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# Praxis paper

## CHILDREN AND JUVENILES IN DETENTION

Study on compliance with International  
Standards in Sierra Leone

Prison Watch Sierra Leone  
with the support of  
**DIGNITY** - Danish Institute Against Torture



**PRAXIS PAPER**

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Complete version

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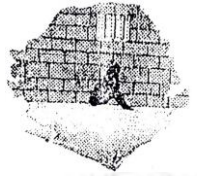
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Prison Watch  
Sierra Leone

# Children and Juveniles in detention

Study on compliance with  
international standards in Sierra  
Leone





# List of abbreviations

BECE	Basic Education Certificate Examination
CAP 44	Children and Young Persons Act 1960
CAP 31	Prevention of Cruelty to Children Act
CIDTP	Cruel, Inhuman or Degrading Treatment or Punishment
CPA	Criminal Procedure Act 1965
CRA	Child Rights Act 2007
CRC	UN Committee for Rights of the Child
DCI	Defense for Children International
DFID	United Kingdom Department for International Development
FSU	Family Support Unit
HRCSL	the Human Rights Commission of Sierra Leone
ICCPR	International Covenant on Civil and Political Rights
JSDP	Justice Sector Development Programme
MACR	Minimum Age for Criminal Responsibility
NCJS	National Child Justice Strategy
OIC	Officer in Charge
PWD	Public Works Department
PWSL	Prison Watch Sierra Leone
RCT	Rehabilitation and Research Centre for Torture Victims
SLP	Sierra Leone Police
UNCAT	The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UNCRC	The UN Convention on the Rights of the Child
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
YMCA	Young Men's Christian Association

# Foreword

Prison Watch Sierra Leone (PWSL), is a local non-governmental organization with a unique and specific mandate working to improve the criminal justice and detention system in Sierra Leone through monitoring places where persons are deprived of their liberty. PWSL monitors police detentions, prisons, juvenile institutions and some local court detention centres supported by among others DIGNITY – Danish Institute Against Torture (former the Rehabilitation and Research Centre for Torture Victims, RCT) in Copenhagen. PWSL has worked with children and juveniles in detention since 2000 with emphasis on improving conditions of detention. Since 2010, and with support from the DIGNITY, PWSL has focused on monitoring the juvenile institutions, provision of humanitarian assistance and connecting juveniles in detention with their relatives.

PWSL remain proud to present a professional study issued with the aim to provide an analysis of conditions of detention for children and juveniles in Sierra Leone highlighting obstacles and issuing recommendations for necessary legal and institutional reforms to improve the conditions of detention.

DIGNITY - Danish Institute Against Torture is a Danish self-governing institution independent of party politics that has been in existence for 30 years. DIGNITY's work focuses on the rehabilitation of torture survivors and the prevention of torture and ill-treatment. Over the years, the organisation has gained specialised knowledge and experience through treatment and research in torture and its sequelae as well as organised violence on the basis of which the interventions of DIGNITY's partners in Africa, Asia, Europe, Latin America and the Middle-East and North Africa are developed and targeted. The aim is to exchange and pass on knowledge and expertise as well as to contribute to the global effort to abolish torture.

The study has been developed in close cooperation with DIGNITY, and PWSL is grateful for the professional input and contributions received from Louise Simonsen Aaen, DIGNITY Legal Programme Coordinator, in the development of the study.



# Definitions

For the purposes of the study, the following definitions apply:

**A juvenile** is a child or young person under the age of 18 who may be dealt with for an offence in a manner which is different than an adult.<sup>1</sup>

**Juvenile offenders or juvenile delinquents** are children convicted for a criminal offence.

**Deprivation of liberty** means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person cannot leave at his own will. However, in the study, it mainly refers to children deprived of their liberty on grounds of suspicion of a criminal offence and/or on pre-trial detention or conviction.

**Imprisonment** is the term used for deprivation of liberty in the Approved School after the sentencing of a juvenile for a criminal offence. The UN Convention on the Rights of the Child uses the same terminology; however, the authors feel that there is a level of repression and retribution attached to the word of imprisonment, and considering the UN Committee on the Rights of the Child's own words that the criminal justice system should especially focus on being rehabilitative and restorative when dealing with child offenders, the word seems inappropriate to apply. Despite this fact, and in the absence of the identification of a more appropriate word as well as recognizing that the conditions of detention in the Approved School (described below) resemble the adult prison conditions in Sierra Leone and indeed are repressive and retributive – imprisonment has been chosen.<sup>2</sup>

**Recidivist** is a person that has been convicted of a criminal offence and who later lapses into previous undesirable patterns of behaviour.

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<sup>1</sup> Following the definitions given in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 ("The Beijing Rules"), and United Nations Rules for the Protection of Juveniles Deprived of their Liberty ("Havana Rules") 1990.

<sup>2</sup> UNCRC general comment 10, para. 10 [CRC/C/GC/10, 25 April 2007].



# I. Summary of Recommendations

It is the hope of Prison Watch Sierra Leone (PWSL) that the present study can be used to inspire a dialogue with the Government, especially the Ministry of Social Welfare, Gender and Children's Affairs, the Ministry of Justice, including the Justice Sector Coordinating Office, the Ministry of Education, and international and national organisations interested and concerned about improving the juvenile justice system and conditions of detention in Sierra Leone. Furthermore, we hope that these key stakeholders will join together to seek realistic and sustainable solutions to the problems and challenges highlighted in the study. Finally, we hope that the analysis provided in the study helps fill the gap of under-documentation of problems and challenges faced in the juvenile justice system in Sierra Leone. Some issues illuminated in the study may prove helpful for other countries or international organisations and institutions working to improve juvenile justice systems and conditions of detention for children and juveniles.

In the following, the overall recommendations and the summary of specific recommendations made under each section of the study are included. However, PWSL would like to encourage the reading of each individual section to obtain a more full and holistic understanding of the issues dealt with and the foundation for the overall recommendations.

## Overall recommendations:

1. The government should ensure the full and effective implementation of the UN Convention of the Rights of the Child (UNCRC), and amend the Child Rights Act 2007 (CRA) accordingly.<sup>3</sup> This should include revision of all existing national legislation pertaining to juvenile justice to ensure compliance with the UNCRC and protection of children in conflict with the law.
2. All police officers, family support units (FSU), probation officers, social workers, police prosecutors, court clerks, magistrates, judges and prison officers should have knowledge of and receive training on all international and national standards relevant for the administration of juvenile justice – as well as practical training on how to handle children in conflict with the law and juveniles in detention. Further, this knowledge and capacity should be ensured already at the early training level of

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<sup>3</sup> As also recommended by the UN Committee on the Rights of the Child (CRC) and reiterated in the working group information during the Universal Periodic Review of Sierra Leone by the UN Human Rights Council in 2011. CRC/C/SLE/CO/2, 20 June 2008 and A/HRC/WG.6/11/SLE/2, para. 34.

recruits, and therefore it should be included in the police and prison training school curriculum.

3. The juvenile justice sector needs immediate attention and prioritisation by the government. The conditions of detention for juveniles are extremely poor and the detention system is seriously neglected and dilapidated and suffering from lack of funding. It is recommended that the government take immediate action to draft and initiate a comprehensive reform programme of the juvenile justice system. It should include alternative sanctions for criminal offences than deprivation of liberty as well as putting in place or reviving existing mechanisms for dispute resolution which will ensure diversion and that children are held in detention only as a means of last resort and as short time as possible.

### **Minimum Age for Criminal Responsibility (MACR):**

- The Criminal Procedure Act (CPA) and the Prison Rules should be repealed to ensure compliance with the UNCRC. The UNCRC definition of a child should be respected so to ensure that all juvenile justice rules apply equally to all children below the age of 18 years.
- Government through the Ministry of Social Welfare, Gender and Children's Affairs should operationalize the "Age Assessment Guidelines" throughout the country and take immediate action to ensure that police officers, FSUs, probation officers, social workers, police prosecutors, court clerks, magistrates, judges and prison officers receive training and copies of the guidelines. The Human Rights Commission of Sierra Leone (HRCSL) has in 2010 recommended that police and judiciary make proper use of the guidelines.<sup>4</sup> Furthermore, ensure that Courts rendering judgements over children and suspected juvenile offenders have adequate tools available to conduct age assessments of suspected juvenile offenders. In cases where the recommended evidence for age assessment is not available, it is recommended that police prosecutors and magistrates instead rely on evidence collected in the community of the suspected offender, and that this recommendation be included in the actual "Age Assessment Guidelines".
- Furthermore, action should be taken to raise awareness about the MACR and the "Age Assessment Guidelines" in all of the 147 chiefdoms throughout Sierra Leone with a special emphasis on the rural and more remote areas. This should include information on juvenile justice and that it is to be administered by the formal justice system and/or child panels and not by the chiefdoms' courts.

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<sup>4</sup> Annual report of the HRCSL 2010.

## Arrest

- In the true spirit of protecting children in conflict with the law, PWSL urge the government to revise the Child Rights Act 2007 (CRA) and other existing legislation to include due process guarantees to ensure adequate safeguards. The government should implement the UNCRC without reservation.
- It is further recommended that the Ministry of Social Welfare, Gender and Children's Affairs to take proactive steps and fully commit itself to the setting up Child Welfare Committees at district, chiefdom and village levels. This will ensure diversion of children from the formal justice system and promote and pursue alternative disputes resolution mechanisms.
- PWSL welcome the efforts of government through partners like Defence for Children International (DCI) Sierra Leone, for the construction of holding cells in the Central and Aberdeen Police Stations for children. Even though we applaud this as a step in ensuring separation, PWSL however encourage government to continue to exploit alternatives of dealing with juvenile offenders and use detention of children as the last resort.
- The government through the Ministry of Social Welfare, Gender and Children's Affairs should ensure that children who are detained in police stations and prisons, be given maximum protection and not allowed to be detained in areas or cells used by adults.
- PWSL recommends that all recruit police and prison officers, juvenile detention and prison officers receive training on all relevant international and national standards as well as practical training with respect to dealing with suspected juvenile offenders. Furthermore, FSUs should receive specialized training to enable them to protect the best interests of children in conflict with the law. Further, this knowledge and capacity should be ensured already at the early training level of recruits, and therefore it should be included in the police and prison training school curriculum.

## Pre-trial

- The government should consider amending the CRA to include protections as prescribed by UNCRC article 37(b) and/or possibly adopt guidelines ensuring respect for UNCRC and Children and Young Persons Act 1960 (CAP 44) by law enforcement officers and the prosecution as well as securing actual implementation.
- Furthermore, the government should take immediate action and ensure that the mechanisms for dispute resolution and diversion prescribed in the CRA are established and provided with sufficient resources to carry out their mandate. The



Child Panels, if functional, will help to divert child offenders from accessing the formal justice system. It will also ensure justice for child victims.

- Immediate action should be taken to bring down the use of pre-trial detention as well as interventions to bring down the prolonged length of pre-trial detention. This should include the appointment of a Magistrate for the juvenile court and residential magistrates for each of the different districts, as also recommended by the HRCSL in 2011.<sup>5</sup>
- It is recommended to put in place a 'visiting and hearing system' entailing having the Juvenile Justice Magistrate visit and hold court sessions within the Remand Home frequently to ensure respect for the 72 hour rule and Part II of CAP 44. This will also aid the logistical and financial problems related to transporting the children to court.
- The government should revive the national legal aid programme established by the JSDP to ensure that children have legal representation during hearings and trial, and implement the Legal Aid Act.
- The current situation of children lingering in pre-trial detention without any access to social, educational and medical care etc. should be aided by government taking effective measures, including development of a policy and implementation plan as well as provision of funds for these.

## **Conditions of detention during pre-trial and imprisonment**

- PWSL urge the government through the Ministry of Social Welfare, Gender and Children's Affairs to exploit alternative family support care system that will be cost effective, practicable and sustainable and divert children from being held in the juvenile institutions.
- As the above description reveals, the conditions of detention are extremely poor and at times a health hazard; it is recommended that the government take immediate action to draft and initiate a comprehensive reform programme of the juvenile institutions. The programme should include action plans for implementing the guidelines outlined for treatment of suspected child offenders and juveniles in the Remand Home Rules and Approved School Rules with the final aim of improving conditions of detention at all levels. The government can possibly seek the support of key stakeholders within the international organisations and civil society organisations focusing on juvenile

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<sup>5</sup> HRCSL Annual report 2011, p. 40.

justice in Sierra Leone. It is evident that human and financial resources are obtained and allocated to improve conditions of detention.

- Furthermore, it is recommended that government ensure that personnel working with children in conflict with the law have the required training and experience, including knowledge of the Remand Home - and Approved School Rules.
- When children and young people are detained, emphasis should be on reformation rather containment. To this end, PWSL urge government to take measures to ensure that the right to education and recreation is respected and to develop alternative care policies to aid children in detention and upon release.
- It is recommended that an effective complaints mechanism for the Remand Homes and Approved School is set-up. This could possibly entail establishing the 'Visiting Committee' under the Remand Homes Rules and expanding the mandate of the Committee to the Approved School and/or ensuring that the HRCSL has the powers and resources to regularly monitor the institutions and serve as a complaints and oversight mechanism.

### **Prohibition of Torture, Ill-treatment and Death Penalty**

- It is recommended that the government take urgent action to ensure implementation of the UNCAT and repeal the CRA so to include explicit prohibition of corporal punishment in all settings, including within the juvenile justice system and institutions.
- The government should consider establishing effective mechanisms that can help prevent torture and ill-treatment in all places where persons are deprived of their liberty, including the juvenile institutions. This could entail ensuring that the HRCSL has the necessary human and financial resources to carry out their monitoring mandate. This could assist the process of establishing national mechanisms to prevent torture and also support the government if it in the future should consider to ratify the Optional Protocol to the UNCAT.

## II. Introduction

*“The child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”.*<sup>6</sup>

Protection and promotion of the rights of the child, as all other human rights, is the primary responsibility of the state. States are generally obligated to ensure the progress of juveniles, including the fostering and ensuring of personal development and education as free from crime and delinquency as possible. The UNCRC and other international standards relating to juveniles in detention are clear on that children should only be detained as a means of last resort.<sup>7</sup> Protecting the best interests of the child entails that the traditional objectives of the criminal justice system, such as repression and retribution must give way to rehabilitation and restorative justice when dealing with juvenile offenders.<sup>8</sup> This means that receiving a sentence as a juvenile offender should not be a punishment; instead, the deprivation of liberty should foster an environment that can support the children in reforming themselves, including enabling them to resume education or finding an apprenticeship or work. The substance of what constitutes rehabilitation and restoration will be further explained in the study.

Sierra Leone has ratified the UNCRC on 18 June 1990 and has partially incorporated the UNCRC into domestic law through the adoption of the Child Rights Act (2007) (CRA). However, adoption of legislation does not necessarily ensure implementation in practice. For example, the Sierra Leonean juvenile justice system is currently far from rehabilitative and restorative despite legislative efforts on alternative approaches included in the CRA. Furthermore, in the concluding observations of the CRC on Sierra Leone in 2008, the Committee among other things emphasised its concerns regarding the fact that juvenile detention facilities were understaffed, ill-equipped, with little or no security, poor learning facilities, little recreation and limited food supplies.<sup>9</sup>

This study builds on the knowledge and experience of Prison Watch Sierra Leone (PWSL) which has been obtained during its monitoring of and regular presence in juvenile detention facilities since 1996, through encounters with suspected child offenders in police detentions as

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<sup>6</sup>UN Declaration of the Rights of the Child (1959), GA res. 1386 (XIV), UN Doc.A/4354, preamble.

<sup>7</sup>UN Convention on the Rights article 37 and UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).

<sup>8</sup> UNCRC general comment 10, para. 10 [CRC/C/GC/10, 25 April 2007].

<sup>9</sup>CRC/C/SLE/CO/2, 20 June 2008, para. 76. Already in 2000 the conditions of detention were documented as appalling in the juvenile detention facilities and it was recommended that improvements be made, Children and Armed Conflict Unit, *Juvenile Justice in Sierra Leone*, September 2000, p. 11-12.

[http://www.essex.ac.uk/armedcon/story\\_id/000013.htm](http://www.essex.ac.uk/armedcon/story_id/000013.htm).

well as through its linking and tracing interventions<sup>10</sup> connecting parents and relatives with children in detention. Through these activities, PWSL has gained a unique insight into the dire situation of juveniles in detention in Sierra Leone.

In the following, an analysis of children and juveniles in detention in the Sierra Leonean justice system is provided with the aim to shed light on existing problems and challenges within the juvenile justice system with a specific focus on arrest, pre-trial detention and imprisonment in the Approved School as well as government compliance with international standards. The study includes recommendations to the government that aim to be realistic and feasible within the Sierra Leonean context. In spite of remarkable strides since the ending of the civil war in 2002, the country still struggles with poverty even though the country has a wealth of natural resources, including minerals, forestry and fishery resources. As a result, the country struggles with a weak physical infrastructure, poor health conditions and inadequate social services, lack of education possibilities, high unemployment rates,<sup>11</sup> high child mortality<sup>12</sup> and low life expectancy<sup>13,14</sup> Sierra Leone is rated as 180 out of 187 countries measured by the UNDP Human Development Index.<sup>15</sup> At the same time, Sierra Leone has weak governmental institutions and continues to struggle with entrenched corruption.<sup>16</sup>

It is the hope of PWSL that the illustrations of actual practice and recommendations can foster constructive dialogue with the government and relevant institutions. Such a dialogue could lead to an identification and implementation of sustainable solutions to improve the juvenile justice system, especially the conditions of detention.

The study is based on PWSL's area of expertise and encounters with children and juveniles in detention. The international human rights standards and national law are only included when relevant for discussion of the key challenges faced within the child justice and detention system in Sierra Leone.

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<sup>10</sup>The DIGNITY supported intervention includes identification of cases where children in detention have lost contact with their parents and family causing the child and juvenile distress and loneliness and increasing their vulnerability. PWSL then seek - and most often successfully find - parents or other family members that wish to assume or resume responsibility and support the child. Through this intervention, PWSL has been able to facilitate cell phone communication between inmates and family members and record short video messages to display to the child and family or ensure letter exchange, which is especially helpful where the family does not have the financial means to travel to the Remand Home or Approved School in Freetown.

<sup>11</sup><http://www.state.gov/outofdate/bgn/sierraleone/194935.htm> and <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/SIERRALEONEEXTN/0,,menuPK:367833~pagePK:141132~piPK:141107~theSitePK:367809,00.html>.

<sup>12</sup>[http://www.unicef.org/infobycountry/sierraleone\\_34898.html](http://www.unicef.org/infobycountry/sierraleone_34898.html).

<sup>13</sup> Although it has increased since 2010.

<sup>14</sup><http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/SIERRALEONEEXTN/0,,menuPK:367833~pagePK:141132~piPK:141107~theSitePK:367809,00.html>

<sup>15</sup><http://hdrstats.undp.org/en/countries/profiles/SLE.html>.

<sup>16</sup><http://www.state.gov/outofdate/bgn/sierraleone/194935.htm>.

# III. Objective

## **Overall objective:**

To identify areas of the Sierra Leonean government's non-compliance with international human rights standards and safeguards as well as national law with respect to children and juveniles in detention and issue recommendations that can be utilized to improve the juvenile justice system, especially conditions of detention for suspected child offenders and juvenile delinquents.

## IV. Methodology

The study has been developed by PWSL. The study is based on data collected by 25 PWSL human rights and detention monitors during approximately 12 months monitoring visits conducted at 25 police stations, 16 prisons and 3 juvenile institutions across the country. There are only few reports on the juvenile justice system in Sierra Leone<sup>17</sup> and hardly any government statistics and reports available. Furthermore, there are only few institutions (e.g. HRCSL) and civil society organisations that have access to juvenile institutions including police detentions, and therefore, information documenting actual conditions of detention is scarce. To the extent possible, the study uses supporting sources of information, including reports from relevant UN bodies' examination of Sierra Leone (CRC and the UN Human Rights Council) and reports from international and national civil society organisations.

DIGNITY has supported the drafting process through a desk study on international standards relating to the administration of justice with respect to suspected child offenders and juveniles in detention, and the identification of relevant national laws as well as shortcomings. The study was used as input to a participatory workshop in Freetown, Sierra Leone on 12 May 2012 where all PWSL staff contributed with their individual expertise and contextual knowledge in the further drafting of the study. This laid the foundation for the finalisation of the study through joint efforts of PWSL and DIGNITY.

The study provides an overview of the relevant International Human Rights framework pertaining to juveniles in detention. It focuses on describing the process through the detention system from initial arrest of suspected child offenders, pre-trial detention and eventual imprisonment after trial. The study sheds light on existing national legislation, identifies gaps and provides illustrations of actual practice and the government's non-compliance with laws and standards. The examples from practice are primarily based on data collected during monitoring and field visits to police detentions and juvenile facilities as well as other interventions in the Kingtom Remand Home, the Approved School in Freetown and the Remand Home in Bo. Other sources of information include UN and NGO reports.

Finally, the recommendations are drafted on the basis of PWSL's long-time experience and knowledge of local circumstances and the challenges facing the authorities.

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<sup>17</sup> Children and Armed Conflict Unit, *Juvenile Justice in Sierra Leone*, September 2000, [http://www.essex.ac.uk/armedcon/story\\_id/000013.htm](http://www.essex.ac.uk/armedcon/story_id/000013.htm), and Advocaid, *Children living in Prison: Insights from Sierra Leone*, January 2008.

# V. International legal framework related to protection of the rights of juveniles

Sierra Leone has ratified the six core international human rights instruments, including UNCRC.<sup>18</sup> The Sierra Leonean government is bound by these conventions and must take steps to avoid violation of these, including by adopting effective legislative, administrative, judicial or other measures to ensure the implementation of the conventions into national law. As a dualist state, the government has to enact legislation to incorporate the conventions into national law. The UNCRC is the only convention that has been partially incorporated by the Child Rights Act 2007.

The UNCRC is the key international convention governing the protection of children's rights in the juvenile justice system, more specifically articles 37 and 40. These are supported by the following guidelines; UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)<sup>19</sup>, the UN Rules for Protection of Juveniles Deprived of their Liberty (Havana Rules)<sup>20</sup> and the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)<sup>21</sup>. The guidelines are soft-law adopted by the UN General Assembly and therefore not directly binding on Sierra Leone. However, the Committee on the Rights of the Child (CRC)<sup>22</sup> has on several occasions used the guidelines in its interpretation of the scope of articles 37 and 40.

In the CRC's review of State parties to the UNCRC, it has come to the attention of the Committee that many states have a long way to go in achieving full compliance with the Convention in the areas of procedural rights, the development and implementation of measures for dealing with suspected juvenile offenders without resorting to judicial proceedings, and the use of deprivation of liberty only as a measure of last resort. Consequently, the Committee issued general comment no. 10 with the aim of providing states parties with elaborated guidance and recommendations in their efforts to administer juvenile justice in compliance with UNCRC. The Committee emphasizes that the UNCRC requires State Parties to develop and implement a comprehensive juvenile justice policy to prevent and

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<sup>18</sup>UN Res 40/33- Beijing Rules 1985

<sup>19</sup>UN Res 40/33- Beijing Rules 1985.

<sup>20</sup> UN Res 45/113 – JDLs 1990.

<sup>21</sup> UN Res 45/112 – Riyadh Guidelines 1990.

<sup>22</sup>The CRC is the mechanism overseeing that State Parties respect and adhere to the Convention, and it examines juvenile justice practice in the light of the UNCRC as well as the above-mentioned guidelines.

address juvenile delinquency,<sup>23</sup> and the general comment specifically outlines State Parties' obligations with respect to implementation of rights of children in the juvenile system.

When dealing with juveniles in the justice system due attention shall be paid to the following general and crosscutting principles enshrined in the UNCRC: The principle of *non-discrimination* (art. 2) which stipulates that State parties must take all necessary measures to ensure that all children in conflict with the law are treated equally. The principle of ensuring that in every decision within the context of the administration of juvenile justice that the *best interests* of the child is the primary consideration (art. 3). The *inherent right to life, survival and development* (art. 6) which in the case of prevention of juvenile delinquency means that one should exercise caution when issuing sanctions placing restrictions on the child including deprivation of liberty. Further, at all times utmost respect must be paid to ensuring the development of the child. The principle of ensuring the child's *dignity* which implies respecting and protecting the child's sense of dignity at all times, respecting the principles of fair trial, paying due consideration to the age and maturity of the child and taking effective measures to protect the child when in custody (art. 40(1)). Finally, throughout the justice process the child's *right to be heard* must be respected (art. 12).

Other relevant instruments are the International Covenant for Civil and Political Rights (ICCPR) and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) that contain fundamental human rights principles with respect to the administration of justice and the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter torture and ill-treatment). The absolute prohibition of torture and ill-treatment has also been included in article 37(a) of the CRC.

The ICCPR and UNCAT will not be subject to a thorough examination in the present study, but needless to say the absolute prohibition of torture and ill-treatment under the UNCAT and the safeguards with respect to arrest and detention in the ICCPR also apply to juveniles in detention.

In the following, a brief introduction to the Sierra Leonean Constitution and relation to international human rights treaties is provided.

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<sup>23</sup>CRC general comment no. 10 (2007) paras.1-2.



# VI. The Constitution and International Treaties

Sierra Leone is a constitutional democracy in which the Constitution is the Supreme law of the land. Within the 1991 Constitution<sup>24</sup> the supreme legislative powers are vested in Parliament that is the law-making body of the nation. Supreme executive authority rests in the President and members of his cabinet and judicial power with the Judiciary headed by the Chief Justice.

Section 40(3) of the Constitution concerns international treaty obligations. It provides that the President '*... shall ensure respect for treaties and international agreements*'. Section 40(4)(d) empowers the President to execute treaties, agreements or conventions in the name of the country.<sup>25</sup> This sub-section further states that '*any Treaty, Agreement or Convention executed by or under the authority of the President which relates to any matter within the legislative competence of Parliament, or which in any way alters the law of Sierra Leone ... shall be subject to ratification by Parliament, by an enactment of Parliament or by a resolution supported by the votes of not less than one-half of the Members of Parliament*'.<sup>26</sup>

Section 40(4) of the Constitution therefore establishes the dualist nature of the Sierra Leonean legal system which entails that an international treaty only can become part of domestic law when it has been passed through an Act of Parliament. There is a need to incorporate all international human rights instruments ratified if the domestic mechanisms for the protection of human rights are to be enhanced.

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<sup>24</sup>Constitution of the Republic of Sierra Leone, 1991.

<sup>25</sup>*Ibid.*, Section 40(4)(d).

<sup>26</sup>*Ibid.*

## VII. National laws relating to children and juveniles in the justice system

National laws constitute the primary legal framework for the promotion and protection of the rights of children. In Sierra Leone, efforts have been made to align its domestic laws through legal and constitutional means with international standards in the protection of children's rights. Accordingly, legal reforms and policies that strengthen the rights of the child have taken place.

The current laws governing children in Sierra Leone include the Children and Young Persons Act (Chapter 44 of the Laws of Sierra Leone, 1960 "Cap 44"), the Prevention of Cruelty to Children Act (Chapter 31 of the Laws of Sierra Leone, 1960 "Cap 31") along with other related legislations and policies that generally govern children at risk such as the Anti-Human Trafficking Act (2005), the Protection of Women and Girls Act (Chapter 40 of the Laws of Sierra Leone, 1960), the Child Rights Act 2007 (CRA) and the Sexual Offence Act 2012.

# VIII. Minimum age of criminal responsibility

## International standards:

UNCRC Article 40(3)(a) requires State parties to establish “a minimum age below which children shall be presumed not to have the capacity to infringe the penal law”.

Rule 4 of the Beijing Rules recommends that the beginning of the minimum age for criminal responsibility (MACR) “shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity”.

The CRC has established that a MACR below the age of 12 years is not internationally acceptable and furthermore, urges State parties not to lower their MACR to the age of 12,<sup>27</sup> which would be contrary to the principle of using judicial proceedings and detention as a means of last resort. Furthermore in terms of the upper age-limit for juvenile justice, the CRC recommends that states who allow 16-17 year-old children to be treated as adult criminals change their laws with a view to achieving full application of their juvenile justice rules to all persons under the age of 18 years.<sup>28</sup>

## National standards:

The CRA section 2 defines a child as “...a person below the age of eighteen”. The interpretation section of the CPA defines a child as a “...person under the age of fourteen years”. It further defines a young person as a “person who is fourteen years of age or upwards and under the age of seventeen years.”

The adoption of the CRA increased the MACR from 10 to 14 years in Sierra Leone.<sup>29</sup> Part 4 Section 70 stipulates that a child shall not be held criminally responsible for acts below the age of 14 years in any judicial proceeding in Sierra Leone.

Cap 44 Part 1 18(2) prescribes that no order or judgement of a juvenile court shall be invalidated by any subsequent proof that the age of the person has not been correctly stated to the court and the age found by the court to be the age of the person brought it shall for the purpose of this ordinance be deemed to be the true age of that person.

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<sup>27</sup>CRC General Comment no. 10 (2007) paras.32-33.

<sup>28</sup>ibid, para. 38.

<sup>29</sup> Part 4, Section 70.

Cap 31 part 2, rule 15 states that when a person, whether charged with an offence or not is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that he is a child, the court shall make due enquiry as to the age of that person, and for the purpose shall take such evidence as may be forthcoming at the hearing of these cases.

In 2010 the Ministry of Social Welfare, Gender, and Children's Affairs with support from UNICEF and Sierra Leone Police (SLP), in collaboration with Justice Sector Development Programme (JSDP), DCI and PWSL developed "Age Assessment Guidelines" with the purpose of determining the age of children in conflict with the law, child victims and witnesses.<sup>30</sup> These were developed as a result of regular disputes over the age of children in conflict with the law as well as misuse and overuse of detention as a result. These set-out guidelines for using evidence collection methods such as birth certificates, baptismal certificates, naming ceremonies, school records and medical records as well as respect for the principle of 'benefit of the doubt'<sup>31</sup>, informal evidence such as statements from parents, relatives or witnesses and that medical examination should be means of last resort. The guidelines needed endorsement by the Chief Justice.

## Actual Practice:

There are recorded instances of children detained below the age of 14 years both in police stations and juvenile detention facilities and children as young as 11 have been found in these homes.<sup>32</sup> According to Defence for Children International (DCI) Sierra Leone Chapter, "Beyond the law assessing the realities of juvenile justice in Sierra Leone" (2010) it is stated that despite revision to the law, research indicates that children below the age of 14 years continue to be apprehended and interrogated by police officers, charged to court and subsequently convicted.<sup>33</sup>

A court monitoring report of 2008/09 from Young Men's Christian Association (YMCA) shows that 28 and 25 children respectively below the age of criminal responsibility were charged to various magistrate courts. This report further includes statistics of children below the age of criminal responsibility in 2009 that were tried in the Magistrate Court.

The 2009 PWSL report on the Status of Women and Juveniles in Detention<sup>34</sup> includes information concerning unlawful detention. A 13 year old suspected offender was unlawfully

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<sup>30</sup>Ministry of Social Welfare, Gender, and Children's Affairs (MSWGCA) with support from UNICEF and Sierra Leone Police (SLP), in collaboration with Justice Sector Development Programme (JSDP), Defence for Children International (DCI) and Prison Watch: "Age Assessment Guidelines", January 2010.

<sup>31</sup>A favorable judgment given in the absence of full evidence.

<sup>32</sup> Findings based on PWSL detention monitoring activities and reports.

<sup>33</sup>DCI, *Beyond the law and assessing the realities of juvenile justice in Sierra Leone*, p. 27.

<sup>34</sup>Supported by the British High Commission in Sierra Leone.

detained in the Bo district state prison without a valid commitment order. His detention was neither authorized by the Justice of Peace nor the Magistrate.

Although the “Age Assessment Guidelines” have been endorsed by the Chief Justice and are currently in use, PWSL have found that most law enforcement officers as well as prosecutors, magistrates and judges are not knowledgeable about the guidelines. In spite of the fact that the guidelines include recommendations to ensure implementation, these have yet to be effectuated. Furthermore, shortcomings of the guidelines can be found in that required evidence can be hard to come by, especially considering that many children and young people that come into contact with the justice system do not have birth/baptismal certificates, medical records or school papers as their births have not been registered, they have not been in the hospital – or hospital records are not available, and furthermore the person in question has never attended school. The principle of ‘benefit of the doubt’ is also found not to be respected even though parents or relatives provide testimony to the age of the child. In addition, PWSL has recorded examples of authorities not respecting birth certificates provided as these are found to be easy to obtain unlawfully when required.

Although criminal matters involving juvenile offenders are strictly the domain of the magistrates courts (sitting as juvenile courts),<sup>35</sup> this is not respected by the chiefdoms in the provinces where these cases are often tried under customary law. As a result, the age of criminal responsibility is most often not respected.<sup>36</sup> When a child commits an unlawful act when under age, the parents are often summoned to take responsibility for the conduct of the child and the parents will often be charged with a fine for the misconduct of their child. Furthermore, the local chiefdom court will often assess whether a child is fit for punishment or detention not by their age but by looking at criteria such as whether the child is sexually active. However, in local communities children will often be sexually active from as young as 11 years so below the MACR in Sierra Leone. Despite advocacy campaigns and interventions to prevent child marriages, these do still occur in many local communities outside the Western Area, and female children are still entered into marriages from 12-14 years. As a result, it is common to find child parents from 14-16 years in these communities, and when a child is a parent, it is no longer considered a child in the local community and by the chiefdom court.

## Conclusion:

The MACR set-out in the CRA meets the requirements of international human rights standards and the recommendations made by the CRC. In the West African region, Sierra Leone has the second highest MACR, and a much higher MACR than most countries on the African continent where many countries have a lower MACR than what is recommended by the CRC. Sierra

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<sup>35</sup>Children and Armed Conflict Unit, *Juvenile Justice in Sierra Leone*, September 2000, p. 7.

<sup>36</sup> Findings based on PWSL monitoring activities.

Leone can thus be a model for other African countries to raise their MACR to comply with the UNCRC.

Even though the CRA definition of a child is in line with the agreed international standard, yet other acts like the CPA, especially the interpretation section, continues to refer to persons under 14 as children and person from 14-17 as young persons, and provisions of the prisons rules of 1960 continue to make reference to young persons from age 17-21 years which makes the legislation unclear. These should be amended to follow the UNCRC definition of a child, as well as the CRC recommendations to ensure that all juvenile justice rules apply equally to all children below the age of 18 years.<sup>37</sup>

Furthermore, the application of CAP 44 part 1 18 (2) could result in unlawful detainment of a minor contrary to UNCRC article 37(b).

In terms of actual practice, the authorities are not complying with the MACR set-out for the country and has failed to effectively implement the age assessment guidelines due to the reasons explained above.

## **Recommendations:**

The CPA and the Prison Rules should be repealed to ensure compliance with the UNCRC. The UNCRC definition of a child should be respected so to ensure that all juvenile justice rules apply equally to all children below the age of 18 years.

Government through the Ministry of Social Welfare, Gender and Children's Affairs should operationalize the "Age Assessment Guidelines" throughout the country and take immediate action to ensure that police officers, FSUs probation officers, social workers, police prosecutors, court clerks, magistrates, judges and prison officers receive training and copies of the guidelines. The Human Rights Commission of Sierra Leone (HRCSL) has in 2010 recommended that police and judiciary make proper use of the guidelines.<sup>38</sup> Furthermore, ensure that Courts rendering judgements over children and suspected juvenile offenders have adequate tools available to conduct age assessments of suspected juvenile offenders. In cases where the recommended evidence for age assessment is not available, it is recommended that police prosecutors and magistrates instead rely on evidence collected in the community of the suspected offender, and that this recommendation be included in the actual "Age Assessment Guidelines".

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<sup>37</sup>Belgium 10/6/95 CRC/C/15.Add.38 [Concluding Observations], [Sri Lanka 21/06/95, CRC/C/15.Add40, paras.22 and 40], and Children and Armed Conflict Unit, *Juvenile Justice in Sierra Leone*, September 2000, p. 4.

<sup>38</sup> Annual report of the HRCSL 2010.

Furthermore, action should be taken to raise awareness about the MACR and the “Age Assessment Guidelines” in all of the 147 chiefdoms throughout Sierra Leone with a special emphasis on the rural and more remote areas. This should include information on that juvenile justice is to be administered by the formal justice system and/or child panels and not by the chiefdoms’ courts.

# IX. Arrest

## International standards:

UNCRC article 37 (b) stipulates that no child must be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.<sup>39</sup>

Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action, UNCRC article 37(d).

Rule 10.2 of the Beijing Rules prescribes that “A judge or other competent official or body shall, without delay, consider the issue of release’ which should be understood in the light of ICCPR article 9(3) which stipulates ‘Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power [...]’”.

The CRC emphasizes that states set and implement time limits for due process guaranties and that these should be much shorter than those set for adults and applicable at all stages of the process.<sup>40</sup>

Further, article 40(2)(b) prescribes that ‘every child alleged as or accused of or recognized as having infringed the penal law must be ensured the following guarantees:

*(i) To be presumed innocent until proven guilty according to law;*

*(ii) To be informed promptly and directly of the charges against him or her, and if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;*

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<sup>39</sup> This is also stipulated in rule 13(1) of the Beijing Rules.

<sup>40</sup>CRC general comment no. 10 (2007), para. 52.



Beijing Rules, rule 10(1) stipulates that *'upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified [...], where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter'*.

Furthermore, during arrest and detainment in police detention, the child must be separated from adults at all times unless it is considered in the child's best interest not to do so. The child shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances, UNCRC art. 37(c).

## National standards:

The Sierra Leone Constitution section 17 (2) states that any person who:

- a) is arrested or detained shall be informed in writing or in a language that he understands, at the time of his arrest, and in any event not later than 24 hours, of the facts and grounds of his arrest and detention;
- b) any person who is arrested or detained shall be informed immediately at the time of his arrest of his rights of access to legal practitioner or any person of his choice and shall be permitted at this own expense to instruct without delay a legal practitioner of his own choice and to communicate with him confidentially.

Section 17 (3) of the Constitution stipulates that any person who is arrested or detained in such a case as mentioned in paragraph (e) of (f) of subsection (1)<sup>41</sup> who is not released shall be brought before a court of law:

- a) Within ten days from the date of arrest in cases of capital offences carrying life sentences and economic and environmental offences; and
- b) Within 72 hours of his arrest in case of other offences

Sierra Leone has not enacted any laws pertaining specifically to protecting the due process and general rights of suspected juvenile offenders. Instead it is the CPA which regulates conditions of arrest regardless of age, sex etc. and which is applied with respect to suspected juvenile offenders.

CPA, section 10 prescribes that all arrested persons shall be brought before a court without delay.

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<sup>41</sup>Section 17 (1), e) for the purpose of bringing him before a court or tribunal, as the case may be, in the execution of the order of a court; or f) upon reasonable suspicion of his having committed or of being about to commit a criminal offence

Part 1 section 15 of the CPA states that *“except where the person arrested is in the actual course of the commission of a crime or is pursued immediately after escape from lawful custody, the constable or other person making the arrest, shall inform the person arrested of the cause of arrest, and if the constable or other person is acting under the authority of a warrant shall notify the substance thereof to the person to be arrested, and if so required shall show him the warrant”*.

CPA Part 1, section 4(1) is very instructive on how arrest is made. It states that *“in making an arrest the constable or other person making the same shall actual touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action”*.

CPA part 1, Section 4(2) stipulates that *“if such person forcibly resists the endeavour to arrest him, or attempt to evade the arrest, such constable or other person may use sufficient force to affect the arrest but no more”*.

## **Actual practice:**

Monitoring records have proved that juveniles in the Approved School and Remand home were detained in police station beyond 72 hours and 10 days detention regulation as provided in the Constitution.

There is excessive use of detention after arrest of suspected offenders. Monitoring records reveal that children are arrested and detained in the Freetown Central Maximum Prison (popularly referred to as Pademba Road Prison) for charges such as loitering. Furthermore, even though the law provides an exception for arrest without warrant (part 1 section 11 of the CPA of 1965), yet the high incidence of arrest without warrant appears to be the norm rather than the exception. This is also the actual situation for children in detention in the juvenile facilities.

Interviews with children found in detention in police stations and prisons, reveal that, most of them are unaware of the actual grounds of their arrest. What they will tell you as reason for their arrest will be different from what is found in their charge sheet. Most often they are surprised of the charges against them which they are unaware until when they are brought before a magistrate.

Almost all persons, including children in police custody are not informed about their rights to legal representation by the police officers. Mostly during arrest, they are not allowed to speak to anyone except during monitoring visits. Sometimes, the suspected offenders do not have the possibility to contact or establish contact with their families until after several days in detention.

On 24 February 2011 a child on his way from school was accused by a man of stealing a phone. The complainant called onlookers who rushed at the suspect and beat him up. He was later

taken to the Public Works Department (PWD) police post. Here, he was beaten by the complainant again in the presence of the police officers on duty who responded by detaining the suspect instead of restraining the complainant for beating him. The suspect was later taken to the Ross Road police station for further investigation. Later he was charged to court and sentenced to serving 4 months in the Approved School or to pay for the phone. The complainant was never charged for the beatings. The example shows that the key legal guarantee of being considered innocent until proven guilty was not respected by the police.

Upon arrest, juveniles are not always secured separation from adult suspect offenders when held in police stations and prison. In Sierra Leone, there are 14 judicial districts, with seventeen prisons for adults and three juvenile homes of which two are found in Freetown and one in Bo. Police stations were constructed without initial consideration of juvenile detention. The cells are small and some of the police stations were not originally built for detention purposes. The Kissy police station was originally built as a post office but was later converted to a police station. PWSL monitoring data and visits have revealed that suspected child offenders are not separated from adults while held together in police custody and prisons together with adults. In some police stations in the Western Area (Freetown), PWSL have been able to observe and confirm children that are handcuffed to the window in the reception area or behind the police counters and in the custody of crime officers. Even though, PWSL acknowledge this act as an effort on the part of the police to ensure separating child offenders from adults, yet this infringes the child's dignity (general principle of UNCRC) and privacy (Beijing Rule 8) as he/she is then on public display at the police stations in open areas where others come to file complaints etc. Furthermore, it is a violation of part IV 57 of the CRA which instructs that all juvenile cases must be dealt with by FSU.

## **Conclusion:**

The current national legislation does not provide adequate legal safeguards and due process guarantees with respect to suspected child offenders. The provision allowing for detainment of a child for 72 hours up to 10 days without access to habeas corpus<sup>42</sup> is not in compliance with the UNCRC article 37(d) and the Beijing Rules when also keeping in mind the CRC emphasis on establishing shorter time limits than for adults with respect to decisions in the criminal justice process.

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<sup>42</sup> "You shall/should have the body (in court)". A legal action (writ) used to bring a person under arrest before a judge or court to determine if the person's detention or imprisonment is lawful. The remedy can be sought by the prisoner or by another person coming to the prisoner's aid.

Furthermore, the regular breach of the 72 hour and 10 day rule as well as detention without bail being the rule rather than the exception are all a violation of the key principles in UNCRC article 37(b), notably “*measure of last resort and for the shortest appropriate period of time*”.

Also, there is a regular breach of the principles of *right to assistance* and *prompt information of family and relatives* and no legal assistance is provided.

Even though the Government can be commended for the enactment of the CRA, it does not provide adequate protection and safeguards for suspected juvenile offenders during arrest. CRA has been criticised by civil society organisations and is described as a document of political convenience rather than an actual implementation of the CRC.

## **Recommendations:**

In the true spirit of protecting children in conflict with the law, PWSL urge the government to revise the CRA and other existing legislation to include due process guarantees to ensure adequate safeguards. The government should implement the UNCRC without reservation.

It is further recommended that the Ministry of Social Welfare, Gender and Children’s Affairs to take proactive steps and fully commit itself to the setting up of Child Welfare Committees at district, chiefdom and village levels. This will ensure diversion of children from the formal justice system and promote and pursue alternative disputes resolution mechanisms.

PWSL welcome the efforts of government through partners DCI Sierra Leone, for the construction of holding cells in the Central and Aberdeen Police Stations for children. Even though we applaud this as a step in ensuring separation, PWSL however encourage government to continue to exploit alternatives of dealing with juvenile offenders and use detention of children as the last resort.

The government through the Ministry of Social Welfare, Gender and Children’s Affairs should ensure that children who are detained in police stations and prisons, be given maximum protection and not allowed to be detained in areas or cells used by adults.

PWSL recommends that all recruit police and prison officers, juvenile detention and prison officers receive training on all relevant international and national standards as well as practical training with respect to dealing with suspected juvenile offenders. Furthermore, FSUs should receive specialized training to enable them to protect the best interests of children in conflict with the law. Further, this knowledge and capacity should be ensured already at the early training level of recruits, and therefore it should be included in the police and prison training school curriculum.

# X. Pre-trial Detention

## **International standards:**

As already emphasised, the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time, UNCRC art. 37(b).<sup>43</sup>

Rule 13 of the Beijing Rules is central and important to pre-trial detention. In addition to article 37, rule 13(2) stipulates that whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting.

UNCRC article 37(d) prescribes that every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

UNCRC article 37(c) emphasises that all children deprived of their liberty must be treated with humanity and respect for the inherent dignity of the human person – taking into account the needs of the persons of his or her age. Furthermore, it calls for State parties to ensure that every child deprived of their liberty is separated from adults unless it is considered in the child's best interest.<sup>44</sup>

While in custody, juveniles shall receive care, protection and all necessary individual assistance, including social, educational, vocational, psychological, medical and physical assistance, Beijing Rules, rule 13(5).

In addition, information on admission, place, transfer and release should be provided without delay to the parents, guardians or closest relative of the juvenile concerned, Havana Rules, rule 22.

## **National standards:**

Part II (5) of Cap 44 “when a person apparently under the age of seventeen years is apprehended with or without a warrant and cannot be brought forthwith before a court, the officer in charge of the police station to which such person is brought shall –

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<sup>43</sup> This is also stipulated in rule 13(1) of the Beijing Rules.

<sup>44</sup> Also prescribed by Beijing Rules 13(4).

- (a) Unless the charge is one of homicide or any offence punishable with imprisonment for a term exceeding seven years; or
- (b) Unless it is necessary in the interest of such person to remove him from association with any undesirable person; or
- (c) Unless the officer has reason to believe that the release of such person would defeat the ends of justice,

Release such person on a recognisance being entered into by him or by his parents or guardians, or other responsible person, with or without sureties for such amount as will in the opinion of the officer secure the attendance of such person upon the hearing of the charge”.

CRA article 71 provides for the setting up of Child Panels in each district that shall have non-judicial functions to mediate in civil and criminal matters. Furthermore, article 75 establishes alternative measures for dispute resolution and diversion from the criminal justice system, including imposing community guidance and supervision.

### **Actual Practice:**

Children continue to be sentenced to pre-trial detention and are held on pro-longed basis. Court monitoring records of children on pre-trial detention reveal that children continue to be subject to lengthy pre-trial detention. Even though the CRA calls for setting-up Child Panels and establishing alternative measures for diversion from the juvenile justice system, these have not yet been established. The latter has previously been raised as an issue needing immediate government attention by both the CRC and HRCSL.<sup>45</sup>

PWSL holds recorded evidence of suspected offenders that have been held on pre-trial detention for 2-4 years. On many occasions during monitoring visits, PWSL has encountered children on lengthy pre-trial detention; one example was a child who had been on pre-trial for 7 years (2 years in the maximum prison and 5 years in the Remand Home). Another later convicted juvenile spent 3 years on pre-trial detention.

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<sup>45</sup> A/HRC/WG.6/11/SLE/2 section 34 and HRCSL Annual Report 2011 p. 42.

The practice of release until hearing and trial should follow Part II (5) of CAP 44, and in practice children on pre-trial detention are most often not charged with homicide or other severe offences. However, release always entails proof of ownership of landed property within the area where the court is situated as well as the provision of an amount that is impossible for the parents or guardian to meet.

These requirements make release of a suspected offender almost impossible. Most often the parents or guardians will have insufficient funds to pay or live in the proximity of the court whereas they do not fulfil the requirement of owning landed property in the area. Furthermore, PSWL has evidence of children held on alleged charges of loitering and other less felonious crimes for which they should have been qualified for release until hearing and trial, instead these children were held on prolonged pre-trial detention.

Children continue to be detained together with adults in police stations, juvenile institutions and prisons. The fact that few holding or separate detention facilities exist for children in conflict with the law has been used as arguments by both police, and the judiciary for the detention of suspected juvenile offenders in adult prisons. There are only three juvenile institutions in the entire country, two in Freetown and one in Bo. Even though FSUs are charged with the responsibility of handling juvenile matters, yet not all police stations have FSUs. There are no separate constructed holding cells for children. Children arrested are detained in cells meant for females that are either empty

### *The Remand Home*

The Remand Home is an institution where suspected juvenile offenders between the ages of 14 and 17 are held in detention. In Sierra Leone, there are two Remand Homes, one in Freetown and the other in Bo. The Remand Home is a transitional home for later convicted juvenile offenders or children who come in conflict with the law.

The Remand Home in Freetown was constructed immediately after the Second World War in 1945 with funds provided by the British Government. It was built initially as reformation school for juvenile offenders. During the ten year civil war in Sierra Leone, the rebels upon entering Freetown, vandalized the facility and carted away with equipment from the home. However, at the end of the home was restored in 2004 with funds provided by the Justice Sector Development Project (JSDP).

The Remand Home in Freetown is located at Kingtom in the Western Part of Freetown. The home has three buildings at the moment, one housing the children on remand, the administrative block, and the residence for the Officer in Charge and the Matron. As of 17 October 2012 there are 21 offenders at the Remand Home.

at the time of their arrest or they are detained with female suspects. Currently, the DCI and UNICEF are assisting the government in constructing FSU structures and holding cells for juveniles in the Western Area which might alleviate the situation but still this is only currently in the Western Area and will not aid the current situation in other and more remote parts of the country. In Makeni, a female suspected offender was detained in the Makeni State prison. Even when the mother had provided her birth certificate revealing that she was indeed a child, she still continued to be held in prison, since the authorities did not trust the authentication of the certificate.<sup>46</sup>

The UNCRC prescribes prompt access to legal and other assistance especially on pre-trial detention. Monitoring interviews with children from the Remand Home reveal that children do not have legal representatives. Where representation was provided, many children were represented by one lawyer, who is representing many other clients at the same time which results in a low level of representation afforded. Previously, through the United Kingdom Department for International Development (DFID) funded Justice Sector Development Programme (JSDP) legal aid was provided for children in conflict with the law, however, this provision of legal aid has ceased to function after the government took over the responsibility of the JSDP. Recently, the Legal Aid Bill of 10 May 2012 was passed which provides for legal assistance to all indigent Sierra Leoneans, including children. However, the Legal Aid Act needs to be implemented and has not changed the situation yet.

Complaints were received over the long and unnecessary waiting time in court cells. Sometimes children are brought from the Remand Home to court day after day without their cases being heard due to the backlog in cases. Furthermore, the vehicle allocated to the Remand Home to transport children to the court is not always provided as required or no fuel is available, which has the result that the suspected child offenders do not show up for trial.<sup>47</sup>

Contrary to rule 13(5) of the Beijing Rules, facilities in the juvenile homes are acutely inadequate and in most cases non-existing. Although the Remand Home Rules 11 establishes the obligation to ensure for education for "*inmates of school age*" and the Education Act of 2004, Part II(3)(2) prescribes the requirements of the compulsory education this is not provided by the institution and the Ministry of Social Welfare, Gender and Children's Affairs. It remains a huge challenge as there is no structured educational system in place for children held in detention. Prior to interventions from civil society organisations,<sup>48</sup> children detained in the juvenile facilities lost all contact with the educational system and their formal education was discontinued as a result.

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<sup>46</sup>See section VII for explanations of why authorities tend to disregard birth certificates as evidence of age.

<sup>47</sup> PWSL report, *The Status of Women and Juveniles in Detention* (2009), p. 10.

<sup>48</sup> DCI, Family Homes Movement and Prison Watch Sierra Leone.



Interviews with Remand Home and Approved School staff revealed serious constraints in ensuring that the children are connected with their families during detention and upon release allegedly caused by lack of financial means provided by the Ministry of Social Welfare, Gender and Children's Affairs. PWSL linking and tracing intervention has revealed that children and juveniles are released without the knowledge of their parents or guardians, leaving the children in a very vulnerable situation upon release. The intervention has been successful in connecting the children in the juvenile institutions with their parents and relatives and has in some cases resulted in the parents reassuming responsibility and support for the child while in detention and upon release.<sup>49</sup>

## **Conclusion:**

UNCRC articles 37(b) and (d) are not respected, and legislation and/or guidelines providing adequate protection of suspected child offenders with respect to pre-trial detention have not been adopted.

The key principle of using pre-trial detention *as a means of last resort* is not respected. Furthermore, the alternative measures for dispute resolution prescribed by the CRA are not in effect, the Child Panels have not been set-up. CAP 44, Part II(5) is not applied effectively and the requirements for sureties and bail are disproportionate and not matching the local context.

The justice sector lacks the capacity structurally, both due to lack of human and financial resources to effectively ensure the separation of children and juveniles from adult suspected offenders.

Legal representation is seldom provided by the state, and when provided it is of a very low standard, not meeting the needs of the child or requirements of UNCRC article 37(d).

Finally, children on pre-trial detention have almost no access to social, educational, vocational, psychological, medical and physical assistance. They linger in detention without access to any activities until their hearing and trial starts.

## **Recommendations:**

The government should consider amending the CRA to include protections as prescribed by UNCRC article 37(b) and/or possibly adopt guidelines ensuring respect for UNCRC and CAP 44 by law enforcement officers and the prosecution as well as securing actual implementation.

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<sup>49</sup> For more information on the linking and tracing intervention see footnote 5.

Furthermore, the government should take immediate action and ensure that the mechanisms for dispute resolution and diversion prescribed in the CRA are established and provided with sufficient resources to carry out their mandate. The Child Panels if functional will help to divert child offenders from accessing the formal justice system. It will also ensure justice for child victims.

Immediate action should be taken to bring down the use of pre-trial detention as well as interventions to bring down the prolonged length of pre-trial detention. This should include the appointment of a Magistrate for the juvenile court and residential magistrates for each of the different districts, as also recommended by the HRCSL in 2011.<sup>50</sup>

It is recommended to put in place a 'visiting and hearing system' entailing having the Juvenile Justice Magistrate visit and hold court sessions within the Remand Home frequently to ensure respect for the 72 hour rule and Part II of CAP 44. This will also aid the logistical and financial problems related to transporting the children to court.

The government should revive the national legal aid programme established by the JSDP to ensure that children have legal representation during hearings and trial, and implement the Legal Aid Act.

The current situation of children lingering in pre-trial detention without any access to social, educational and medical care etc. should be aided by government taking effective measures, including development of a policy and implementation plan as well as provision of funds for these.

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<sup>50</sup> HRCSL Annual report 2011, p. 40.

# XI. Conditions of detention during pre-trial and imprisonment

## International standards:

UNCRC article 37(c) stipulates: *“Every child deprived of their liberty shall 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 [...]”*. The provision applies to both pre-trial and imprisonment and further calls for ensuring the juveniles contact with his or her family through correspondence and visits.

The CRC urges State parties to ensure full respect for and implementation of the Havana Rules and at the same time pay due consideration to the UN Standard Minimum Rules for the treatment of Prisoners (1955).

The Havana Rules are instrumental when considering conditions of detention for juveniles. Rule 66 and 67 of the Havana Rules prescribe respect for the inherent dignity of the juvenile and the fundamental objective of the institutional care, namely instilling a sense of justice, self-respect and respect for the basic rights of every person. Disciplinary measures are strictly prohibited including CIDTP and corporal punishment, including solitary confinement, placement in a dark cell or any other punishment. Reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should only be viewed as an educational tool and as a means of promoting self-respect of the juvenile in preparing him or her for the return to the community.

*“Upon admission to the detention facility, juveniles must be informed of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand [...]”*, Havana Rules, rule 24. The juvenile should also be interviewed with the purpose of designing an individualised treatment plan specifying objectives and time-frame, rule 27. The plan should include educational aspects and leisure activities. Furthermore, due attention must be paid at all times to ensure appropriate:

- Physical environment and accommodation which allows for proper rehabilitation, including access to recreational activities, sports, physical exercise, arts and leisure time
- Access to education and possibility for preparing to return to society and future employment

- Medical examination upon admission to the detention centre and access to medical care during imprisonment
- Contacts with the outside world, including right to receive weekly visits and have access to telephone calls as well as have access to keep themselves informed of news
- Restraints or force can only be used when the child poses an imminent threat to him or herself or others, and only when all other means of control have been exhausted. It must never be used as a means of punishment.
- Any disciplinary measure must be consistent with upholding the inherent dignity of the juvenile and the fundamental objectives of institutional care – disciplinary measures in violation of CRC article 37(a) must be strictly forbidden.
- Access to issue complaints to the central administration, judicial authority or other independent mechanisms. Children need to be informed and have easy access to complaints mechanisms.
- Independent and qualified inspectors should be empowered to conduct inspections of detention facilities.
- All staff must be educated and sensitised to the specific needs of the children / juveniles.<sup>51</sup>

## National Standards:

### **Right to life and maximum survival and development**

Part III 23 (1) of the CRA states that *“every child has the right to life and to survival and to development to the minimum extent possible”*.

### **Right to life, dignity, respect, leisure, liberty, health**

Part III 26 (2) of the CRA states that *“Every child has right to life, dignity, respect, leisure, liberty, health, including immunization against diseases, education and shelter from parents”*.

Cap 44, Approved School Rules, section 42; rule 12(1) prescribes different activities that the juvenile should have access to while detained, including recreational and outdoors activities.

### **Right to protect from exploitative labour**

Part III 32 (1) of the Child Rights Act states that *“no person shall subject a child to exploitative labour as defined in sub section 2”*.

### **Right to family visit and contact with the outside world**

CAP 44, the Approved School Rules, section 42, rule 12 (3) and (4) provides for access to home leave and support to letter writing.

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<sup>51</sup> Havana Rules Section D – K.

CAP 44, Approved School Rules, section 42, rule 12(5) states that visits may be made by parents and guardians at such intervals, as the headmaster determines from time to time. The headmaster may suspend any of these rights if he is satisfied that they interfere with the discipline of the school. Any such suspension shall be recorded in the schools log book.

### **Right to food and beds/beddings**

Cap 44, the Remand Homes Rules, section 42, rule 6 states that each inmate shall sleep in a separate bed.

Cap 44, the Remand Homes Rules, section 42 (7) states that inmates shall be supplied with sufficient and varied food as laid down by the dietary scale approved by the director of medical services.

### **Contributions Orders**

Cap 44 Part IV 30 (1) states that any court having power to commit a child or young person to an institution, or Approved School shall have power to make orders on the parents or guardians or other persons liable to maintain the child or young person to contribute to his maintenance during the period of his maintenance during the period of committal such sums as the court may think fit and may from time to time varies such orders.

### **Complaints**

Cap 44, the Remand Homes Rules, section 42, rule 22 provides for the establishment of a visiting committee that is to pay at least 4 unannounced visits to the Remand Home each year. Furthermore, it provides for the justice of the Juvenile Courts to be able to access the Homes.

## **Actual Practice:**

### **General conditions**

Life in the children and juvenile homes continues to be a struggle for survival characterized by shortage of food, poor sanitary conditions. In the Remand Home, children are kept under constant lock and key, and in the Approved School excessive lock-down is used by management as a means of preventing escapes. Life in the juvenile institutions is harsh and does not correspond with the UNCRC enshrined principles of respect for right to life, survival, development – and dignity.

Children are kept under constant lock and key with very limited space to move. Life in the juvenile institutions is less dignified and very harsh. Children are often arrested and following detention the state might not even have clothes to provide for them. Humanitarian interventions from NGOs like PWSL have complimented the effort of government to provide second-hand clothing for the juveniles.

## **Physical Environment and Accommodation and recreational activities**

Suspected offenders and juveniles continue to be incarcerated under harsh physical conditions. The iron bars on all windows gives the impression a prison environment more than a juvenile institution or a school. No wonder the children themselves are living under the impression of being in a prison. The institutions continue to be challenged with poor accommodation facilities and services. In the Approved School; children use sanitary buckets which are kept in the same room where they sleep. The beds are constructed of cement and most times the juveniles sleep on card boards due to inadequate supply of foam mattresses. This has untold negative effects especially during the rainy season given the hard surface with no beddings and the fact that the homes are fairly close to the sea which leaves the children affected by the cold and with rheumatism. This suggests that the primary consideration of the authorities is on containment and physical security rather than human and social rehabilitation. The Remand Homes and the Approved School seriously lack the provision of recreational activities. As earlier described, the children and juveniles spend many hours every day in their sleeping quarters / cells. Despite having the facility of a volleyball court in the Remand Home, the children are hardly permitted to use the court or allowed out for exercise.

### **Food**

The food provided is of very poor quality and inadequate portions. Government provide food through contractors, who supply food and other non-food items to the Approved School and Remand Home on a quarterly basis. It is a common occurrence that

### *The Approved School*

The Approved School is located in Wellington in the Eastern part of Freetown. It is a residential institution where juveniles who have been convicted by the court for various crimes are usually committed for custody for specific period as may be determined by the court. It is the only institution for convicted juvenile offenders in Sierra Leone.

The Approved School like the Remand Home was constructed immediately after the Second World War in 1945 with funds provided by the British Government. The initial purpose was to reform and rehabilitate juvenile offenders whilst in detention. However, at the climax of the civil war in Sierra Leone, the Rebels and their allies vandalized the facilities with impunity. With the war coming to an end, the Justice Sector Development Programme (JSDP) provided funds to renovate the facility in 2004.

The home at present has six buildings, two dormitories for the juveniles (one for males and one for females), a classroom block, a vocational center, an administrative building, a kitchen and one extension toilet. However, at the moment, the female block is not in use because there are no female offenders committed to the Approved School. As at 17 October 2012 there are 17 male juveniles at the Approved School.

contractors have refused to supply food to the juvenile homes as a result of overdue payments. This has created acute food shortage and lack of basic and essential sanitary supplies which have led to the children staging violent strikes. The children appear shabby and malnourished. Interviews with children reveal that they do not receive three meals a day; it is actually two and sometimes only one. The children have explained their normal feeding habits in the following way: “*twelvo*” (12:00) and “*fivo*” (5:00 PM). This gives an indication of the times they are actually served food. “*Twelvo*” means their first meal is at 12 noon and “*fivo*” means their dinner is at 5PM. This explains why the children are always begging for money or coins when they see visitors.<sup>52</sup>

### **Access to Education**

The Approved School appears to be a dead end for children who are attending school. Detention in the Remand Home and Approved School means an end to children’s academic growth. However, under the Justice Sector Development Project with the support of the Ministry of Social Welfare, Gender and Children’s Affairs, PWSL was commissioned to prepare the first set of juveniles detained in the Approved School for public exams at the Basic Education Certificate Examination (BECE). The outcome is very successful for all of the children. Most of them did remarkably well and following release they have been able to continue their school. However dozens of children who were going to school prior to their detention continue to languish and risk becoming dropouts.

### **Possibility for returning to society and prepare for future employment**

Careful observation of the movement of children in and out of the juvenile homes have revealed that when they are released from detention, instead of moving out and moving on, PWSL have observed that they come back to the institutions. Currently, there is a former juvenile offender detained in the Freetown Central Prison who had only been out for 6 months before he was arrested and detained on a different charge. In the Kambia State prison in the North, another child offender had been arrested and detained on a different charge, less than two weeks of his release. In Kabala, a juvenile offender who was detained on a charge of malicious damage was found in Kenema on a larceny charge. This holds true for a majority of children and juveniles released from detention. Many become recidivists as a result of the environment in the juvenile institutions – and lack of opportunities. This seriously questions the role of the Remand Homes and the Approved School in providing and ensuring rehabilitative and restoring treatment of the suspected offenders and convicted juveniles.

There is no structured reformation programmes aimed at ensuring the human and social development of children in the juvenile homes save that provided by NGOs.

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<sup>52</sup>Here it should be noted that many Sierra Leoneans are used to two meals a day, and the less fortunate population sometimes only have one meal a day.

### **Medical examination upon admission and general access to health care**

Children continue to be admitted to detention and held in the juvenile institutions without prior medical examination or access to regular medical facilities. The services provided by the government are very poor and sometimes entirely absent, similar to the situation in the adult institutions. Adequate medical treatment thus rests with civil society organisations.<sup>53</sup>

### **Contact with the outside world and right to family visit**

Children continue to languish in the juvenile institutions waiting for sureties to bail them.<sup>54</sup> The Juvenile Home Detention Managers continue to excuse their inability to facilitate contact between the children and their family due to logistical consideration. Children do not have the opportunity to contact their parents, relatives or friends by phone or letter. The latter also being unrealistic means of contact in the local context as many senders and receivers cannot read or write.

Through the previous mentioned PWSL linking and tracing intervention, PWSL has been able to connect the juveniles with their parents or families which have contributed to re-establishing family connection and sometimes support. For more information on the linking and tracing intervention confer to section I. Introduction.

### **Instrument of Restraints**

Interviews with children and evidence of handcuff marks on their hands suggest the use of handcuffs. On occasion, inmates have been found handcuffed to a window inside their dormitory as a means of punishment rather than for preventive measures.

### **Complaints**

Although there is a provision providing for the establishment of a Visiting Committee for the Remand Home, it has not been established. Furthermore, the Remand Home's Rules do not provide any guidance on the actual powers and functions of such a Committee. The Approved School Rules do not provide for the establishment of a monitoring mechanism. In the Act establishing the HRCSL, there has also not been included any provision vesting the Committee with powers to monitor the Juveniles facilities. At present, there is therefore no complaints mechanism or oversight in place for the Remand Homes and the Approved School.

Instead, the presence of PWSL human rights and detention monitors has produced a platform for inmates to channel their complaints that can serve as a conduit for dispute resolution. Complaints are now discussed with the Officer in Charge (OIC) whose busy schedule does not permit him to always be in the juvenile institution. Unlike the Remand Home where the OIC is physically resident on the Remand Home facility, the OIC in the Approved School lives outside the premises leaving the inmates to the social workers and the prison guards for much of their stay.

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<sup>53</sup> GOAL, Family Homes Movement and Humanitarian Philanthropy.

<sup>54</sup> Confer to section IX on pre-trial detention for explanation of the rules on bail and sureties



## **Staffing**

There are persistent recurring institutional problems with the staffing as well as the education of the staff. This is caused by several things, including allocation of too few and inadequately educated and trained staff to the institutions, lack of training and experience to work with children in conflict with the law and juvenile delinquents as well as the positions to be considered as a demotion from the actual prisons service and the general low salary of prisons officers in the country.

Prison Officers continued to be relied on for complementary support especially for security. This has proved very disadvantageous to the children as they are treated as adult prisoners by the prison officers. As a result, they use excessive lockdown measures. Interviews with prison officers at the Juvenile Homes reveal that they have very little or no training/experience at all in working with juveniles in conflict with the law. This explains the reason why children continue to think that they are in a prison and not an institution of "reform". During regular PWSL monitoring activities the detention monitors have on several occasions encountered prison staff under the influence of alcohol while on duty at the Approved School.

Staffs in charge of the juvenile homes continue to be characterized by a feeling of neglect, disgruntlement, and frustration, lack of interest for the job, unattractive salary and poor conditions of service which does not support the building of a rehabilitative and restorative environment.

Monitoring observations revealed that juveniles are engaged in outdoor labour activities at the behest of the workers and sometimes in their homes. During a linking and tracing of one of the inmates in the Approved school, the team had wanted to link the child with his relatives through a cell phone. The team had to wait for over an hour to finally connect the boy with his relatives. When asked, he replied "*I was running an errand for one of the officers*".

## **Conclusion:**

The conditions of detention in Sierra Leone with specific reference to the juvenile institutions are far from compliant with UNCRC and the Havana Rules as well as the national rules prescribed in both the Remand Home Rules and the Approved School Rules.

Even though there has been no direct violation of the right to life of children in the juvenile institutions, yet right to leisure, health, dignity, and education is seriously compromised. Conditions of detention are extremely poor and health-hazardous and sometimes even life threatening.

The focus is more on physical restriction and social exclusion rather than human and social reformation. The majority of the convicted juveniles who are detained for misdemeanour end up as recidivists and for much serious crimes later on in life. PWSL monitoring records support this statement, as detention monitors often encounter former juveniles – now serving sentences in adult institutions for more felonious crimes.

Currently, there are no mechanisms in place for monitoring and serving as complaints mechanisms in the Remand Homes and the Approved School.

## **Recommendations:**

Firstly, PWSL urge the government through the Ministry of Social Welfare, Gender and Children's Affairs to exploit an alternative family support care system that will be cost effective, practicable and sustainable and divert children from being held in the juvenile institutions.

As the above description reveals, the conditions of detention are extremely poor and at times health hazardous and it is recommended that the government take immediate action to draft and initiate a comprehensive reform programme of the juvenile institutions. The programme should include action plans for implementing the guidelines outlined for treatment of suspected child offenders and juveniles in the Remand Home Rules and Approved School Rules with the final aim of improving conditions of detention at all levels. The government can possibly seek the support of key stakeholders within the international organisations and civil society organisations focusing on juvenile justice in Sierra Leone. It is evident that human and financial resources are obtained and allocated to improve conditions of detention. .

Furthermore, it is recommended that government ensure that personnel working with children in conflict with the law have the required training and experience, including knowledge of the Remand Home and Approved School Rules.

When children and young people are detained, emphasis should be on reformation rather than containment. To this end, PWSL urge government to take measures to ensure that the right to education and recreation is respected and to develop alternative care policies to aid children in detention and upon release.

Finally, PWSL recommends that an effective complaints mechanism for the Remand Homes and Approved School is set-up. This could possibly entail establishing the 'Visiting Committee' under the Remand Homes Rules and expanding the mandate of the Committee to the Approved School and/or ensuring that the HRCSL have the powers and resources to regularly monitor the institutions and serve as a complaints and oversight mechanism.

# XII. Prohibition of Torture, Ill-treatment and Death Penalty

## International standards:

UNCRC article 37 (a) stipulates that “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age”.

UNCAT article 1 defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Furthermore, the UNCAT prohibits any other acts of cruel, inhuman or degrading treatment or punishment that does not amount to torture as defined in article 1.

Each State Party to the UNCAT must take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.<sup>55</sup>

When considering sentences the possibility of release or parole should be realistic and regularly considered, and the principles and aims of juvenile justice enshrined in UNCRC article 40 (1) must be respected at all times.<sup>56</sup>

## National standards:

### Torture and ill-treatment

*The Constitution article 20 (1) states that no person shall be subject to any form of torture or any punishment or other treatment which is inhumane or degrading.*

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<sup>55</sup> UNCAT article 2.

<sup>56</sup> CRC general comment no. 10 (2007) para. 77.

CRA section 33 (1) prescribes that *no person shall subject a child to torture or other cruel, inhuman or degrading treatment or punishment including any cultural practice which dehumanizes or is injurious to the physical and mental welfare of the child.*

The CRA section 33(1) and (2) does not effectively repeal the Prevention of Cruelty to Children Act in terms of corporal punishment for purposes of 'correction', but reaffirms the concept of 'reasonable' and justifiable correction of children. CRA article 33(3) however repealed the Corporal Punishment Act and it is no longer permitted as a sentence.<sup>57</sup>

### **Death Penalty**

Part VI section 216 of the CPA 216 states that "*Sentence of death shall not be pronounced or recorded against a person convicted of any offence if it appears to the court that at the time when the offence was committed he was under the age of 18 years; [...]*".

### **Actual Practice:**

Incidences that could amount to torture and cruel, inhuman, degrading treatment and punishment (hereinafter torture and ill-treatment) have been found in the Remand Home and Approved School, noting the fact that the poor and appalling conditions of detention can amount to ill-treatment. Children have complained of excessive cold especially during the rainy season, forced to sleep on naked cement constructed beds without beddings and mattresses, served two meals, sometimes even one per day that is inadequate.

Monitoring activities have revealed that juveniles are sometimes handcuffed to windows in their dormitory as a means of punishment. Cuff marks on the hand of children found in detention and interviews with them have proved beyond doubt the use of handcuffs by prison officers.

The use of excessive lock-down measures applied by the OIC as a defense for preventing escape has without a doubt negative psychological effects on juveniles. Furthermore, this has often led to serious violent strikes.

Interviews with children in the Approved School also reveal that they are often insulted by officers who refer to their crimes in the presence of other children who have in turn tagged

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<sup>57</sup> See also, UN HR UPR of Sierra Leone in 2011. JS3 stated that corporal punishment of children was culturally entrenched in Sierra Leone with physical abuse often inflicted in the guise of discipline. Global Initiative to End All Corporal Punishment of Children (GIEACPC) noted that corporal punishment was lawful in the home and at school. The Child Rights Act adopted in 2007 did not repeal article 3 of the Prevention of Cruelty to Children Act and reaffirmed the concept of "reasonable" and "justifiable" correction of children [article 33(2)]. In the penal system, corporal punishment was unlawful as a sentence, but there was no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions. Corporal punishment was lawful in alternative care settings.

them with their crimes which create stress. The use of separate cell continues to be used as punishment especially in the remand home.

PWSL has never received complaints from the Remand Homes or Approved Schools regarding the use of corporal punishment.

## **Conclusion:**

The government still need to take active legislative measures to domesticate the UNCAT and abolish corporal punishment.<sup>58</sup>

The government of Sierra Leone has not carried out death sentence since October 1998 and the moratorium on death penalty is still in force. However, death penalty is still part of the criminal justice legislation.

General detention conditions under which children are detained remain harsh and inhumane and can amount to ill-treatment.

## **Recommendations:**

It is recommended that the government take urgent action to ensure implementation of the UNCAT and repeal the CRA so to include an explicit prohibition of corporal punishment in all settings, including within the juvenile justice system and institutions.

The government should consider establishing effective mechanisms that can help prevent torture and ill-treatment in all places where persons are deprived of their liberty, including the juvenile institutions. This could entail ensuring that the HRCSL has the necessary human and financial resources to carry out their monitoring mandate. This could assist the process of establishing national mechanisms to prevent torture and also support the government, if it should consider to ratify the Optional Protocol to the UNCAT in the future.

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<sup>58</sup> As also recommended by the CRC and included in the UPR working group report A/HRC/WG.6/11/SLE/2, para. 29.

# XIII. Bibliography

## **UN Conventions, standards, rules and guidelines**

UN Declaration of the Rights of the Child (1959)

International Covenant on Civil and Political Rights (1966)

UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

UN Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) (1985) UN Res 40/33

UN Convention on the Rights of the Child (1989)

UN Rules for the Protection of Juveniles Deprived of their Liberty (“The Havana Rules”) (1990) UN Res 45/113

UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines”) (1990) UN Res 45/112

## **CRC reports and general comments**

Committee on the Rights of the Child, General Comment 10, *Children’s rights in juvenile justice*, 25 April 2007

CRC Concluding Observations, Sierra Leone CRC/C/SLE/CO/2, 20 June 2008

Belgium 10/6/95, CRC/C/15.Add.38 Concluding Observations

Sri Lanka 21/06/95, CRC/C/15. Add.40

## **UN Human Rights Council**

Universal Periodic Review of Sierra Leone, UN Human Rights Council, 2011

Universal Periodic Review, Working Group Report, A/HRC/WG.6/11/SLE/2

## **Sierra Leone Constitution, national legislation and guidelines**

Constitution of the Republic of Sierra Leone (1991)

The Protection of Women and Girls Act, Chapter 40 of the Laws of Sierra Leone, 1960

The Prevention of Cruelty to Children Act, Chapter 31 of the Laws of Sierra Leone, 1960 (“Cap 31”)

Children and Young Persons Act, Chapter 44 of the Laws of Sierra Leone, 1960 (“Cap 44”)

The Anti-Human Trafficking Act (2005)

The Child Rights Act (2007)

The Sexual Offence Act (2012)

Age-Assessment Guidelines, Children in Contact with Justice System, Ministry of Social Welfare, Gender and Children’s Affairs and others, January 2010

## **Reports and articles**

*Annual report of the Human Rights Commission of Sierra Leone 2010*

*Annual report of the Human Rights Commission of Sierra Leone 2011*

*Beyond the law and assessing the realities of juvenile justice in Sierra Leone*, Defence for Children International, 2010

*Children living in prison: Insights from Sierra Leone*, AdvocAid, January 2008

*Juvenile Justice in Sierra Leone, An analysis of Legislation and Practice*, International Bureau for Children’s Rights, Children and Armed Conflict Unit, by Rachel Harvey, September 2000

Report on Sierra Leone, 12 January 2012, US Department of State

<http://www.state.gov/outofdate/bgn/sierraleone/194935.htm>

Sierra Leone Country Brief, The World Bank, 2011

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/SIERRALEONEEXTN/0,,menuPK:367833~pagePK:141132~piPK:141107~theSitePK:367809,00.html>

*Sierra Leone, Country Profile: Human Development Indicators*, UNDP 2011

UNDP, '<http://hdrstats.undp.org/en/countries/profiles/SLE.html>

*Sierra Leone targets child and maternal mortality*, by Yves Willemot and Alusine Savage, UNICEF [http://www.unicef.org/infobycountry/sierraleone\\_34898.html](http://www.unicef.org/infobycountry/sierraleone_34898.html)

*The Status of Women and Juveniles in Detention*, Prison Watch Sierra Leone, 2009

