Training Course on Juvenile Justice for Officials from Sierra Leone

in cooperation with
Justice Sector Development Program (JSDP)
Delegation of Sierra Leone

Good Practice and Visits

August 2010

Working Report
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THE SWISS LEGAL SYSTEM FOR YOUNG OFFENDERS
Jean ZERMATTEN Director of IDE

PLAN

ATTENTION : **New law**
The Models
Law of inspiration "welfare"
- The objectives of the law
- Distinction between juvenile delinquents and juvenile endangered
- The ages of intervention and the conditions of place
- Statistics
- Catalogue and characteristics of the measures and the penalties

The models

In the world, there are three models that inspire the juvenile court's systems :

- the Welfare Model,
- the Justice Model, or Control model
- the Restorative Model.
The Welfare Model

The Welfare Model puts the emphasis on the person of the young offender. The latter is seen more as victim than as an offender: victim of his family, of his history, of his environment, of his immaturity, of the hazard of care....

- So, the justice does not have to punish him, but to look for the causes of his behaviour and to act on them.
- The principal answer to the offence is not a sanction, but a measure. The question of the responsibility isn't important.
- The central role of the judge
- The model of the Model was the French legislation of 1945, still in function, but adapted several times since its entry into force.

The Justice Model

The Justice Model, on the contrary, is based on the idea of a young offender responsible of his acts and who has chosen to "malpractice". So he has to pay in the form of a retributive punishment.

- The central role of deprivation of liberty
- In this model, the procedural rights of the young are very developed, but not the possibilities of taking care.
- The question of guilty or not guilty is the central point of the trial. If this model goes until his last logic, it means the end of the specific courts for juveniles.
- This system is used principally in countries with a long tradition of common law.
The Restorative Model

The Restorative Justice Model goes from the idea to involve the victim(s) in the process and from the other idea of reparation/restoration. The young offender has to face his/her victim(s) and to do something in order to repair his fault. These two ideas are important and it’s a fact that during a long time, the victims have been forgotten.

• Often, the restorative elements are linked with welfare or Justice approaches
• With this model, the Mediation and the Service Community Orders appear and become more and more applied.
• There is no "only" Restorative Justice Model but we can mention that the Austrian law for juvenile (1988)

The Swiss blended « Model »

• Fidelity to the welfare Idea (art. 2 of the Swiss Law) : objectives = Protection and Education
• But with restorative elements : important place to Mediation at different stages and Community Services Orders
• ... and more severity : deprivation of liberty up to 4 years and possibility to place in closed facilities
The objectives of the Swiss law

The 5 objectives are:

• Educational
• Curative/Care
• Preventive
• Social integration/reintegration
• Protection
  - of the victims
  - public security

General ideas of the Swiss system

Distinction

• Minors/juveniles endangered
• Minors delinquents
• Minors endangered

Civil authorities = tutelarian system

Several models: 26 Cantons (counties)

• Minors delinquents

Penal authorities = Juvenile Court
specialised courts with specialised judges
### Conditions of age

- **0-10 years old**: absolute irresponsibility
- **10-18 years old**: relative responsibility
- **15, 16 years old**: age limit for deprivation of liberty
- **18 years old**: penal majority (civil, civic)
- **18-25 years old**: “young adults”
  - total responsibility but a watered-down intervention

### Conditions of place

- **Inquiries**: place where the act is committed
- **Judgment**: place where the young lives
- **Foreigner**: rules can change
Statistics

GENERAL COMMENT

Generally speaking, the situation in Switzerland is characterized by:

- A **sharp rise** in the number of minors charged and convicted in juvenile court,
- A shift from “adult” delinquency **towards juvenile delinquency,**
- A **change in the type of offenses** committed by minors,
- The question of violence

---

**Number of minors condemned in Switzerland**

- 1990  **6'803**  - 2000  **11'314**
- 1991  **7'278**  - 2001  **12'319**
- 1992  **7'357**  - 2002  **12'854**
- 1993  **7'930**  - 2003  **13'483**
- 1994  **8'243**  - 2004  **14'363**
- 1995  **7'983**  - 2005  **14.106**
- 1996  **8'900**  - 2007  **14'236**
- 1999  **12'238**  - 2008  **14'632**
Number of minors condemned in Switzerland

From “Adult” Delinquency towards Juvenile Delinquency

- For quite a long time most offenses were committed by adults, with an over-representation of young adults (18-25 years old).
- Now however, although the majority of those brought before the law enforcement authorities are adults, the numbers of juveniles subjected to criminal proceedings is becoming proportionately higher.
- Thus, from approximately 15% of all recorded offenses being committed by minors the figures have risen almost to **one quart / one third**
Changes in the Type of Offenses Committed

a) **Offenses against the penal code (general) property**
   - 2001: 7'396 convicted juveniles
   - 2003: 8'217 convicted juveniles
   - 2004: 8'866 convicted juveniles
   - 2008: 9'175 convicted juveniles

b) **Offenses against the physical integrity**
   - 2001: 1'600 convicted juveniles
   - 2003: 1'755 convicted juveniles
   - 2004: 2'068 convicted juveniles
   - 2008: 2'268 convicted juveniles = **16 %**

c) **Drugs-related offenses**
   - 2001: 4'957 convicted juveniles
   - 2003: 4'953 convicted juveniles
   - 2004: 5'199 convicted juveniles
   - 2008: 4'535 convicted juveniles

---

Increasingly Young Offenders

One characteristic of the new data is that offenders are committing their offenses at an increasingly young age. This holds true throughout the Western world.

- In Switzerland juvenile courts have found themselves in the throes of this trend.

- This situation poses additional difficulties since the age of these young offenders often corresponds to a delicate period compounded by the educational status of the young who at times are no longer accepted at normal educational institutions, and have been expelled from them (compulsory education...!).

- The lack of appropriate structures to deal with this type of situation create difficulties.
POSSIBILITIES OF INTERVENTION

The Judge has many possibilities

- To divert (investigation stage) by non-suit, refusal to take action, dismissal, acquittal, withdrawal of complaint, conciliation
- To renounce to punish = remission
- To mediate = mediation
- To pronounce a measure
- To punish

The restorative aspects

- **Mediation**: at three stages of the intervention: investigation, judgment and implementation of a measure
- The objective is to confront author and victim with two aspects: reparation (damage) and restoration (social relationships)
- If the young offender and the victim find an agreement, the case is dismissed
- If no agreement, the case goes to trial
- **Community service orders** plays an important role in Switzerland (normal or as way not to deprive of liberty)
Measures’ Characteristics

• Idea of protection (offender is a victim); system said dualist: measure or / and punishment
• Priority of the measure
• The measure have to be accepted
• The term of the measure is not fixed
• The measure can be changed / adapted to the evolving development of the offender

Protective Measures
Penalties’ characteristics

- Subsidiary with regard to the measures
- Idea of retribution (the child is guilty), but educational contents
- The term is fixed
- The question of the deprivation of liberty from 15 until 1 year
- From 16 until 4 years for aggravated offences
- Swiss speciality: obligation to renounce (art 21 = remission)
Necessity of collaboration

The Juvenile justice is a **system**

Not only the prosecutor / judge but

- the parents
- the police
- the social services
- the psycho-social services
- the lawyer
THE RESTORATIVE JUSTICE, THE GUIDING PRINCIPLES

Renate WINTER, Member of the Appeals chamber of the UN Special Court of Sierra Leone

<table>
<thead>
<tr>
<th>Hypothesis</th>
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<tbody>
<tr>
<td><strong>Current System</strong></td>
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<tr>
<td>• A crime is an act against the State, a violation of the law, an abstract idea</td>
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<tr>
<td>• The criminal justice system controls the crime</td>
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<tr>
<td>• The offender must be punished, he is guilty</td>
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<tr>
<td><strong>Restorative Justice</strong></td>
</tr>
<tr>
<td>• A crime is an act against another person and against the community</td>
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<tr>
<td>• The control of the crime concerns primarily the community</td>
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<tr>
<td>• The offender: takes responsibility and commits himself to repair the damage</td>
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<table>
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<th>Current System</th>
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<tr>
<td>• The threat of punishment deter them of committing a new crime</td>
</tr>
<tr>
<td>• Punishment modifies the behaviour</td>
</tr>
<tr>
<td>• Victims are at the periphery of the process</td>
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<table>
<thead>
<tr>
<th>Restorative Justice</th>
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</thead>
<tbody>
<tr>
<td>• Recognition of the responsibility deters from committing a crime</td>
</tr>
<tr>
<td>• The commitment to repair modifies the behaviour</td>
</tr>
<tr>
<td>• The victims are central in the process of finding a solution to a crime</td>
</tr>
</tbody>
</table>
Current System
- The offender is defined by his deficiencies
- The stress is put on a relation of opponents
- A pain to punish and prevent
- Goal: to dispense justice
- The community is put aside, it is represented by the State (prosecutor)

Restorative Justice
- The offender is defined by his/her capacity to repair
- The stress is put on the dialogue and negotiation between members of the community
- Restitution as a way of redress/ restoring the relationship between the two parties
- Goal: reconciliation / healing
- The community as a mediator in the restoration process

We must distinguish

Distinctions must be made between:
- Children in conflict with the law that fall within criminal law,
- The child in danger who falls within the social services and not the justice,
- The child victim or witness who must benefit from protection measures because he/she risks to live again what he has been subjected to.
Principle of proportionality: the answer to the criminal act must be

- Adapted to the circumstances
- Adapted to the child
- Adapted to the facts
- Adapted to the goals pursued

Children deprived of their liberty
37 (b) CRC
No arbitrary or unlawful deprivation of liberty. The arrest, detention or imprisonment of a child shall be in conformity with the law and used only as a measure of last resort, and for the shortest appropriate period of time
1. First consideration: the best interests of the child (3 CRC)
2. Imprisonment; is it the last resource?
3. How long must the minor be deprived of his/her liberty?
   What is the shortest appropriate period?

The alternative measures (1)

- They are ways of resolution of conflicts, of restoration and of reparation of the damage suffered
- They resolve conflicts when justice only gives a judgment
- They try to restore peace
- They put into question the State’s exclusive right, to denounce, to resolve the conflict
- They are rooted in the tradition of every country
The alternative measures (2)

The alternative measures can take place 3 times in the procedure:

- **Before trial:** it is diversion by extrajudicial resolution means. Depending on the country, the policemen or the prosecutors can have a large latitude to solve the problem without starting the legal process.

- **During trial:** the legal process is then suspended to enable the research of an alternative, and if this succeeds, the judge closes the case.

- **After trial:** the young person is found guilty and either not sentenced, or he is sentenced to a penalty that will not be carried out to enable the research of alternative measures.

The alternative measure put into place is chosen according to the gravity of the offence and to the reoffending. It is possible to cumulate various alternative measures.
DIVERSION AND EXTRAJUDICIAL SYSTEM

- The extrajudicial system is largely accepted

- The alternative measures to deprivation of liberty are important to reduce subsequent offence

List of possible alternative measures (1)

- Community service order
- Youth-contracts between the judge and the minor
- Community homes for groups to deal with the gang phenomenon
- Group orientation by the Houses of justice
- Exercises in the nature (Confrontation of the minor to a difficult or dangerous situation to make him/her realise that he/she needs the others)
List of alternative measures
(2)

- Criminal reprimand or warning
- Fine (to be used only if the minor has an income available)
- Payment of indemnities
- Redress
- Mediation
- Conciliation (author, victim and community)
- Confiscation
- Family conference (traditional alternative measure)
- Group conference
HOW TO DEVELOP THE RESORT TO ALTERNATIVE MEASURES

1. Police, prosecutors, lawyers, judges, social workers, educators and penal establishment employees training separately and then jointly.

2. Institutionalize meetings.

3. Establish detention institutions, open and semi-open, specialised institution for offenders with mental or addiction problems.

4. Create networks with social administrations scattered everywhere for prevention and survival.

We can say that the application of alternative measures is hard to sell but costs less in the end.
DIVERSION / RESTORATIVE JUSTICE
Jean ZERMATTEN Director of IDE

• The two notions are not very clear,
• Both refer to the necessity to find alternatives to the traditional retributive sanction: the deprivation of liberty
• One can say that Diversion is a part of RJ
• Or that they are different

Diversion Legal framework

• « States shall seek to promote...whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected ». Art. 40 par. 3 CRC
Diversion refers to this non formal (judicial) intervention.
DIVERSION, definition

- Diversion means « to divert » young offenders from formal criminal justice system (formal court processes) to another type of answer.
- Through this process the young comes to realise that there are other options apart from crime.
- The idea of Restorative justice is an important component of diversion.

DIVERSION, Objectives

- To encourage the child to be accountable for the harm he/she caused
- To prevent re-offending
- To provide an active role to the victims (reconciliation)
- To prevent the stigmatization and to give the child a second chance
- To avoid delays, costs and traumas of the trial
- To reintegrate the child in the family/community
- To use the courts and jails only for serious crimes
DIVERSION, Benefits

- For the child in conflict with the law
  break the cycle of stigmatisation,
  violence, rupture of relationships
  avoid labelling children and reinforcing
  their criminal experience
  avoid limiting the options for their
  reintegration and future
  provide concrete programs

DIVERSION, Benefits (2)

- For the society
  Children reintegrated are active young,
  Avoid exclusion of a important number of
  young people,
  Non-formal justice is cheaper than court
  procedures,
  Imprisonment is very expensive,
  Better perception of the youth, public
  awareness
DIVERSION, Forms

- Written or oral apology or reprimand
- Agreement to attend school regularly or to stay home during certain hours
- Prohibition to go to certain areas
- Restoration of property taken or damaged
- Payment or non-cash activity to redress the damage caused
- Informing the protection authorities or require their care
- Counseling sessions for the child
- Training course, therapy groups, guidance, supervision orders...

DIVERSION, requirements

- Competence given to police officer, prosecutor, judge, by the law
- Not very serious offence
- Absence of certain types of offence (against life, sexual nature)
- Absence of public interest in punishing (general prevention)
DIVERSION, guarantees

- principles enshrined in the law (legality)
- limited power of civil servants
- avoid arbitrary ways by giving the child/parents the opportunity to refuse
- avoid corruption by the opportunity of complaint
- provision stating clearly that the file is closed after diversion.

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Restorative Justice

legal framework

« A variety of dispositions, such as care, education and vocational trainings programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to the their circumstances and the offence. »
CRC 40 par. 4
Restorative Justice refers to the alternatives
RESTORATIVE JUSTICE
Principles

- Criminal justice systems in many countries are 'retributive', punishing the offender. Focus on the crime itself more than on the people involved. However, this is often not in the best interests of the victim, the offender, or society in general. Those parties involved may emerge from the process further alienated, more damaged, disrespected, disempowered, feeling less safe and less cooperative with society.

RESTORATIVE JUSTICE
Principles (2)

- The restorative justice, focuses on 'restoring' damaged relationships (between victim, offender and community), to 'make things right as much as possible.'
- It promotes solutions to repair damage, reconcile parties involved, restore community harmony and reassure those involved, with the active participation of the offender, victim and community.
- The offender takes responsibility for the crime and makes amends to the victim and to the community. It allows for repentance, forgiveness and reintegration.
- Restorative justice emphasises the need for a 'proportionate response' and is a much more sustainable and effective response to crime which is much more likely to reduce re-offending.
RESTORATIVE JUSTICE
Principles (3)

- Restorative justice applies to people of all ages but it is especially important for young offenders as it provides the option of having a lasting impact on their emotional and moral development.
- It can stop the process of a young offender turning into an adult offender.
- Restorative justice recognizes that not all offenders will choose to be cooperative. Therefore there is a need for an outside authority to make decisions for the offender who is not cooperative.

RESTORATIVE JUSTICE
Benefits

- Focus on the relationships (not on the offence or offender)
- The reaction is to repair not to punish/treat
- The objective is to restore, not to deter
- The position of the victim is central
- The social context is democratic: (community-offender-victim’s participation)
- For the child: responsibility, not anger
RESTORATIVE JUSTICE
Forms

- The aim of RJ is to find alternatives to the detention
- Apart the forms for diversion mentionned, the three main forms of RJ are:
  - Mediation (confrontation victim-offender)
  - Community Service order (repair the harm done, with a personal activity)
  - Family groups Conference (community)

RJ, requirements and guarantees

- If the forms of RJ are choosen in an informal intervention (without procedures), the requirements and guarantees are the same than for diversion
- If the forms of RJ are decided by the judge or the Court, the requirements and guarantees are those included in the law (criminal procedure code)
RESTORATIVE JUSTICE: a Better system

Getting the right balance
Restorative justice is about balancing the rights of offenders, rights of victims and concern for public safety and crime prevention.

For the COMMUNITY: a better SAFETY
For the VICTIM: the possibility to PARTICIPATE
For the OFFENDER: RESPONSIBILITY AND REHABILITATION

THE QUESTION OF TRAINING

1. Police, prosecutors, lawyers, judges, social workers, educators and penal establishment employees training separately and then jointly
2. Institutionalize meetings.
3. Appropriate the interdisciplinary method: the law itself is insufficient, we need pedagogy, psychology, social work, criminology...
4. And we need to know and trust each other
THE PSYCHOLOGICAL APPROACH OF JUVENILE JUSTICE
Philip D. JAFFÉ, University of Geneva and Director of the Children’s Rights Unit, IUKB

LEGAL PSYCHOLOGY?

☐ Field at the interface of PSYCHOLOGY and the LAW

☐ Studies the reciprocal influences of human behavior and the web of laws and rules that regulate the social group and our environment

☐ Legal psychology is at one a field of research and a field of practice... a very diverse profession

MAIN COMPONENTS OF LEGAL PSYCHOLOGY

☐ Police psychology

☐ Psychocriminology and juvenile delinquants

☐ Psychology of detention / prison psychology

☐ Interventions in favor of specific populations (e.g.: victimology, child protection, mandated treatment, etc.)

☐ Judicial psychology

ACTIVITIES OF LEGAL PSYCHOLOGISTS

- private practice
- courts
- child protection services
- victims advocates
- prisons, halfway houses, juvenile justice system
- law enforcement
- psychological and psychiatric institutions
- universities (teaching and research)
- civil society, NGO’s, etc.

ACTIVITIES OF LEGAL PSYCHOLOGISTS

- **Fundamental and applied research** on all that concerns the legal system and its actors (e.g., ce qui concerne le système légal et/ou les acteurs de ce système (e.g., criminal behavior of children in CWL, but also how judges think and judge, what attitudes do the police show when confronted to specific situations such as CSA, how do jurors reason, how does memory work when you have been traumatized, etc.)

- **Training and education** of all the actors within the judicial system (police officers, prison staff, psychologists, lawyers, judges, psychologists, social workers, psychiatrists, etc.)
@ the interface of PSYCHOLOGY and LAW

Psychology OF Law... what psychological insights contribute to the development of theories on how the Law and legal procedures operate and affect our society

Psychology IN the Law... that is the beneficial use of psychology and psychologists within the justice system at large

HISTORY

Psychology is a young science, about 115 years old... exploded since the 1950ies

legal psychology dates back to the earliest days of psychology
Precursors

James Cattell (1860-1944)

in 1895 conducted experiments with students simulating the types of questions that are asked in a court room.

Alfred Binet (1857-1911)

Published a book, *La suggestibilité*, on how witnesses are subject to a variety of influences that alter their testimony.
**HISTORY**

*William Stern* (Lewis or Louis) (1871-1938)

Also studied the behavior of witnesses.
Invented the «Sam Stone» situation

*Author of a lovely statement*

«subjective sincerity does not guarantee objective truth

---

**HISTORY**

1896: first psychologist to participate in a trial

*Baron Von Schrenck-Notzing* (1862-1929)

The Baron avwith the medium

Eva C. (1912)
Le Baron **Von Schrenck-Notzing**

In a famous court case proposed a theory on the *retroactive falsification of memory* (the current False memory debate).

---

**1911**: Belgian psychologist Varendonck in a famous court case

Varendonck testifies that children should not be trusted for they have too much imagination, will say anything to please an adult, and that the justice system should rid itself of such « dangerous weapons »

1911 Marbe testifies and convinces a jury that children are not reliable witness. The defendant, a school teacher accused of having molested several young girls, is acquitted!

History recalls that the first famous psychologist working with children in conflict with the Law was an American by the name of Grace Fernald.

She was William Healy’s colleague when he set up, in 1909, the Juvenile Psychopathic Institute in Chicago to study, diagnose and treat juvenile delinquents.
**HISTORIQUE**

*Brown v. Board of Education*

Great debt to the afro-american psychologist **Kenneth B. Clark** (1914-2005).

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**Subdivisions of legal psychology**

1. Law enforcement psychology
2. Psychocriminology or the study of delinquency
3. Victimology
4. Detention psychology
5. Judicial psychology
1. Law enforcement psychology

Some examples...

- assist police departments create better procedures for the selection and hiring of new recruits
- train police to better manage mentally ill people they may come into contact with, teach them how children think and react, victims, women, people from different cultures
- provide debriefing services
- teach police specialized interviewing techniques, e.g. with children in CWL or victims of physical or sexual abuse

2. Psychocriminology

A few examples...

- conduct research on the emergence of antisocial behavior
- develop methods to evaluate future dangerousness of mentally persons, children in CWL, juvenile sex offenders, etc.
- consult on how to reduce bullying practices and set up general prevention strategies in schools
- help identify at risk youth
3. Victim advocate agencies

A few examples...

- evaluate and treat victims or witnesses of crime
- train professionals to understand the processes behind the experience of victimization (e.g., PTSD, etc.)
- consult on complex issues such as national or transnational sex trafficking of minors

4. Psychology of detention

A few examples...

- assist detention and probation services conduct security level assessments and release plans into the community on the basis of estimations of risk of reoffending
- set up and staff treatment residential and community-based treatment programs for juvenile delinquents, sex offenders, etc., based on evidence based methods, i.e., cognitive behavioral, social learning, relapse prevention, mutisystemic therapy, etc.
4. Forensic psychology

A few examples...

- court ordered evaluations (victim credibility, divorce/separation, parental capacity, adoption, criminal responsibility, etc.)

- consultation for lawyers and judges on a variety of topics
Children in difficult circumstances and the CRC new principles

- Right to rehabilitation of children who have suffered various forms of cruelty and exploitation
- Obligation of Governments to take measures to abolish traditional practices harmful to children’s health
- Parents (or others responsible for the child) should provide guidance to the child in exercising his/her rights in accordance with the child’s “evolving capacities”

Art. 19

Protection for abuse and neglect
- Physical or mental violence
- Injury or abuse
- Neglect or negligent treatment
- Maltreatment or exploitation (sexual abuse)
Recommended:

**Protective measures**

- Establishment of social programmes (support for children and caretakers)
- Other forms of prevention (community programmes)
- Identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment (judicial involvement)

---

**Art. 20**

**Protection of children without families**

- Children deprived temporarily or permanently of family environment

- Children removed in their best interest from family environment
Recommended:

**Alternative care**

- Foster placement (host families)
- Kafalah (Islamic law)
- Adoption
- Placement in suitable institutions

Art. 22

**Refugee children**

(Children seeking refugee status or considered a refugee unaccompanied or accompanied) shall get

- Appropriate protection
- Humanitarian assistance

In accordance with the CRC and all other international humanitarian instruments
Recommended:

- Cooperation with UN organizations, IGOs, NGOs
- Assist the child
- Trace the parents/families

(reunification

protection as for children of family environment (Art. 20)

Art. 23

**Handicapped children**
(Mentally or physically disabled children)

- Ensure their enjoyment of a full and decent life in dignity
- Promote self-reliance
- Facilitate active participation in the community
- Ensure special care (free of charge) for:
  - Education
  - Training
  - Healthcare services
  - Rehabilitation services
  - Preparation for employment
  - Recreation opportunities
Recommended:

- Exchange of information (preventive health care, medical, psychological and functional treatment)
- Dissemination of methods of rehabilitation, education and vocational services

Art. 30

Children of minorities or indigenous groups
- Ethnic
- Religious
- Linguistic
- Indigenous origin

Have the right to:
- Enjoy their own culture
- Profess and practice their own religion
- Use their own language
**Art. 32**

**Child labour**

Protection from
- Economic exploitation
- Performing hazardous work
- Performing work that interferes with the child’s education
- Performing work harmful to health, physical, mental, spiritual, moral, social development

Recommended:

- Take into consideration CRC and other international instruments (ILO resolutions 138, 182)
- Provide for a minimum age for admission to employment
- Provide for appropriate regulation of hours and conditions of employment
- Provide for appropriate penalties for those not respecting this Article
Art. 33

Drug abuse

Protection of

- Children from illicit use of narcotic drugs and psychotropic substances
- Prevention of use of children in illicit production and trafficking of such substances

Problems:

- Law must allow for treatment instead of punishment
- Organized crime, especially if members of Government are involved
- Corruption, especially of law enforcement
- Justice: catching few and not the “big fish” and using deterrence by punishing
- Consumer: awareness raising but without inciting curiosity
The question of drugs

Children taking drugs:
- Prevention
- Treatment

Children producing drugs: only possibility for job, drugs as salary

Children transporting drugs: often family enterprise, drugs as salary

Children selling drugs: ("carriers", "bunkers")
- to meet their needs
- no legal possibility for treatment

Art. 34

Sexual exploitation

Protection from sexual exploitation (sexual abuse)
- Prevent inducement of a child to engage in any unlawful sexual activity
- Prevent exploitative use of children in prostitution or other unlawful sexual practices (pedophilia)
- Prevent exploitative use of children in pornographic performances and materials
Recommended:

Consideration of all national, bilateral and multinational measures (Optional Protocol II)

Art. 35

Sale, trafficking and abduction

Prevent

- Sale of children for any purpose,
- Traffic in children in any form

By taking all appropriate national, bilateral and multilateral measures
Art. 36

All other forms of exploitation

Protection against all forms of exploitation prejudicial to any aspect of the child’s welfare (street children)

Art. 38

In respecting all relevant rules of international humanitarian law applicable (Optional Protocol I)
- Ensure that persons under 15 years of age do not take a direct part in hostilities
- Refrain from recruiting any person under 15 years of age into armed forces
- Give priority in recruiting persons between 15 and 18 years of age to those who are the oldest
- Protect all children who are affected by an armed conflict in accordance with international humanitarian law
Art. 39

**Rehabilitative care**

- Promote physical and psychological recovery
- Promote social reintegration into an environment which fosters health, self respect and dignity for a child victim of:
  - Any form of neglect, exploitation, abuse
  - Torture, cruel, inhumane or degrading treatment or punishment
  - Armed conflicts

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**Adoption:**

1) Inside the country (national legislation)
2) International adoption (Hague protocols)

**Foster families:**

1) Crisis placement (8 weeks approx.)
2) Long term placement (contact with family of origin)
3) Placement for children with disabilities (special training)

**Kafalah:**

1) Legal differences to adoption
2) Protection issues after puberty of placed children
CHILDREN IN STREET SITUATIONS
Daniel STOECKLIN, IDE

Child participation: a new paradigm

- Children are active: they are able to take part in family life, school life and community life.

- Children have their own views: they are able to express their opinions in decisions affecting their lives in order to influence them, according to age and maturity.

- Children are social actors: they are able to reflect about their own life experience and their environment, and therefore acquire progressive responsibility as citizens.

Child participation: a challenge to adult-child relationships

- Children are active, but do adults accept that they take part in family life, school life and community life?

- Children have their own views, but do adults accept that they express these opinions in decisions affecting their lives?

- Children are social actors, but do adults accept that they reflect about their own lives and environments and therefore acquire progressive responsibility as citizens?
Socialization: a give and take process

The 3 Ps of the CRC

- Protection
- Provision
- Participation
Participation rights

- Art. 12: the right to be heard
- Art. 13: the right to freedom of expression
- Art. 14: the right to freedom of thought, conscience and religion
- Art. 15: the right to freedom of association and the right to freedom of peaceful assembly
- Art. 16: the right to privacy
- Art. 17: the right to access to information

Art. 12 CRC: the right to be heard

- 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

- 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.
Indivisibility of rights

- Link with Art. 3 (Best interests of the child): it is necessary to include the child’s opinion into the process of decision-making.

- Link with Art. 5: responsibilities, rights and duties of parents or legal guardians: « to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention ».

- Link with civil rights and liberties:
  - Art. 17: the right to information
  - Art. 13: the right to expression
  because the right to receive and impart information is an important precondition to child participation.

Participation as a right to development (evolving capacities)

- Day of General Discussion to the theme “Speak, Participate and Decide – The Child’s Right to be Heard” (15.09.06)

- Committee on the Rights of the Child: “the importance of encouraging opportunities for child participation as a tool to stimulate the evolving capacities of the child”.

- Victor Karunan: “Participation is critical to self-development”; participation “fosters learning, builds life-skills and enables self-protection”.
Self development and social development

- Personal skills strengthen social opportunities

- Social opportunities (including the rights of the child) foster personal skills

The group « children »

- Article 12 is linked to other rights (best interests CRC art. 3, relations with parents CRC art. 5), and to civil rights and liberties, like the right to expression (art. 13) and the right to information (art. 17).

- Therefore, article 12 is not only for the individual child, but for the group « children »: the child has the right to be heard not only regarding his/her own personal situation but also regarding the whole group « children » to which he/she belongs when decisions affecting this group of the population are being taken.
Illustration of a « group » of children: the « street children »

- How are the best interests of “street children” decided upon?... What are the preconditions to help “street children” become part of the decisions affecting them?

- It takes time to be able to define the best interests of these children (trust building).

- strong participation of the child can only be achieved if he/she is consulted from the very beginning of intervention.

Labeling process

- Street children?

or

- Children in street situations?
Categories of «street children»

(From the point of view of project implementing agencies)

There are categories of street children:

- Children on the street
- Children of the street
- Children of street families

Limits to the definitions of categories of street children

R. Lucchini, 1993
Limits to the definitions of categories of street children

- Only two dimensions: time and socialization
- No consideration for shifting situations
- Qualitative assessment based on unquestioned assumptions and representations ("of" the street is worse than "on" the street)
- Statistical and organizational purposes (not child-centred)

Children in street situations: emphasis on the set of interactions configuration
Child-centred approach

Deal with the child’s subjective perception of the situation

Child-centred (insider’s) point of view

From the point of view of the child:

Street life depends on the quality of the existing interactions within and outside the street.

Implications:

• Listen to what the child says about street life.

• Cast light also on those who are in contact with these children, because they are part of the problem, and hopefully also of the solution.
Training Course on Juvenile Justice for Officials from Sierra Leone

Situation as a set of interactions
configuration

Child-Street System
(Prof. Riccardo Lucchini, Fribourg University)

Collect data along these 8 aspects through interviews.
Profiles and career

- Children in street situations may have quite different “profiles”, according to the differential importance these dimensions of street experience may have for them.

- By linking these different dimensions together, one comes to a more accurate image of the way the children actually experience street life.

- It helps identify the child’s life course (street “career”). The child’s life conditions on the streets are the outcome of:
  
  - The constraints that may affect the child
  
  - The child’s own survival strategies according to competences he/she has acquired outside and in the street.
**Bottom-up model of action**

**Structures:** Use and networking of spaces appropriate for the required activities (or creation of such spaces if lacking)

**Options:** Profile-wise choice and combination of empowerment and promotion & prevention options, in order to satisfy children's needs and develop their skills

**People:** Assessment of needs and abilities and identification of typical profiles thanks to the “Child-Street System”

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**The best strategy is to make the child an active participant**

**Resources**
- Social opportunities and personal skills

**Principles**
- UN Convention on the Rights of the Child

**Methods**
- Child-friendly Tools
Principle: The obligation to hear the child (also those in street situations)

- The obligation to hear the child should cover all settings: home, community level, school, judicial and administrative proceedings.

- Obligation to hear the children = design policies and programmes that actually enable children to have their views taken into account.

- The responsibility of state parties to the CRC, and the concrete organisations taking care and empowering such children is to provide them with sufficient and adequate spaces and opportunities for meaningful child participation.

the CRC as a set of principles for the development of capacities

- A fundamental precondition to the development of children’s capacities is the enjoyment of such basic rights as the right to life (art. 6 CRC) and adequate shelter (art. 27 (3) CRC).

- The indivisibility of rights contained in the CRC is clearly bound to the necessity of an integrated approach where participation is just as important as food and shelter.

- It is quite important to first assess the capacities already possessed by “children in street situations” in order to acknowledge them and to foster further capacity building.
Resources: Acknowledging children’s skills

- Children’s capacities may be quite diverse. Children in street situations have developed, mostly out of necessity, some social, symbolic and instrumental competences that are quite important and often more developed than with other children of their age.

- Transposition of skills from deviant areas to socially and legally conform behaviour is in fact the main objective of a project addressing the needs and capacities of children in street situations.

- More sensitive assessment: Acknowledgment of the capacities of children in street situations is a precondition to their participation within the project.

Methods: the challenge to develop child-friendly tools

- They must be understood by the children.

- They must be tested and developed to guarantee that the child will actually be heard.

- They must allow integration of children’s voices in the definition of situations and not define the situations beforehand.
Processes: Levels of participation

- level 8: Child-initiated shared decisions with adults
- level 7: Child initiated and directed
- level 6: Adult-initiated shared decisions with children
- level 5: Consulted but informed participation
- level 4: Assigned but informed participation
- level 3: Tokenism
- level 2: Decoration
- level 1: Manipulation

(Roger Hart, Innocenti Studies)

Processes of participation

- Levels of child participation vary according to the procedures of competent authorities dealing with issues regarding children. The Committee:
  - “calls for States parties to clearly designate (an authority which) establishes direct contact with child and youth led organisations in order to engage with them”.
  - recommends “that children and youth be directly included in the planning, design, implementation and evaluation of National Plans of Action which relate to children’s rights, in recognition of their role as core stakeholders in the process”.
  - encourages “the direct involvement of children in monitoring the implementation of all rights enshrined in the Convention. The Committee recommends that States parties actively involve children in the periodic review process of the Convention”.

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Conclusion

• Processes for child participation should include the children’s own competences.

• It is the best way to include them as social actors and partners in the projects for personal and social development.

• Principles of action inspired with the norms contained in the CRC can be best translated into practice when they are coupled with child participation.
Training Course on Juvenile Justice for Officials from Sierra Leone

CRC AND JUVENILE JUSTICE, LEGAL AND PRACTICAL REFERENCES
Jean ZERMATTEN Director of IDE

Plan of the Presentation

1. Aims of GC No. 10
2. A synthesis of previous international instruments...and something more
3. JJ as a system and form of prevention
4. CRC Principles and JJ: concretisation
5. Interventions, diversion
6. Ages and children in conflict with the law
7. Criminal intervention: which response?
8. Procedural guarantees for a fair trial
9. Deprivation of liberty

Objectives

- To provide SP with guidance and recommendations for their reports,
- To interpret articles 37 and 40 of CRC
- To encourage implementation of all international standards
- To understand JJ as a system and not only as courts
- To help States parties develop a comprehensive juvenile justice policy
- To pay special attention to preventive measures
- To introduce alternative measures without resorting to judicial procedures
Leading principles

Impacts on JJ:
- **Non-discrimination** (art. 2): girls, truancy, recidivism, vagrancy, runaways
- **Best interests** (art. 3): procedural tool and spirit of the Convention
- **Life, survival and development** (arts. 6 + 37): death penalty, life imprisonment, evolving capacities
- **Views of the child** (art. 12): a substantive right and an obligation for States parties
- **Dignity** (art. 40): Justification for separate and specialized justice

The principle of Dignity

**Dignity** (art. 40 (1))
- Treatment that is consistent with the child’s sense of dignity and worth
- Treatment that reinforces the child’s respect for the HR and freedoms of others
- Treatment that takes into account the child’s age and promotes reintegration
- Requires that all forms of violence in penal intervention be prohibited and prevented
Core Elements

CORE ELEMENTS OF A COMPREHENSIVE POLICY

• Prevention of juvenile delinquency
• Interventions and diversion
• Ages and children in conflict with the law
• Guarantees for a fair trial
• Responses to juvenile offences
• Deprivation of liberty, including pre-trial detention and post-trial imprisonment

Prevention

• Primary parental responsibility or subsidiary State intervention
• Help and assistance for vulnerable families
• Ensure a certain standard of life: difficult circumstances increase risks
• The importance of the Riyadh Guidelines (1990)
• Prevention through all, not only specialists
• The role of education and the community (leisure, sports, children’s movements, churches...)
Interventions

2 sorts of interventions

a) Measures without judicial proceedings: **diversion**

b) Measures in the context of judicial proceedings

- Respect of double proportionality: offence and individual circumstances of the child
- Interests of the child vs interests of the community? A good but sometimes difficult balance

Diversion

- Majority of children commit petty offences (shoplifting, limited damage, first offence...)
- States must promote **diversion** by police, prosecutors or judges, i.e.: non-formal solutions in lieu of prosecution
- Apologies, restitution, counseling, warning...
- Diversion with guarantees (art. 40 CRC):
  - the law contains provisions for diversion,
  - child admits responsibility
  - child provides written consent, (as do the parents) on the basis of objective information,
  - child has a legal assistance, if necessary,
  - in case of success: closure of the case
Responses

(A) Pre-trial Measures

- Explore the possibility of alternatives to imprisonment (diversion)
- Pre-trial detention: why, where, how, how long....????
- Pre-trial detention as a measure shows the most frequent cases of violations of the rights of the child: violence, places, torture and other forms of inhuman treatment...

Responses (2)

In the context of judicial proceedings

(B) Disposition by the judge/court

- No death penalty
- No life imprisonment without parole
- Deprivation of liberty:
  - last resort
  - shortest time possible,
  - for very serious crime
- Separation of children from adults
- Proportionality with crime and personal situation
- Large range of measures (see Restorative Justice instruments)
The AGES

• Minimum age of criminal responsibility **below the age of** 12 **years** is internationally considered to be unacceptable.
• States parties are encouraged to increase their low MACRs to 12 years as an absolute minimum and to further increase it to a higher age limit.
• But **not to lower** the MACR to the age of 12!
• For all children who, at the time of their alleged commission of an offence, have reached the MACR and not yet reached the age of 18 **years**
• The upper age-limit for juvenile justice is **18 years**: **no exception** (trend to consider 16 adolescents as adult for certain crimes)

Guarantees for a fair trial

(art. 40 (2) CRC and art. 14 ICCPR)

• No retroactive juvenile justice (terrorism!)
• The presumption of innocence: burden of proof is on the prosecution
• The right to be heard directly: information on charges and the JJ process; each stage of the process
• Prompt and direct information about all charges: official documents and oral explanation
• The right to privacy: behind closed doors
Guarantees for a fair trial (continued)

- Legal or other appropriate assistance (free of charge)
- Decisions without delay; pedagogical impact of the intervention
- Involvement of the parents: assistance and co-operation in the decision-making process
- Presence and examination of witnesses
- The right to appeal
- Free assistance by an interpreter

Child victim and witness

- A comprehensive system must also provide provisions for children when they are victims/witnesses in criminal matters
- The child has the right to have special status in proceedings and to be protected (danger of secondary victimisation...)
- And rehabilitated
- See the ECOSOC Guidelines 2005
  = children in contact with the law
Organization of Juvenile Justice

(art. 40 (3))

- A comprehensive SYSTEM with: laws, procedures, authorities, staff...
- Specialized units in the police, the prosecutor’s office, lawyers
- Specialized courts with specialized judges
- Specialized services such as probation, counseling, guidance, therapy...
- Specialized facilities for treatment and residential care
- Importance of training

Interest of the child vs Public security

A difficult balance

- A global policy is the best response to the zero tolerance trend
- Deprivation of liberty is a short-term answer with perverse effects: exclusion and recidivism
- The JJ system must also take into account public security and provide appropriate solutions for the most serious crimes
- But not «shooting birds with canons»
Chronology and the different steps of the investigation

- **Starting** of the case (report, legal proceedings, denunciation, enquiries etc.).
- **Preliminary police investigation** – enquiries.
- **Contacts** with the juvenile judge or the prosecutor - development strategy.

- **Contact** with the victim (physical checkup, safeguarding of the prints and traces) – preparation of his hearing (relating person, psychologist, specialist LAVI, etc.).
- **Hearing** of the victim in accordance with the LAVI (law on the victim assistance) regulation (video or audio recording etc) - immediate taking in charge or the follow-up of the victim.
Chronology and the different steps of the investigation

- Analysis and retranscription of the hearing.
- Hearing of people being able to provide informations.

- Inquiry into the environment of the offender and the victim.
- To apprehend / arrest the offender in private, educational or professional circle.
- Interrogation.
- Searching / House search – analysis of sequestered and seized objects.
Chronology and the different steps of the investigation

- Information and presentation to the juvenile judge (measures) – Information of the parents.
- Release or incarceration.
- Checks – proofs – locking of the confession.
- Development and transmission of the denunciation report.

Missions of the investigation groups - Subdivisions

Investigation / statements / legal proceedings
- Theft
- Armed robbery
- Fraude
- Offences against the sexual integrity
- Abuse
- Offences against the life (homicide, threat, injury etc.)
Missions of the investigation groups - Subdivisions

Investigation / statements / legal proceedings
- Cybercrime (paedophile)
- Removal of the body
- Prostitution
- Etc.

Narcotic cases
- Traffic = specialized subdivision
- Other = gendarmerie

The Juveniles

Mission that falls into the competences of the juvenile section, according to the swiss penal code and the task distribution between gendarmerie and judicial police.
Typology of the juvenile

- From 0 to 7 years: Early childhood
- From 7 to 12 years: Children
- From 13 to 15 years: Pre-juveniles
- From 15 to 18 years: Juveniles

Children and juveniles in front of the law

- From 0 to 10 years: child, no punishable (Art. 4 DPMin).
- From 10 to 18 years: child / teenager, punishable - (Art. 3 DPMin).
Principles

- Knowledge of the rules governing the intervention by the children and juveniles.
- Professional attitude of the police officer.
- Consider the environment.
- General informations.
- Search for truth.

Interpellation of a juvenile

- Proportional measurements
- Security (personal search)
- Handcuffs if necessary
- Inventory
- Information to the holder of the parental authority
Training Course on Juvenile Justice for Officials from Sierra Leone

Summons

- Written summons (eventually oral agreement with the parents).
- Addressed to the parents of the minor.
- Exceptionally by phone:
  - in a case of emergency
  - through the parents.

Police intervention and interpellation in an educational circle

- In civil only
- In accordance with the direction
- No intervention at school without informing the direction and always in accordance with the juvenile judge.
Attitude of the police officer in front of the juvenile

- Exemplary behaviour.
- Appropriated and adapted language.
- No critics against the parents.
- Resistance to the provocations.
- No conditioning.

Attitude of the police officer in front of the parents

- Put oneself at their place.
- Objectivity.
- Make less dramatic or sometimes dramatize.
- Not judge educational deficiencies.
- Not be opposed in case of differences.
- Contribute to a solving of the problem (advice).
House search

- Agreement of the parents
- Refusal of the parents:
  - search warrant
- Only in front of:
  - a parent or relative
  - a legal representative
  - a person in charge of the institution

House search

- Inventory signed by the juvenile and the parents (representative).
- Mention on the hearing record the origin of the objects.
Hearing

- In accordance with the code of criminal procedure and the juvenile judge.
- According to the case, in presence of the parents or the legal representative.
- The juvenile’s signature.
- No countersignature of one of the parents.
- Confirming visa due acknowledgment.

Among other informations, the hearing record has to contain:

- The name of the legal representative.
- The name of the social reference point / educational trainer.
- The present situation.
- The circumstances and facts seen by the heard person, if possible formulated with her own words.
Hearing

Below mentioned informations about the juvenile’s family are obligatory:

- Father
- Mother
- Marriage
- Separation
- Divorce
- Brothers and sisters
- Attended schools
- Present situation
- Remarks

Hearing of a child under 10 years old

- LAVI regulation (law on the victim assistance).
- If one of the parents is present, mention it in the record.
Environment

The *why* is as important as the *how*

- Situation of the family
- The reasons of the offence
- Relationship
- Hobbies
- Etc.

Back to the parents

- The juvenile is obligatory to be turned over to his parents or the person in charge (school).
- The juvenile (more than 15 years) is allowed to return home by himself (with the parent’s agreement).
**Information to the parents**

- Explanation given by the juvenile himself.
- Reading of the hearing record.
- Details given by the police officer.

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**Apprentices - Students**

- The apprentice-trainer has not to be informed about the intervention and the reason of it.
- Theorically no interpellation of an apprentice on his workplace.
Principles, methods and aspects of the investigation
Principles, methods and aspects of the investigation:

- General evaluation
- Situation of the facts
- Victims
- Scene
- Evidence
- Time
- Manner
- Proceeding
- Place

Legal situation
- Situations of the intervention
- Staff
- Equipment and resources
- Public

Sierra Leone
Principles, methods and aspects of the investigation
Principles, methods and aspects of the investigation

Aspects of the various methods of the criminal tactic

- Analyse / Synthesis
- Observation
- Inspection
- Questioning
- Comparison
- Hypothesis

- Forecast
- Experimentation
- Reconstruction
- Mathematical methods
- Logical methods
Training Course on Juvenile Justice for Officials from Sierra Leone

Juvenile specialists on the Swiss area

Connection between the cantons and vocational training

Examples de l'interconnexion (et formation) intercantonale
Vocational training

The course is especially scheduled for police members in charge of the juvenile delinquency.

Purpose of the course is to acquire:
- General knowledge of juvenile delinquency and its processing in the criminal law.
- Understanding the reasons of the juvenile delinquency and its effect.
- To acknowledge the importance of collaboration and connection between the different juvenile professionals and cantons.
Training Course on Juvenile Justice for Officials from Sierra Leone

**Vocational training**

**Matter of the course:**
- Swiss penal code.
- Understanding the reasons of the juvenile delinquency and its effect.
- Victims and offenders.
- Foreign customs
- Prevention (generally and at school)
- Connection and cooperation
- Particular methods
- Drug addiction / new electronic means
Since 1999 different prevention campaigns were started-up:

1999 – 2001 Together against violence
2002 – 2004 Domestic violence
2005 – 2007 Internet and peadocrime
2008 – 2009 Youth and violence
2010 Youth and violence
CONCLUDING REMARKS
Renate WINTER, Member of the Appeals chamber of the UN Special Court of Sierra Leone

Looking back on five days of intensive work of the Training Course it is necessary to state that this course has been organized around two important issues, a theoretical one and an imminently practical one: presentations concerning legal systems in the field of juvenile justice with a special focus on restorative justice were given mostly during the morning whereas in the afternoons visits to different types of institutions, for boys and girls alike including a court visit, took place. Directors and educators in open, semi-open and closed institutions spoke about their statutes and directives and their really successful policy in trying to solve the individual problems of the adolescents living there and to prepare them for another chance in their life.

The interventions given by judges at the one had side and by experts and practitioners at the other, underlined despite of different professional mandates of the speakers that an efficient juvenile justice policy is possible only as a team work between justice and psychology; between well trained and specialized Youth police, Juvenile prosecutors, Juvenile judges and qualified personnel for different and if possible small institutions; that supervision and monitoring as well as credible and complete statistics are necessary in order to provide a better youth policy adapted to the special needs of children in an ever changing world.

As a recommendation for developing the juvenile justice system for Sierra Leone in accordance with the Considerations of the Committee on the Rights of the Child, I would like to suggest a continuous cooperation between the Supreme Court of Sierra Leone and the International Institute of Child Rights in Sion in order to provide training curricula for the on the job training for juvenile judges as well as to establish a first pilot training course as a first step.

Finally I would like to express how gratifying it was to work and to discuss with colleagues, highly interested and specially devoted to levy the burden of the children of Sierra Leone.
1. Background

a. Introduction

Sierra Leone is in a reflexion phase on the justice it wishes for its minors (adolescents). Currently, the country has only one juvenile court. Moreover, the children suspected of offences are incarcerated with adults or sent in overcrowded establishments in the capital. For the training of its magistrates, Sierra Leone is considering the creation of a magistrates’ school. This present course should contribute to the elaboration of a specific curriculum for the future juvenile judges.

b. Concluding observations of the Committee on the rights of the child

In its concluding observations of June 20th 2008, the Committee on the rights of the child expressed the following preoccupations and recommendations concerning Sierra Leone1

**Juvenile justice**

76. The Committee notes that efforts at reviewing and upgrading current laws on juvenile justice have intensified and are near completion and that the Child Rights Act contains extensive provisions on alternative approaches to the issue of juvenile justice. The Committee welcomes the various measures taken by the State party to improve the situation of children in conflict with the law, including training programmes, awareness-raising and sensitization campaigns, monitoring of Remand and Bail Homes, and the establishment of a task force on juvenile justice to review policy and law and develop best practice for the general administration of juvenile justice. The Committee also notes that the Child Rights Act increases the minimum age of criminal responsibility from 10 years to 14 years. The Committee expresses concern that the State party does not provide legal aid for children within the justice system and that there is only one juvenile court in the country. The Committee is further concerned that the country’s Remand Homes and Approved School are understaffed and ill-equipped, with little or no security, poor learning facilities, little

1 CRC/C/SLE/CO/2
recreation and limited food supplies. The Committee also notes with concern that children suspected of crimes are either incarcerated with adult offenders in deplorable conditions or sent to overcrowded facilities in Freetown.

77. The Committee urges the State party to ensure that juvenile justice standards are fully implemented, in particular in line with articles 37 (b), 40 and 39 of the Convention, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules). In particular the Committee recommends that the State party, while taking into account the Committee’s general comment No. 10 (2007) on children’s rights in juvenile justice:

a) Take the necessary steps to ensure full implementation of the Child Rights Act, which raises the age of criminal responsibility to 14 years;

b) Take all necessary measures, including adopting a permanent policy of alternative sanctions for juvenile offenders, to ensure that children are held in detention only as a last resort and for as short a time as possible and that detention sentences are reviewed periodically;

c) Take all necessary measures to ensure that when detention is carried out, it is done so in compliance with the law and respects the rights of the child as set out under the Convention and that children are held separately from adults both in pre-trial detention and after being sentenced;

d) Take all necessary measures to ensure that children are not ill-treated in detention, that conditions in detention facilities are not contrary to the child’s development, that such facilities are regularly and independently monitored and that children’s rights, including visitation rights, are not violated, and that cases involving juveniles are brought to trial as quickly as possible;

e) Request further technical assistance in the area of juvenile justice and police training from the United Nations Interagency Panel on Juvenile Justice.

Protection of witnesses and victims of crimes

78. The Committee recommends that the State party ensure, through adequate legal provisions and regulations, that all children victims and or witnesses of crimes, e.g. children victims of abuse, domestic violence, sexual and economic exploitation, abduction, and trafficking and witnesses of such crimes, are provided with the protection required by the Convention and that it take fully into account the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (annexed to Economic and Social Council resolution 2005/20 of 22 July 2005).

c. Training seminar

IDE prepared a course on Juvenile Justice for officials concerned by the subject in Sierra Leone. This course took place from July 12th 2010 to 16 July at the IDE, in Sion,
Switzerland, based on scientific resources and the possibilities offered by the Institute and by several institutions. The course was build taking into account the particular context described above.

2. Purposes

Purposes of this course were:

• the course should inscribe itself in the general context of a specific and specialised justice for juvenile offenders, relying on international texts (United Nations Convention on Children’s rights and subsequent text on criminal law) and favouring answers based on other principles than only the deprivation of liberty (alternatives);
• Stress the collaboration in network and show examples of realisation;
• Permit the meeting, outside context, of Juvenile Justice Sierra Leone actors;
• Participant’s consciousness-raising about the importance of having specific and specialised justice;
• Point out minimal rules, on an international level, in this field;
• Invite them to think about possible reforms in their national system;

• Show modalities of desirable intervention (institutions);
• Explain that there are other possible answers than the deprivation of liberty, for instance alternatives like mediation, community service order, diversion, inspired from the Restorative Justice;
• Make useful recommendations for the country.

In the longer run, those purposes aim to the following changes:

• Stress the alternative or community solutions;
• Develop the capacity of persons to think and intervene in an interdisciplinary way;
• Reduce institutionalization;
• Prevent juvenile delinquency;
• Awakening with several speakers the necessity to respect the rights of the child through international standards, numerous in that field;
• Reduce stigmatization for non-important cases;
• Reduce the use of deprivation of liberty (before or after judgment) through prison or institutions.

3. Method

To achieve those goals, a one week training module was organised and four officials from Sierra Leone attended it in a constant way. This module favoured examples of good practices and visits.

The course was given by an interdisciplinary network:

- The direction of the course was assured by Ms Renate Winter, Judge in United Nations Special Court for Sierra Leone.
Numerous speakers: Philip Jaffê, Daniel Stoecklin, Jean Zermatten; Michel Lachat, Martin Lauber, Xavier Lavanchy, Anne Bochatay, Gérard Demierre, Daniel Gross, Jean-Bernard Siggen

Those persons were chosen by IDE in the network of experts in the Juvenile Justice and selected on the criterion of their pedagogic aptitudes and experiences in the Juvenile Justice. Several of them were, above all, practitioners.

The method is based on the confrontation theory - practice: workshops and institutions visits (detentions centre, institution for young persons with problems, etc.) to really show the reality in the field and have an impact the future practices.

Putting into perspective the main international standards in criminal law was the spine of the course, however still respecting the historical, cultural and judicial inputs of Sierra Leone:

1. The Juvenile Justice, it’s system and international standards, for instance the last General Comment no 10 on Juvenile Justice (February 2007),

2. alternatives, diversion, mediation,
3. working in network and the role of every partner (police, prosecutor, welfare service, institution, psychologist),
4. restorative justice,
5. specialization and training of speakers.

An appreciable place was reserved to convivial and cultural events, which brought a state of mind favourable in the group of zealous, active and curious participants.

4. Participation

The delegation was made up of four officials concerned by the Juvenile Justice, one of whom was the Chief Justice for Sierra Leone. The other participants were a judge, a magistrate, and a probation officer.

See Appendix III for the list of participants.

The working language was English.

5. Program

The programme was very intensive. Being a first consciousness-raising step, however, this seminar had to provide a substantial theoretical background. Participation was exemplary, the debates animated.

Interdisciplinary work was favoured by a variety of professional backgrounds among the speakers as among the participants. Moreover, the theme dealt with is basically interdisciplinary.
Informal encounters have also been very important, be it between Sierra Leone officials and experts or among Sierra Leone officials. This is not the least benefit of this type of meeting.

See Appendix II for the program.

6. Visits

Visits counted:

- St Raphaël, open institution, centre preparing for vocational training boys (14.16) (Sion);
- Pramont, closed institution for difficult young offenders (Sion);
- Foyer François-Xavier Bagnoud, Rehabilitation of substance-addicted youths (Salvan);
- Juvenile Court (Fribourg);
- Mediation Office for young offenders (Fribourg);
- Specialized police Unit for young offenders, Minor’s Brigade (Fribourg).

7. Recommendations

The participants from Sierra Leone presented recommendations at the final synthesis on the 16.07.10.

Those recommendations are joined in Appendix I.

8. Concluding remarks from the Director of the training course

Looking back on five days of intensive work of the Training Course it is necessary to state that this course has been organized around two important issues, a theoretical one and an imminently practical one: presentations concerning legal systems in the field of juvenile justice with a special focus on restorative justice were given mostly during the morning whereas in the afternoons visits to different types of institutions, for boys and girls alike including a court visit, took place. Directors and educators in open, semi-open and closed institutions spoke about their statutes and directives and their really successful policy in trying to solve the individual problems of the adolescents living there and to prepare them for another chance in their life.

The interventions given by judges at the one had side and by experts and practitioners at the other, underlined despite of different professional mandates of the speakers that an efficient juvenile justice policy is possible only as a team work between justice and psychology; between well trained and specialized Youth police, Juvenile prosecutors, Juvenile judges and qualified personnel for different and if possible small institutions; that supervision and monitoring as well as credible and complete statistics are necessary in order to provide a better youth policy adapted to the special needs of children in an ever changing world.

As a recommendation for developing the juvenile justice system for Sierra Leone in accordance with the Considerations of the Committee on the Rights of the Child, I would like to suggest a continuous cooperation between the Supreme Court of Sierra Leone and the International Institute of Child Rights in Sion in order to provide training curricula for the on
the job training for juvenile judges as well as to establish a first pilot training course as a first step.

9. Follow up

It is up to every participant to implement the Seminar’s teaching at work in the concerned Ministry, Faculty, organisation or place of work. To provide it to any interested collaborator or even teach it further.

IDE plans a follow-up with the publishing of a working report on the works of the Sion week. It contains all the theoretical presentation given in the seminar and should stay as a reference of a global context.

Sion, end of July 2010

Jean Zermatten, IDE Director
ANNEX I

RECOMMENDATIONS OF THE SIERRA LEONE’S DELEGATION

The following recommendations were made after an intensive five days training in juvenile justice at Sion, Switzerland from 12th July to 16 July 2010.

1. Specialised training for special section of the police in Juvenile Justice – how to handle children, talk to them so the juvenile will realise that the police is not an enemy but someone to help him come out of his situation, including even liaising with parents and teachers.

2. Training on collaboration of stakeholders and for each collaborator to do what his duties are and not encroach.

3. Budget for Legal Aid for Children, as well as a budget for Specialists e.g. Child Psychologists, Counsellors. Etc to assist in the juvenile courts.

4. Specialist training in mediation and to include that in the curriculum of the NATIONAL JUDICIAL TRAINING INSTITUTE (NJTI). Also generally training in DIVERSION and ALTERNATIVE MEASURES.

5. Maintain a separate Register of all juvenile cases and their outcome, including Social Welfare Report, to be forwarded to the Master and Registrar every month, with appropriate monitoring procedures.

6. Mediation Room to be provided in all juvenile courts and not in the office of the Magistrate.

7. Police holding cells to have separate cells for juvenile and adult offenders.

8. Diversion, preventive, and rehabilitation procedures should be encouraged at all levels, especially for less serious offences.
Training Course on Juvenile Justice for Officials from Sierra Leone
ANNEX II
Program

PROGRAM

for

SIERRA LEONE

JUVENILE JUSTICE
GOOD PRACTICES & VISITS

Training Course

A project of

INSTITUT INTERNATIONAL DES DROITS DE L’ENFANT (IDE)

in cooperation with

Justice Sector Development Program (JSDP) – Delegation of Sierra Leone

July 12th to 16th 2010

July 12th 2010
Training course for officials from Sierra Leone
Institut international des Droits de l'Enfant (IDE)
Sion, Switzerland – 12-16.07.2010

Director: Justice Renate WINTER,
Member of the Appeals chamber of the UN Special Court of Sierra Leone

Monday 12.07.2010

Chair: Mr Jean Zermatten, Director of IDE

08:45 a.m. Departure for IDE
09:00 a.m. Registration, handing out of documents
09:15 a.m. Opening Ceremony
09:40 a.m. Seminar’s presentation: Mr Jean Zermatten, Director of IDE
10:00 a.m. Presentation of the members of the delegation of Sierra Leone
10:30 a.m. Break
11:00 a.m. The Swiss legal system for young offenders
   Mr Jean Zermatten, Director of IDE
12:30 p.m. Lunch at the Bramoisien restaurant
02:00 p.m. The restorative Justice, the guiding principles
   Mrs Renate Winter, Member of the Appeals chamber of the UN Special Court of Sierra Leone
03:00 p.m. Diversion / restorative justice
   Mr Jean Zermatten, Director of IDE
07:00 p.m. Valaisanne Evening (cultural evening) in a typical restaurant in town, return to the hotel after the meal
Tuesday 13.07.2010

Chair: Mrs Renate Winter, Course Director

08:45 a.m. Departure for IDE

09:00 a.m. The psychological approach of Juvenile Justice

Prof. Philip D. Jaffé, University of Geneva and Director of the Children’s Rights Unit, IUKB Sion, Switzerland

09.45 a.m. Presentation of the Sierra Leone’ Juvenile Justice system

Renate Winter, Member of the Appeals chamber of the UN Special Court of Sierra Leone

10:30 a.m. Break

11:00 a.m. Restorative Justice, the African way?

Renate Winter, Member of the Appeals chamber of the UN Special Court of Sierra Leone

12:00 a.m. Departure for St-Raphaël Institute (see above)

12:30 p.m. Lunch at St-Raphaël Institute

First visit

01:30 p.m. Visit of the St-Raphël Institute (4 units for young, boys and girls) especially the Center preparing for vocational training boys (14 – 16)

Mr Jean Zermatten, Director of IDE

02:45 p.m Departure for Pramont

Second visit

03:15 p.m. Visit of Pramont Center (closed institution for difficult young offenders)
Mr Jean Zermatten, Director of IDE

Wednesday 14.07.2010

Chair: Mr Jean Zermatten, Director of IDE

08:45 a.m. Departure from the hotel for the “Foyer François-Xavier Bagnoud”, Rives du Rhône, Salvan

09:30 a.m. Visit of the Foyer FXB in Salvan, Rehabilitation of substance-addict youths

11:30 a.m. Transfer to Bramois

12:15 p.m. Lunch at the Bramoisien restaurant

01:30 p.m. Children with special needs. The vulnerable group.

Mrs Renate Winter, Member of the Appeals chamber of the UN Special Court of Sierra Leone

03:00 p.m. Children in street situations

Prof. Daniel Stoecklin, IDE, Sion

04:00 p.m. Break

04:15 p.m. CRC and Juvenile Justice, legal and practical references

Jean Zermatten, Director of IDE

05:00 pm Transfer to town, free sight-seeing or shopping
Visits lead by: Mr Michel Lachat, Juvenile Judge, Fribourg

Visits: Juvenile court, mediation Office (pilot project) and Minors' Brigade

07:30 a.m. Departure from the Hotel to Fribourg

09:00 a.m. Arrival in Fribourg
   Welcome of the participants and visit of the Juvenile Court of Fribourg
   Mr Michel Lachat, Juvenile Judge, Fribourg

09:45 a.m. Transfer to the Mediation Office for young offenders and visit

12:30 p.m. Lunch

02:30 p.m. Visit of a specialized police station for young offenders, La Grenette (Minors’ Brigade)

04:30 p.m. Visit of the old town of Fribourg

07:15 p.m. Dinner

09:30 p.m. Arrival in Sion, transfer to the hotel
Friday 16.07.2010

Chair: Mr Xavier Lavanchy

08:45 a.m. Departure for IDE

09:00 a.m. Police and Juvenile Court

Mr Martin Lauber, Chief Inspector Vice and Minors Squad, Cantonal Police / Valais, Switzerland

10:30 a.m. Break

10:45 a.m. The work of a Juvenile Judge. The importance of Collaboration

Mrs Renate Winter, Member of the Appeals chamber of the UN Special Court of Sierra Leone

11:45 a.m. Plenary Discussion with the participation of a Swiss Juvenile Judge

Mr Xavier Lavanchy, Juvenile Judge in Sion, Switzerland

12:30 p.m. Lunch at the Bramoisien restaurant

01:30 p.m. Workshops

Recommendations to be presented to the Sierra Leone authorities

Mrs Renate Winter, Member of the Appeals chamber of the UN Special Court of Sierra Leone

03:00 p.m. Adoption of the recommendations

03:30 p.m. Closing Ceremony

Head of Sierra Leone Delegation

Mrs Renate Winter, Course Director

04:30 p.m. End of the training course and transfer to town
**ANNEX III**
List of participants

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
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</thead>
<tbody>
<tr>
<td>Hon Justice Umu Hawa Tejan-Jalloh</td>
<td>Chief Justice</td>
</tr>
<tr>
<td>Justice Julia Naa Yarley Sarkodie-Mensah</td>
<td>Consultant master and Registrar</td>
</tr>
<tr>
<td>Mr. Isaac Showers</td>
<td>Probation Officer</td>
</tr>
<tr>
<td>Mr. Mohamed Alhaji Stevens</td>
<td>Magistrate</td>
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