is for the response to lose its "desired positive and pedagogic impact", and also increases the child's chances of being stigmatized.

Delays in trial of children are common occurrences in both the South African and Sierra Leonean child justice systems. Delays in the South African system are evident from the length of pre-trial detention as well as in the adjudication process from the first appearance to the plea. Children are said to be held in prison awaiting trial for over one year. Worst even is an instance in which a child was held awaiting trial in prison for 1922 days- over five years.[249] Matters are said to take a long time to be resolved in district courts.[250] What is of even more concern is the fact that the offences are less serious ones that should warrant delays. There were reported instances of a delay for over a year (413 days) for theft, and also of over three years (1192 days) for an offence of housebreaking.[251] The delays experienced are largely owned to the backlog as a result of

[247] Ibid, Para 7.2
[248] Supra note 199 para 32
[249] Amanda Diesel, Supra note 99, p. 118
[250] Ibid
[251]

postponements[252] coupled with the shortage of skilled personnel due to high turnover of staff, which ensures efficient juvenile justice systems.

Delays in the adjudication of juvenile cases are even more evident in the Sierra Leonean system which could be put down to a number of related factors. The first is the dearth of skilled professional including legal practitioners and probations officers and the fact that the small number of these professional especially lawyers are reluctant to serve in the judiciary because of poor conditions of service. This is evident by the fact that cases in the juvenile court are handled by police officers who lack the expertise in handling court cases. Secondly, there exists only a single juvenile court in the country that is located only in Freetown and operates only as a makeshift court. The court currently sits once in a week for 3 or 4 hours.[253] The fact that the Magistrate who presides over the juvenile court also preside over the ordinary magistrate courts, means that the juvenile court often suffers from excessive workload thus resulting to a backlog of cases. The situation is not helped either by the logistical problem such as the lack of vehicles to transport accused persons from prison cells or the remand home, coupled with the fact that "complainants and/ or principal witnesses stay away or irregularly attend court sittings even when subpoenaed to do so"[254], thus resulting to adjournment/postponement of cases.

The reasons for the delay in the trial of children in the juvenile justice systems in both South Africa and Sierra Leone point out to mostly institutional problems leading to excessive workloads and backlog of cases. This reason could not be taken as a reason 'substantial' enough that could warrant a delay in the trial of a juvenile. In *Massa v Italy*, the ECtHR dismissed a plea

[252] Ibid
[253] Child Justice Strategy Sierra Leone , Supra note 3 p. 13
[254] Rachel Harvey Supra note 143, p. 9

of the respondent state of excessive workload of the relevant division of the court as a reason for the delay of applicant's matter. The Court noted that *"Art 6 para 1 [of the Convention] imposes on the contracting state the duty to organize their judicial system in such a way that their court can meet each of its requirements."*[255]

4.3.1.2 Right to legal or other assistance

The right to have legal representation and other appropriate assistant is a fundamental due process guarantee that should be accorded to every child alleged as or accused of having infringed the penal law. This is enshrined in Articles 40 (2) (b) (ii) of the Convention; 17 (c) (iii) of the ACRWC and in Article 14 (3) (d) of the ICCPR. The ICCPR even guarantees further the right of the accused to be provided with free legal representation if he/she cannot afford to pay. A denial of such aid can be viewed as a denial of justice.[256] This is particularly true in cases involving juveniles who due to their immaturity are particularly vulnerable. Even where the CRC provides an option of "other appropriate assistance", it must be presumed that for the best interest of the child and for justice to be done, such assistance should only be resorted to in cases involving minor offences. Such is then the importance of legal assistants.

As indicated in the previous chapter, the current South African child justice system provides for children to be entitled to both legal and parental assistance in all stages, after their contact with the justice system,[257] and also the possibility of the state assigning legal assistance at its expense if "substantial injustice would otherwise result"[258] The court is also obliged to inform the accused person promptly of this right. However, in spite of this constitutional recognition of the

[255] ECtHR Application No. 23/1992/368/442 para. 30 & 31
[256] Rhona K.M Smith, Supra note 244, p. 264
[257] Section 73 of the CPA
[258] Sections 28 (h) and 35 (3) (g) of the 1996 Constitution

need for legal assistance and the existence of a legal aid board to effect the implementation of this guarantee, significant number of children appear before courts without legal representation owing to factors such as: the children not being informed about this right and a waiver of the right because of distrust of 'government lawyer' among others. This situation is not also helped by the fact that the right to free legal assistant is limited in scope and dependent on a vague and unpredictable ground- the 'substantial injustice test'

The problem of legal representation relating to children in conflict with the law is even grave in the Sierra Leonean system; where Cap 44 only stopped short of guaranteeing the right to legal representation, but failed to accord the right to free legal assistance. The absence of free legal aids as instructed by the constitution, [259] coupled with huge shortage of legal practitioners only exacerbates this situation. Hence, juveniles (mostly street children) who appear before the juvenile court are not represented by counsels and certainly do not receive legal advice when they are arrested and detained pending trial. Worst even is the fact that matters of juveniles who are not represented in court by counsels are usually postponed, leading to excessive delays in their trials. An interview with the Social worker confirmed that:

> *"Only children whose parents can afford to hire counsels are the ones whose cases are heard. Out of every 20 children transported from the remand home to the court, only one is called by the magistrate. The rest are sent back to the remand home with their matters unheard. The simple reason is because they are not represented by a counsel!"*[260]

[259] Section 28 (5)
[260] Sheik Sawaneh Social Worker Interview, Supra note 211

Even where children may have parents, only few of the parents can afford to hire the services of a legal assistance in an impoverished country whose peoples boast of a daily sustenance of less than a dollar a day. The absence of legal representative has also led to the delay in the trial of the juvenile

The fact that both South Africa and Sierra Leone practices the adversarial mode of criminal procedure underlines the need for a legal representation especially in cases of children who, vulnerable because of their immaturity and inability to properly grasp the legal proceedings are pitted against seasoned prosecutors. Apart from the substantial injustice that may result, the lack of a legal representation undermines the very principles of equality of arms and fair trial. The CRC Committee in cognizance of this has in the past expressed concern that the right of children to legal representation or other appropriate assistance is not always systematically guaranteed and recommended that state parties ensure respect for juvenile justice standards including the provision of legal representation.[261]

4.3.1.3 The Right to respect of the Juvenile's privacy

Worth commenting about also is the implementation of juvenile's right to respect of privacy in the two child justice systems. International law treats with utmost importance the need for the accused child to have his or her privacy fully respected at all stages of the proceedings.[262] The Beijing Rule even goes further to state its purpose of "avoid[ing] harm being caused" to the juvenile.

[261] U.N. Doc. CRC/C/15/Add.170, Concluding Observation of the CRC Committee Greece (2002) paras 78 & 79
[262] Art. 40 (2) (b) (vii) of the CRC

In both South Africa and Sierra Leone, a child jointly tried with adults loses every measure of confidentiality. In fact no juvenile hearings are done in private in Sierra Leone currently. Juveniles and adult as well are tried in an open court.[263] This practice completely violates the provisions enunciated in both the Convention and the Beijing Rule. Besides its undermining the 'best interest' principle as it leads to the stigmatisation of the child as a delinquent or criminal, it also inhibits the young person's reintegration into society which should be the ultimate aim of a juvenile justice system.

4.4 Comments on Post trial phase

Finally attention must now be turned to the deposition practices in the juvenile justice systems in the two countries under review. A fundamental principle guiding disposition in juvenile justice system is laid down in the Biejing rule which provides that the court's reaction to every offence should be proportionate not only to the circumstances and gravity of the offence, but also to the circumstances and needs of the juvenile as well as the society in which s/he resides.[264] The juvenile's wellbeing shall also be the guiding factor in any decision.[265] Where the deprivation of liberty for the juvenile is considered, "it should be as a measure of last resort and for the shortest appropriate period of time."[266] The Beijing Rule even qualifies this further by recommending that deprivation of liberty shall only be imposed in cases in which the child commits a serious and violent offences or if s/he persists in committing other serious crimes; and where there exists "no other appropriate response"[267]

[263] Interview with Social Worker, Supra note 211
[264] Rule 17.1 (a)
[265] Rule 17.1 (b)
[266] CRC Article 37 (b)
[267] Rule 17.1 (c)

The above provisions point to the fact that the international law generally guiding sentencing of children is characterised by an emphasis on the constructive purpose of the disposition rather than its punitive side.[268] This is simply because of the deleterious effect an institutionalized type of disposition might have on children.[269] In view of this, the Convention provides for a non-exhaustive list that states should make available to "ensure that children are dealt with in a manner appropriate to their well-being and proportionate to both their circumstances and the offence."[270]

Although current legislations governing child justice in South African children prohibits the deprivation of liberty of children except as a measure of last resort and for the shortest possible time, it additionally avail to children a wide range of sentencing options that should be used instead of an institutionalized type. This notwithstanding, key role players have demonstrated either the lack of creativity and/or heavy-handedness in sentencing child offenders. This has often resulted in the incessant use of restrictive sentencing options including incarceration of children in prison, reform schools and other harsh sentencing options that would have a negative effect on the well-being of the children.

A recent Department of Correctional Services Annual reports indicates that a large number of children are still handed custodial sentences in prison. As at March 2007, there were between 1000 and 1200 children incarcerated in prisons across the country.[271] While it can be submitted

[268] Van Bueren Supra note 54, p. 184
[269] Criminological research result indicated that children becomes particularly vulnerable to negative influences resulting from the deprivation of liberty and separation from the social life they have been used to impacts on them negatively.
[270] CRC Article 40 (4)
[271] Department of Correctional Services Annual Report 2006/2007, p. 23 available at http://www.dcs.gov.za/Annualreport/DCS%20Annual%20Report%202007.pdf

that children are sometimes given imprisonment sentences for crimes of a violent nature that warrants their incarceration in prison, it is more disturbing to note that most of the sentences are imposed for non-serious offences such as housebreaking, theft or robbery, common assault etc.[272]

Committing child offenders to reform schools also constitute a measure that is not entirely different from prisons. Apart from the fact that they are restrictive and have often been referred to as 'schools of crime', because they are few and dispersed, children sent to reform schools are often removed far away from their family and localities.[273] This hinders their reintegration and the maintenance of contact with their family.

With regards to disposition in the Sierra Leone child justice system, whereas the outdated Cap 44 provides for a number of alternatives to the deprivation of liberty of the juvenile, it cannot be said to be adequate as in the South African system, neither do they provide for the full range and variety that the CRC requires. In spite of the availability of these alternatives, (meagre though they might be) there use is greatly hampered by the lack of required skill and limited resources. An example of this is the under-utilization of the probation order of the court which involves placement of the child under the supervision of a probation officer as a sentencing option. Factors responsible for the under-use are "*the probation officer's lack of incentive and working logistics to handle the increasing delinquent situation in the country coupled with their lack of adequate training in or knowledge of child psychology, sociology or welfare…[and] are poorly paid. These factors seem to weaken any interest that they may have in general child welfare."*[274]

[272] Daksha Kassan, in Part 2 Conference Papers, July 2006, Supra note 120, p.85
[273] Karolin Johansson and Co, Supra note 90
[274] Rachel Harvey, Supra note 171

Consequently, children have been frequently sent to either the approved school or the maximum Pademba Road prison. Worst even is the fact that children sent to prison are exposed to the possibility of been mixed together with adults. This is because though Cap 44 provides for the separation of juveniles adult in adult institutions, the proviso clause of "*only so far as circumstances permit*" has served as the weak link through which children are incarcerated together with adults. This provision contravenes the CRC and the Beijing rule which prohibits the detention of children together with adults in the same facilities.[275]

As mentioned in the previous chapter, the approved in Sierra Leone cannot be categorised as a prison, but as an institution meant for the reformation of children in conflict with the law. However, the fact that children committed into the approved school are not permitted to leave is sufficient to submit that they fall under the category of children deprived of their liberty defined under Rule 11 of the JDL as "any form of detention, imprisonment or the placement of a person… from which this person is not permitted to leave at will…". [276] Once deprived of their liberty, rule guiding their meaningful treatment which takes into account their dignity as a human being as well as their needs based on their age, and also providing for them care, educational and vocational training with the view of helping them assume a socially constructive and productive roles in society should apply. However, the Approved School lacks basic social services like health, education and recreation. Also personnel who are required to counsel and ensure psychosocial intervention are not properly trained.[277]

[275] Article 37 (c) of the CRC and Rule 26.3 of the Beijing rule. Also see Article 10 of the ICCPR
[276] Rule 11 of the UN Rules for the Protection of Children Deprived of their Liberty
[277] Child Justice Strategy, Supra note 3, p. 24

The frequent use of institutionalized sentencing option such as sending children to prison, reform of Approved school in both South Africa and Sierra Leone especially for less serious offences, while there exists other sentencing options points to the fact that the deprivation of liberty for children is not used as a last resort. This is a flagrant violation of the provisions enshrined in the relevant international treaties mentioned above as well as the domestic laws in the respective countries.

4.5 Juvenile justice reform in post-conflict South Africa and Sierra Leone: Are they innovations to juvenile justice practice in general?

A review of the Child Justice Bill 49 of 2002 of South Africa reveals diversion and restorative justice to be the central features of the proposed child justice system. Given that these two practices have gained foothold in the juvenile justice systems internationally, with Article 40 (3) (b) of the CRC particularly recommending the adoption of the former (diversion) by state parties, and the latter (restorative justice) being widely acknowledged and practiced in a number of jurisdictions such as New Zealand and Canada. A claim can not therefore be made that the proposed child justice system brings an innovation to the practice of juvenile justice generally. It is in fact contended that the model of family group conferences which constitutes one of the restorative justice alternatives provided for in the Bill is "largely a 'borrowed' model based on the experiences of other countries, in particular New Zealand."[278]

Nonetheless, what can be asserted is that the political context of the transition to democracy after decades of conflict engendered by the Apartheid Rule served as a catalyst for the influence of

[278] Ann Skelton, Supra note 150

restorative justice on the juvenile justice reform. The transition took the form of a Truth and Reconciliation which is linked to restorative justice.

The uniqueness of the restorative justice enunciated in the proposed child justice however is its 'Africanization' through the notion of 'Ubuntu'. The concept of Ibuntu has promoted societal harmony in Africa for many years and has guided traditional conflict resolution.[279] It is regarded as a "spirit of humanity" and espouses the notion of "it takes a whole village to raise a child".[280] It encompasses the principle of people caring for each other's wellbeing and says that a person is a person because of or through the community.[281]

With regards to Sierra Leone, the newly enacted Child Rights Act 7 of 2007 covering juvenile justices mainly provides for a diversionary alternative through the use of child panels at community and district levels to adjudicate on criminal as well as civil matters involving children. This structure is a replica of the Reaffirmation of the Law programme in France and the juvenile cautioning program in Wagala, Austria.[282]

Thus it could be submitted that though the child justice reforms processes in both South Africa and Sierra Leone are partly responses to the rising juvenile crimes resulting from their respective conflict backgrounds, they cannot be said to bring an innovation to the body of practices that constitute juvenile justice at international level.

[279] Ibib
[280] Karoline Johannson and Co, Supra note 90
[281] Ibid
[282] Child Justice Strategy Sierra Leone, supra note 3, P 12

CHAPTER 5: CONCLUDING REMARKS AND RECOMMENDATIONS

5.1 Concluding Remarks

The study revealed that both South Africa and Sierra Leone faced, with the increasing juvenile crime rates recognises in their legal systems the notion that children differ from adults in their physical and psychological development as well as their emotional and educational needs. This is evident by their endeavours to separate the criminal justice systems governing children from that of adult through legislations and institutions. Also their ratification of the number of international and regional children's rights treaties governing juvenile justice coupled with moves to reform their respective child justice systems with the aim of giving effects to the rights enshrined in the international treaties is a testament of an international ideal of protecting the rights of children in conflict with the law.

Additionally, the current systems of both countries depict a conflation of both the welfare and justice approaches to the treatment of children in conflict with the law. This at least is made manifest by the individualized treatment of the juvenile and recognition of his or her best interest as well as his/her rehabilitation and reintegration into society in their respective legislations.

The study however affirmed some gaps between practices and what the law uphold within the two systems on one hand, and inconsistencies between the practices and international standards provided in the respective international and regional treaties with their related soft norms. This is made possible by discretionary powers bestowed on key role players in the two systems coupled with the lack of trained personnel particularly in the case of Sierra Leone.

Finally, the study revealed some variations between the two systems. While the legislations governing juvenile justice is embodied into a single document, albeit of the fact that it is fraught with inadequacies and inconsistencies, South African system exhibits a non-cohesive legal system. Specific provisions meant for the protection of children in conflict with the law spreads across a number of legislations. However, the South Africa systems demonstrate progression and flexibility in that practice tends to evolve faster than legislations. This could be evident by practices such as diversion which have been in operation since the early nineties in spite of its non-codification in the legislation. Sierra Leone on the other hand has lagged behind with regards to standardizing the juvenile justice system with international practices. This is evident by the existence of the out-dated Cap 44 which still governs the juvenile justice systems.

5.2 Recommendations

5.2.1 Recommendations for South Africa

The envisaged Child Justice Bill 49 of 2002 provides a comprehensive legislative framework that is consistent with safeguards enshrined in both the constitution and International Instruments. The provisions therein seek to address some of the weaknesses in the current juvenile justice system. For example, the Bill codifies diversion and restorative justice into the legal systems and makes provision for a mandatory assessment and a preliminary inquiry procedures which, it is hoped will remedy the problem of age determination. It also provides for a six months time limit within which a case involving a juvenile offended shall be finalized; precludes children from exercising a waiver of legal representation etc. Therefore the starting point of any recommendation will be the suggestion for an enactment of this Bill into law to give effect to the provisions enshrined therein.

However, while awaiting its enactment, the following is recommended:

It is recommended that effective monitoring mechanism should be put in place to ensure that key role players implement the wide array of safeguards available in the justice system to protect the rights of children in conflict with the law, particularly those that ensures that deprivation of liberty is used as a measure of last resort. One way of doing this is the creation of an integrated database for the effective monitoring of children in conflict with the law.

It is suggested that judicial officials and other role players such as social workers, probation officers be trained and sent to rural areas, and also for juvenile courts to be established in these rural areas. This will help in remedying the disparity in the administration of juvenile justice between urban and rural areas.

5.2.2 Recommendation for Sierra Leone

The effective implementation of fair trial safeguards is conditioned upon the quality of persons involved in the administration of juvenile justice. A review of the juvenile justice system clearly reveals the dearth of trained personnel for dealing with children in conflict with the law. It is suggested therefore that professionals nationwide such as police officers, magistrates, probation officers, social workers receives training on children's rights in general and juvenile justice in particular.

Additionally it is recommended that a review of the working conditions be made for professional staff involved with juvenile justice such as probation officers, social workers court officers including lawyers be made so as to serve as a motivation for effective service delivery. Logistics such as vehicles, fuels should be provided and their uses monitored to ensure that they are utilized in the proper way.

There is currently a single juvenile court in the country. It is recommended that juvenile justice courts be established throughout the country in all fifteen districts. These courts are to be equipped with trained staff to effectively implement juvenile justice with the focus on the protection of the rights of children in conflict with the law.

To remedy the problem of legal representation for juvenile offenders, it is recommended that efforts be made to implement the provision of the constitutions (Section 28 (5) (A&B), which enunciates the provision of legal aid. The fact that the Justice Sector Development is to implement a legal aid board pilot project is an indication of some kind of a light at the end of the tunnel in this respect.

Conditions in both the remand homes and approve school be improved so that the institutions will be equipped enough to achieved their desired aim of rehabilitating children with the view of enhancing their successful reintegration into society.

Finally it is suggested that awareness raising campaigns be undertaken to educate communities on the newly enacted Child Rights Act 7 of 2007. The campaign should particularly target

community elders who are likely to play formidable roles in the envisaged Child Panels. This it is hoped will enhance the implementation of the rights enshrined in the Act.

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