



Policy Brief

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Failing young offenders

Juvenile Justice in Sierra Leone, Tanzania and Zambia

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INTRODUCTION

The legal systems of the former British colonies derived from British law and in most cases were simple copies of the criminal justice system of the colonial power. A comparison of British law with its ex-colonies reveals, however, that whilst British law has evolved in the decades since decolonisation, particularly in the area of juvenile justice, reform in the justice systems of the three states investigated here has been slow and inadequate.

The law in all these states fails to consistently incorporate the principles of limited criminal liability of minors and the priority of reform and rehabilitation over retribution. Children in conflict with the law often fail to have their rights guaranteed and are frequently treated in a manner inconsistent with a child's sense of dignity and worth, despite all three states being party to the Convention on the Rights of the Child (CRC). In addition to the CRC, the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the UN Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), and the UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) serve to define the key rights to which juveniles are entitled in their contact with the criminal justice system (also known as 'soft norms').

The Beijing Rules define a juvenile as being 'a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult'. To satisfy international standards, an effective juvenile justice system requires dedicated facilities for children at time of arrest, trial and detention. Here the systems in place in Sierra Leone,

Tanzania and Zambia are examined in the light of recent original research.

JUVENILE JUSTICE SYSTEMS: ANTIQUATED AND CONFUSED

In all states studied, significant demands are made of the juvenile justice systems. In Sierra Leone, over a thousand juveniles (95 per cent of them boys) were documented to be held in police cells, prisons and correctional facilities in 2004. In Zambia, in 2005, over 300 juveniles were detained, 74 per cent of whom were on remand. In the period 2003–2005, 515 boys and 79 girls were charged with various crimes in Dar es Salaam, Tanzania.

Both the African Charter on the Rights and Welfare of the Child and the Convention on the Rights of the Child (CRC) define a child as being below the age of 18 years, unless majority is attained earlier. All three states fail to incorporate these understandings into law and legal frameworks are confusing and contradictory. Under Sierra Leone law, whilst the Children and Young Persons Act of 1960 defines minors as being under 17 years of age, the Approved Schools order addresses juvenile detention of those under 18; other instruments variously define children as 16, 18 or 21, while the age of criminal responsibility is 14, inconsistent with the CRC. Similarly, Zambian law refers to a juvenile as a person under 16, whilst a 'young person' is defined in various laws both as being between 16 and 18, and being under 15. In Tanzania the age of criminal liability is 12, while 'young person' is defined as between 12 and 16.

The need for juveniles to be protected by court systems

that are child friendly and not intimidating has been acknowledged by all states, but implementation of such systems remains inadequate.

Sierra Leone has domesticated the Children's Rights Act of 1989 in 2007. The Act enshrines a number of rights of juveniles, including the right to an interpreter in court and to legal representation. Whilst the former is generally respected in proceedings, in most cases juveniles are not represented in court. There is as yet no dedicated court for juveniles. Owing to administrative and logistical constraints, the speed of judicial proceedings, for children as for adults, remains insufficient. In Sierra Leone, issues relating to children in general are dealt with by the Ministry of Social Welfare, Gender and Children's Affairs and the Ministry of Justice; however, a limited budgetary allocation hampers its effective operations. In police stations, the admirable initiative of dedicated juvenile units, which aid the appropriate treatment of children on arrest, is undermined by a lack of staff.

In Tanzania proceedings involving children are governed by the Children and Young Persons Act 2002 (CYPA), which creates a special procedure for juveniles in conflict with the law, from arrest and trial to sentencing. This enshrines the concept of a juvenile court which will not be a traditional court building and encourages the use of non-custodial sentences; however, in practice there is only a single dedicated juvenile courtroom in the country and ambiguity in sentencing policy remains. While the CYPA prohibits imprisonment for juveniles, the Penal Code does not, leading to a range of sentences, including the sentencing of juveniles to prison. Where a juvenile is detained, the CYPA mandates that he or she will be separated from adult prisoners, but this directive is often violated. In spite of the apparent protections afforded to juveniles by the CYPA and other laws, in practice the criminal justice system does not deliver on all the protection required for juvenile offenders.

Zambian law on juveniles is governed by the Juveniles Act of 1956. This antiquated piece of legislation, despite several amendments, remains at the heart of problems with juvenile justice in the country. Legislation is spread across many instruments and covered by a range of poorly coordinated ministries and programmes. Trials of juveniles take place in specially constituted courts, and available sanctions include absolute or conditional discharge, probation, an approved school order, a reformatory order, corporal punishment, payment of a fine, damages or costs, or imprisonment if he or she is 16 years of age or older. The Juveniles Act stipulates that detention for juveniles should be avoided and where unavoidable, juveniles should be segregated; pre-trial detention is

discouraged. Where a child is imprisoned he or she is sent to Katombora Reformatory.

While courts have banned corporal punishment, this has not been enshrined in law and 60 per cent of remanded juveniles report assault by police during arrest and questioning. A National Child Policy has recently been created (2006), but there is no national plan to implement this. Previous centralisation of cases involving children at two courts was reversed in 2004, dissipating expertise and experience. Some recent initiatives, involving an arrest, reception and referral service for arrested children, and the Child Friendly Court, a specialised court for juveniles in Lusaka, have been very positive. The Diversion Programme, run by an NGO, has also pioneered non-custodial approaches to juvenile offenders, explicitly aiming to reform and reintegrate those convicted. The government has embarked on a law reform process to review various pieces of child-related legislation in order to harmonise them and bring them in line with the general principles of the CRC. However, the process is slow and has on occasion stalled; there is still a lack of clarity regarding progress.

In all three states, those engaged with the juvenile criminal justice system are inadequately informed of the law regarding juveniles and fail to recognise children's rights in the criminal justice system.

JUVENILE DETENTION: FAILING TO PROTECT CHILDREN

The principles of the detention of juveniles are clear and acknowledged by the three states; detention should be a last resort and juveniles should be kept in dedicated facilities, separate from adults. In all contexts practice fails to satisfy these criteria, however, violating both national law and international standards.

Whilst Sierra Leone law stipulates that 'a young person sentenced to imprisonment shall, so far as circumstances permit, not be allowed to associate with adult prisoners', this is often contravened. In 2007 the Sierra Leone Human Rights Commission found that juveniles were detained in Padema Road Maximum Prison despite the existence of an approved school to allow juveniles to be held in an appropriate environment. This situation was justified by the relevant ministry as being a result of the poor condition of the approved school and the lack of alternative detention facilities. In May 2008 the school was reopened following renovation. However, problems remain with medical services and a lack of training facilities, challenging the reformatory aim of the facility.

The school continues to use solitary confinement as punishment, in violation of the Havana Rules, and to detain children after they pass the age of 18. Conditions in remand homes in the country are adequate, but authorities provide no support for education and security is inadequate, leading to escapes. However, a single approved school in Freetown and remand homes in Freetown and Bo fail to serve the rest of the country. The Probation Unit of the Ministry of Social Welfare, Gender and Children's Affairs is understaffed, with only two probation officers serving the whole of the Western Area, complicating the collection of background information on juveniles

On arrest in Zambia many juveniles are not separated from other prisoners in police stations, due to a lack of cell space; the absence of special provisions for children allows them to be held, like adults, for up to 24 hours prior to being produced before a magistrate. Although the Juveniles Act requires that a juvenile appears at least every 21 days before the court to extend the warrant for his or her detention, this does not happen in practice. While there are efforts to separate juveniles from adults in detention facilities, a large number of juveniles as well as the younger children of detained mothers are held in adult prisons. In many cases, juvenile prisoners are ill-treated and indecently assaulted by older inmates. Detained juveniles experience the same hardships as adults in a prison system that is overcrowded and underfunded.

In Tanzania, adults are required to be separated from juveniles, but achieving this is compromised by the Prison Department's many challenges, including an acute shortage of accommodation for inmates. In both Tanzania and Sierra Leone laws on corporal punishment are ambiguous, leading to beatings - particularly on arrest - that violate the rights of arrested and detained minors.

RECOMMENDATIONS: CREATING A SYSTEM THAT SERVES JUVENILES

There are common challenges facing the way juveniles are treated by criminal justice systems in Sierra Leone, Tanzania and Zambia. The governments have ratified international instruments and committed to recognising the rights of minors in conflict with the law, but in practice these rights are systematically violated as a result of confused and antiquated legislation, administrative and funding failures, and a lack of awareness of juvenile rights among personnel tasked with implementing juvenile justice. The acknowledged imperative to reform and reintegrate young offenders is compromised by inadequate training, poor administration and a lack of resources.

All three states have seen colonial legislation amended repeatedly over decades to produce a fragmented legal framework that defines juveniles, children and 'young persons' in myriad contradictory ways. In many cases these laws fail to satisfy states' obligations under the African Charter on the Rights and Welfare of the Child and the UN Convention on the Rights of the Child (CRC). A global reform of such legislation is required to create a consistent framework for juvenile justice harmonised with the CRC. The Zambian government has embarked on such a reform process that can serve as an example to others, even if it remains unclear how much progress has been made. In Tanzania, the Children and Young Persons Act and the Penal Code law should be harmonised to ensure consistency in dealing with cases involving juveniles; the judiciary should sensitise magistrates to the provisions of the Children and Young Persons Act and require them to apply it in the sentencing of juveniles.

The main focus of juvenile justice should be rehabilitation as opposed to punishment, which, whilst being acknowledged, has not been put at the heart of juvenile justice systems. Innovative initiatives in Zambia can serve as examples for the other states, notably the Diversion Programme in which explicitly reformative approaches replace custodial sentences. Ambiguities over sentencing, particularly concerning the imprisonment of juveniles and corporal punishment, must be clarified: to ensure compliance with minimum international standards laws must be changed to abolish corporal punishment in Sierra Leone and Tanzania. There is also need to domesticate international instruments governing juvenile justice, including the Convention on the Rights of the Child (which is ratified but not domesticated by all three states) as well as 'soft norms' (see above).

All three states have begun to make efforts to make the court system more appropriate to children, but none has made substantial progress. The establishment of child friendly courts should receive urgent attention through the provision of special separate courtrooms, as demanded by international standards, and minimisation of intimidation for juvenile proceedings in all courts in the countries concerned. Zambia's limited experience with the Child Friendly Court in Lusaka is a valuable one that should be extended both nationally and duplicated elsewhere in the region, offering a model for a dedicated court to cater to children's needs. The Sierra Leone government should provide a state-wide legal aid service to provide juveniles with court representation; additional magistrates should be assigned to ensure speedy trials and avoid juveniles from being detained arbitrarily at remand homes.

The problem of inadequate detention facilities for juveniles

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needs to be tackled in all three contexts. Whilst this is a problem for juveniles - in particular concerning the lack of effective separation from adult prisoners - it reflects a more general crisis in prison systems. Addressing the historical overcrowding and underfunding of prison systems in the region will also assist juveniles who are detained and who remain the most vulnerable to human rights abuses among prison populations. Whilst the interests of child prisoners can best be served when they are separated from adult prisoners, most prisons in the three states were built without considering the special needs of children. In Zambia a dedicated new facility for juveniles is required: it is recommended that the Minister of Home Affairs use powers vested in him under the Prisons Act to declare a suitable building a prison for juvenile inmates. In Sierra Leone facilities should be created for the detention of juveniles, particularly in the provinces where there is currently no provision. The Tanzanian Social Welfare Department should improve its capacity to assist juveniles by establishing more facilities for holding juveniles and acquiring adequate equipment and facilities to improve administration.

Basic facilities such as education, health and recreation should be made available at remand homes, reformatories and approved schools in all three states to ensure that these detention centres meet international standards and provide offenders with basic education and skills training while in custody. Without such facilities juvenile detention will fail to have a rehabilitative effect or to discourage recidivism.

Training programmes should be launched to improve the skills of personnel involved in the delivery of criminal justice in general and in gender, juvenile and human rights issues in particular. All personnel dealing with juveniles, including court personnel, probation officers and detention officers, should be trained to ensure that they are fully informed about laws concerning juveniles.

In all contexts most juvenile crime is committed by marginalised children and young people from backgrounds where parents are largely or completely absent and who are confronted with extreme poverty. There is a need to work on a comprehensive poverty alleviation strategy for youths who have dropped out of school in order to reduce incidences of property crime, which is mostly committed by unemployed and uneducated youth.

CONCLUSIONS

The provision of dedicated services for children in conflict with the law is a prerequisite for protecting the rights of children in the criminal justice system. Sierra Leone, Tanzania and Zambia have all acknowledged this and initiated modest changes to law and practice, but have failed to create a coherent system that can address the needs of juvenile offenders.

All three states need to address the inconsistent and scattered approach of their laws to juveniles. States have begun to create units within the police and dedicated courts for children but these efforts do not yet represent the creation of effective national juvenile justice systems. The rights of children in detention continue to be violated, notably through a failure to segregate them from adults. In order that detention in appropriate facilities can serve a reformative role, investment is needed both in dedicated facilities for children and in ensuring that education and training is available for juveniles. In all states additional resources are required for such a programme as well as comprehensive training at all levels of the criminal justice system to ensure increased awareness of child rights and existing law.

Some innovations that have emerged from the region demonstrate that it is possible to find imaginative solutions to the challenge of young offenders: the need now is to institutionalise and broaden these approaches.

NOTE

This brief is derived from the country reviews conducted by the AHSI in Zambia, Sierra Leone, Mali, Benin, and Tanzania. See the following ISS monographs: The Criminal Justice system in Zambia, No 159; Sierra Leone: A country review of crime and criminal justice, No 160; Mali: Criminalité et Justice Criminelle, No 162; Benin: Revue de la Justice Criminelle, No 163. The monograph on Tanzania is forthcoming.

