

*National Framework for
the Diversion of Children
in Conflict with the Law in
Sierra Leone*



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ACRONYMS

A4P	Agenda for Prosperity
AG&MJ	Attorney General and Minister of Justice
CAP44	Children and Young Persons Act
CBO	Community Based Organisation
CJWG	Child Justice Working Group
CWC	Child Welfare Committee
DPP	Department for Public Prosecution
EVD	Ebola Virus Disease
FSU	Family Support Unit
GoSL	Government of Sierra Leone
JSCO	Justice Sector Coordination Office
JSRSIP	Justice Sector Review Strategy and Investment Plan
KII	Key Informant Interview
LAB	Legal Aid Board
LOD	Law Officers Department
MDA	Ministries, Departments and Agencies
M&E	Monitoring and Evaluation
MEST	Ministry of Education, Science and Technology
MLGRD	Ministry of Local Government and Rural Development
MOHS	Ministry of Health and Sanitation
MSWGCA	Ministry of Social Welfare, Gender and Children's Affairs
NGO	Non-Governmental Organisation
SLP	Sierra Leone Police
ToR	Terms of Reference
UNICEF	United Nations Children's Fund
WHO	World Health Organisation

1. INTRODUCTION

Since the end of the Sierra Leone's civil conflict that lasted from 1991 to 2002, the Government of Sierra Leone (GoSL) and its development partners have invested immensely in reforming the country's security and justice sectors. However, there continues to exist a plethora of challenges, key amongst which is the handling of children in conflict with the law. It is worthy to mention very little is known of the factors that lead children into conflict with the law and whether this is a function of a change in children's behaviour or a function of the system itself, and the mechanisms that lead children into conflict with the law.

Whatever the case may be, it is evident that vulnerability factors such as poverty, unstable homes, being unable to attend school, involvement in child labour and general lack of care and concern within homes and communities could be contributing factors to the involvement of children in certain acts. Several writers such as Ibrahim Abdullah (1998),¹ Ibrahim Bangura (2016)² and Abdul Karim Koroma (1996)³ have written extensively on the relationship between the marginalisation and isolation of children, youth and violence in Sierra Leone. As of 15 August 2017, there are 41 children in the Remand Home in Freetown, 23 in the Remand Home in Bo and 25 in the Approve School in Freetown.

Inasmuch as the support and needs required by these children differ from those of adults, the existing systems and structures have not been significantly enhanced to identify and attend to the needs of the children. As Aljazeera News stated “children are often considered guilty until proved innocent, with detention being the first resort for all offences, regardless of their nature.”⁴ As such, the children are disadvantaged, and this has immense physical and psychological implications for their growth and development. It also negatively affect their educational needs and opportunities. It

¹ **Abdullah, Ibrahim.** 1998, 'Bush Path to Destruction: The Origin and Character of the Revolutionary United Front/Sierra Leone' in *Journal of Modern African Studies* 36: 2: 203–235.

² **Bangura, Ibrahim.** 2016. "We Can't Eat Peace: Youth, Sustainable Livelihood and the Peacebuilding Process in Sierra Leone" *Journal for Peacebuilding and Development*, University of Notre Dame, USA

³ **Koroma, Abdul. Karim.** 1996, *Sierra Leone: The Agony of a Nation*, s.l.: Freetown, Sierra Leone: Andromeda Publications.

⁴ Aljazeera. Com. 2016, "The forgotten Child Prisoners of Sierra Leone" See: <http://www.aljazeera.com/indepth/features/2016/04/forgotten-child-prisoners-sierra-leone-160421093658901.html> (Accessed 30 August 2017)

appears that, rather than using restorative measures geared towards promoting rehabilitation, behaviour change and reintegration back into society, the approaches used at the moment are focused on criminalising and punishing children. Coupled with this, the inconsistencies and challenges in the system lead to children contending with one or more of the following challenges mentioned below:

- Pre-trial detention periods that are more than the lawful time period of 72 hours;
- Detention of children in cells with adults;
- Lack of social workers, parental support or advocates present during the taking of statements;
- No legal representation;
- Denial of the right to privacy during questioning and court appearances;
- Overcrowding in remand home facilities which are not equipped to deal with their emotional, physical or psychological needs;
- Lack of education and recreation; and
- Remand detention periods often exceeding two to three years, denying the right to have the matter determined without delay;
- Lack of reintegration support/services when they are released.

These practices go against the International Minimum Standards on dealing with children in conflict with the law and the GoSL's commitments to protect and promote the welfare of the child as indicated in the Child Rights Act of 2007, the Justice Sector Reform Strategy and Investment Plan (III), the Child Justice Strategy (2014-2018), the Children and Young Person's Act of 1944 (CAP 44) and the Government's Agenda for Prosperity (A4P).

To overcome the existing challenges, the Child Justice Working Group (CJWG) consisting of relevant Ministries, Departments and Agencies (MDA) of the GoSL, development partners and civil society and of which the Justice Sector Coordination Office (JSCO) in the Ministry of Justice serves as the secretariat, decided to develop and adopt a Diversion Framework with the principal of divert children who meet the in conflict with the law who meet the set criteria from the formal justice system. It is worthy to mention that this document builds on an earlier effort by the Judiciary to develop Guidelines for

Diversion for Children in Conflict with the Law in Sierra Leone in 2013, this effort was affected by the outbreak of the deadly Ebola Virus Disease (EVD) in the country.

It is believed that this is a forward looking and progressive approach, as the incarceration of children for even minor offences instead of using restorative justice mechanisms such as diversion, has not proved to be an effective method, particularly when the punishment is manifested inside the formal judicial system. It is expected that this framework will provide the GoSL and its development partners and informal actors such as community leaders with a context specific and clear understanding on what diversion is, the need for them and the guidelines to use when dealing with issues related to children in conflict with the law. **If this framework is effectively used, it will enhance the protection and the rights and welfare of children in conflict with the law.**

2. DIVERSION

According to UNICEF⁵ diversion means the “conditional channelling of children in conflict with the law away from formal judicial proceedings towards a different way of resolving the issue that enables many- possibly most- to be dealt with by non-judicial bodies, thereby avoiding the negative effects of formal judicial proceedings and a criminal record”. As indicated in Rule 11.2, of the Beijing Rules of 1985 “Diversion may be used at any point of decision-making-by the police, the prosecution or other agencies such as the courts, tribunals, boards or councils. It may be exercised by one authority or several or all authorities, in accordance with the rules and policies of the respective systems; and in line with the present Rules. It need not necessarily be limited to petty cases, thus rendering diversion an important instrument.”

Diversion is largely based on the principles of restorative justice which is geared towards promoting reconciliation, healing and positive peace. Thus, such an approach will be instrumental in protecting the rights and welfare of children in conflict with the law, decongesting the juvenile justice system, providing appropriate rehabilitation and promoting positive behavioural change.

The concept of diversion primarily seeks to ensure that detention is used as a measure of last resort as is enshrined under the United Nations Convention on the Rights of the Child (UNCRC). The concept of diversion is based on the assumption that, “processing a child through the justice system could do more harm than good to the child”. In most cases, the harm will either be short or lasting physical, emotional and psychological damage to the child. This is particularly true in cases where a child has been subjected to abuses, injustices and traumatic experiences, experiences which they are not physically or mentally mature to cope with; and for which they do not normally receive support to recover (inside the justice system) . Putting children through detention in most cases has significant and

⁵ See: https://www.unicef.org/tdad/index_56037.html (Accessed 21 July 2017)

lasting negative effects on their education, life skills, perception of society and life, and ability to establish and maintain positive relationships with others in their community/society on release. Rather than rehabilitate a child, their experience in the justice system is likely to do much more harm than good.

Diversion calls for a more pragmatic, feasible and humane approach to dealing with children in conflict with the law. It establishes through non-formal judicial approaches, a means of addressing a child's behaviour in a manner that ensures some level of correction and response – but with the aim of reshaping his or her behaviour and approaches to life without subjecting or exposing the child to the indignities and traumatic experiences of the formal justice system.

In line with the points mentioned above, diversion allows for a system where professionals working with the child can look beyond the offending behaviour and get a better understanding of how to help the child learn right from wrong, reduce his/her tendency to repeat the same behaviour, and create a sense of civic responsibility, including how to approach and relate with society. However, in order for this to happen, each individual case has to be profiled and examined by appropriate and trained professional in order to understand the specific context that shaped the attitude and subsequently the behaviour of the child. As such, understanding the root causes of the behaviour of the child, his/her environment and the context under which the child lives is essential in providing the support that the child requires, helping to facilitate positive rehabilitation, and consequently mitigating the chance of recidivism.

Relevant to this process are informal mechanisms and structures such as the Local Police Partnership Boards (LPPB) constituting police officers and local community members, and the Child Welfare Committee (CWC), which are based in local communities and are owned and managed by community members. Such mechanisms and structures have to be mapped and used as they will provide the social capital that is essential for the success of any diversion programme. A key importance to diversion are the family members and the community from which the child came. The informal actors and structures have a much more vital role to play especially in preventing offences, mitigating reoccurrence and providing the psycho-social and other support that are essential to the rehabilitation of the

child. More details on the role of informal structures and actors could be found in Section 4.2.

2.1 GUIDING PRINCIPLES FOR DIVERSION

As indicated in the introduction, several international and national binding and non-binding legal frameworks such as the UNCRC which Sierra Leone signed in 1990, the Beijing Rules of 1985 on Administration of Juvenile Justice, the 1990 Guidelines for the Prevention of Juvenile Delinquency also known as the Riyadh Rules as well as the UN Rules for the Protection of Juveniles Deprived of their Liberty otherwise known as the Havana Rules, aim at protecting the rights and welfare of children in conflict with the law. Nationally, Sierra Leone has a framework for improvement of the justice sector reform and the rule of law in its third generation Justice Sector Reform Strategy and Investment Plan (JSRSIP III). This recognizes the importance of providing justice for children to include diversion (part 1.16-1.17). To this end, the Government of Sierra Leone launched a National Child Justice Strategy (2014-2018) whose outcome 3 stipulates that ‘Children in Conflict with the Law are diverted from the formal justice system’. This sets the framework for children to be diverted from the formal justice system.

Based on the provisions of the legal frameworks above, the implementation of diversion in Sierra Leone would be guided by the principles listed below, which should be adhered to at all times and by all stakeholders.

No.	Guiding Principles
1.	The best interests of the young person are to be the paramount consideration. The focus should be on restorative justice and rehabilitation of the offender and priority should be given to respecting the child’s rights when determining the best solution or response.
2.	Detention should be a measure of last resort. Every child who is alleged to have committed a minor or non-violent offence should not be detained.
3.	To the greatest extent possible, a child’s contact with the formal justice system is to be minimized. In practice, this means that children who are eligible for diversion should not spend time in a police station, government offices or go to

	court, (or at least for only the minimum required period of time); and detention facilities are to be avoided to the greatest extent possible.
4.	The child's right to protection from abuse, exploitation and violence is to be respected at all times, including protection from unlawful corporal punishment and public humiliation as a response to alleged criminal behavior.
5.	All children are to be separated from alleged and convicted adult offenders throughout their contact with the justice system. This is to avoid them experiencing violence or abuse at the hands of adult prisoners or learn criminal behaviours from them.
6.	A child's right to due process is to be respected at all times. It is important to note that children who want to have their matter contested in court are entitled to do so. However, the child should be encouraged to have this discussion with their parents in a case where the parents prefer diversion to going to court. The children must be given legal assistance and understand their legal rights
7.	No child is to be penalized for capacity constraints that exist in the system, which are beyond his control. No children should be detained because the probation officer or social worker is not available or does not have the means to find the child's family. Alongside this, no children should be required to pay a monetary bail because the social worker/ probation officer or police do not have resources to conduct adequate supervision.
8.	Boys and girls are to be treated differently, where necessary, to ensure maximum benefit from their participation in the diversion process Where possible, professionals of the same gender should be engaging with girls/boys.

2.2 THE CURRENT PATHWAY FOR DEALING WITH CHILDREN IN CONFLICT WITH THE LAW IN SIERRA LEONE

At the moment, the categorisation of children within the age of criminal responsibility is 14 and above. Thus, when a child (at least 14 years and above) is reported to have committed an offence, the decision to prosecute has to be made at the office of the Director of Public Prosecution (DPP). This is usually a very lengthy process as the office of the Public Prosecutor is inundated with cases under review. With children under 14 (below

the age of criminal responsibility), a risk assessment is done by the police, should the child be deemed to be at risk, organisations such as Don Bosco and World Hope International are contacted by the police and Social Workers to provide temporal placement for the child, or the family is asked whether they have a secure place to take the child. Should the child not be at risk, the family will be advised on keeping the child away from trouble and they would be allowed to take the child home. Important to note is the fact that the Attorney General and Minister of Justice (AGMJ) is also vested with the power under Section 64 (3) of the Constitution of Sierra Leone to free accused persons before judgement is entered. Under Section 66, the DPP has similar powers but exercises it under the direction and control of the AGMJ. Based on the evidence before the AG and the DPP, they could use these powers to release children in conflict with the law.

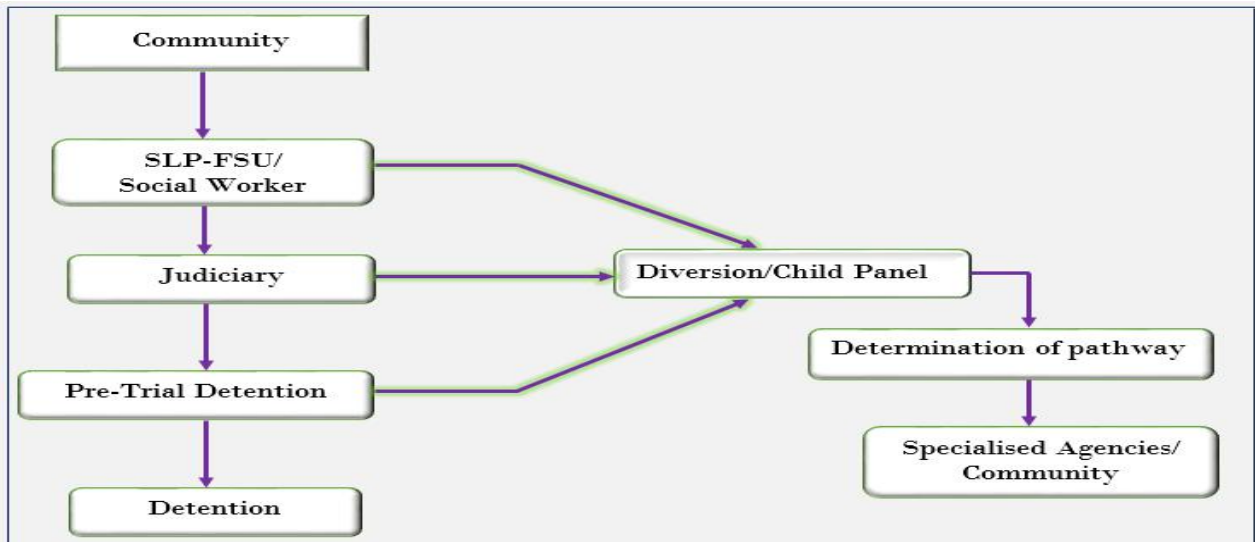
While there may be no formally laid down approach to diversion, it appears, based on regional consultations that agencies such as the Sierra Leone Police (SLP) and the Legal Aid Board (LAB) are undertaking aspects of diversion through mediation for the LAB, and through mediation and cautioning for the SLP for minor offences and family related disputes. The SLP in 2005 adopted the Informal Dispute Resolution Approach and has been using it since then. The Ministry of Social Welfare, Gender and Children's Affairs (MSWGCA) is a crucial Ministry in the process of providing support to children in conflict with the law. However, at the moment the relevant MDAs are all contending with limited human and financial resources, and inadequate systems and structures, which significantly violates the rights and welfare of children in conflict with the law. For instance, out of 75 FSU across the country, there are only 16 social workers from the MSWGCA situated in the FSU in accordance with the MOU signed between SLP-FSU and MSWGCA. There is the need for at least one in each of the units. In the absence of a Social Worker, two instead of one FSU officers should deal with the case.

2.3 THE DIVERSION FRAMEWORK FOR SIERRA LEONE

This section provides the framework that will guide the implementation of diversion in Sierra Leone. It clearly defines the eligibility, conditions, typologies, the model for diversion in Sierra Leone and the role of both the formal and informal actors. This framework emphasises that, diversion is meant to promote rehabilitation and positive

behaviour change rather than a focus on punishing children and putting them through rigorous formal judicial processes. However, it has to be ensured that children are accountable for their actions, take responsibility for them and ensure that they are not repeated. The model below clearly presents the diversion pathway and further illustrates that diversion could take place at any point time.

Figure 1: Diversion Model



The timeframe for diversion has to be determined by set of guidelines developed by the Child Panel. However, no programme over intervention for the child should last for more than 4 months. The timeframe for any activity that the child will be tasked with for very minor misdemeanours by first time offenders should last for not more than 3 weeks.

2.3.1 ELIGIBILITY FOR DIVERSION

When an offence is reported to have been committed by a child, a police officer and a social worker trained to work with children in conflict with the law, should examine the nature and particulars of the offence reported. If it is concluded to be a serious offence, for example murder, it will be passed on to the DPP’s office for legal advice. However, if it is concluded to be a misdemeanour, it should at this point be eligible for diversion. However, the decision has to be made in conjunction with frontline managers and the Child Panel who decide the child’s suitability for a diversion programme. Cases that will go through diversion include but are not limited to:

- Common Assault;
- Throwing Missile;
- Cruelty to Animal;
- Malicious Damage (of a minor nature);
- Fraudulent Conversion;
- Threatening remarks;
- Trespassing;
- Insulting conduct;
- Noise causing; and
- Domestic violence (of a minor nature).⁶

Once a decision is taken that a child is eligible for a diversion programme, the officer and social worker dealing with the child formally caution the child. One of the essential elements of the programme is that, the child must take responsibility for his/her behaviour and agree to be entered into the programme. This practice is geared towards hindering the negative effects of subsequent proceedings in juvenile justice administration for example, the stigma of conviction and sentence. In many cases, interventions that are designed to prevent the child from exposure to the formal justice system would be the best response. Thus, diversion at the outset and with referral to alternative (social) services may be the optimal response. This is especially the case where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner.

2.3.2 CONDITIONS FOR DIVERSION

For diversion to be constructive and meaningful, there are certain pre-conditions that should be fulfilled. These pre-conditions have to be carefully fulfilled to ensure that it is done in the best interest of the child, it is properly done, creates the necessary impact and mitigates recidivism.

- i. **Profiling:** The child has to be profiled by a trained child profiler to ascertain the age and the background of the child. Profiling seeks to answer questions such as; Is the child in school/working/engaged in a vocation skills training programme?

⁶ All of these offences are included in the offences to be settled informally by the SLP and they currently mediate on them and do not necessarily prosecute all of them.

What type of home and family environment does the child live in? What are the factors responsible for the behaviour of the child? Profiling the child is of intrinsic significance to the diversion process, as it provides the profiler with an in-depth understanding of the context that shaped the attitude and subsequently the behaviour of the child. Without understanding the factors that shape the behaviour of the child, it will be difficult to determine the most effective approach to use for diversion, as each case will require its own approach.

- ii. **Understanding and acceptance of responsibility:** The child must be educated on the nature of the offence committed and should take responsibility for it. This is important to the process because, children sometimes commit an offence without understanding what they have done. Additionally, taking responsibility for an offence is a start point of justice as it demonstrates a genuine interest to be assisted through the process, and a recognition by the child that what he/she has done is wrong. The child should be supported so he/she conforms to the conditions set in the diversion agreement. Should the child fail to fulfil the condition, the prosecution retains the right to restart judicial proceedings.
- iii. **Informed consent:** Every child that goes through diversion, must be fully informed of what they are going through and the reasons why they are going through it. As such their willingness and consent must be sought and documented. If they are unwilling to go through diversion, other appropriate steps could be discussed alongside family members, who would be responsible for the final decision.
- iv. **Ensuring Proportionality:** It must be ensured that the diversion measure recommended for the child should be proportionate to the offence committed (and ideally should help the child to recognise that what he/she did is wrong, and to discourage reoccurrence. Coupled with this, while going through diversion, children should not be subjected to the indecency and indignities of corporal punishment, deprivation of liberty and public humiliation. Subjecting or exposing them to such traumatic experiences has physical, emotional and psychological implications which the process seeks to avoid and which are also against all international standards on dealing with children in conflict with the law.
- v. **Identifying and addressing the Needs of the Victim/Survivor:** Fundamental to the diversion process is the necessity to identify and address the needs of the

victims. However, this process has to be guided, to ensure that a common ground is reached that is satisfactory and acceptable to all concerned.

2.3.3 TYPOLOGIES OF DIVERSION FOR SIERRA LEONE

This section provides very specific sets of diversion approaches to be employed in Sierra Leone. However, it should be noted with caution that every case has its own peculiar characteristics and should be treated as such. As such, conclusions on the type of diversion approach to employ has to be based on the profiling and assessment of the child and the offence committed.

- i. **Oral/Written apology:** Given the nature of an offence committed, a child could be asked for an oral or written apology to the victim and the community (should that be determined by the panel as necessary). As part of the apology, the child should commit him/herself to never committing any offence in the future.
- ii. **Reparations:** This approach is geared towards getting the children provide services that will appease the victims of the offence. Reparation could include direct services such as cleaning a house or doing community service, to any other defined to be adequate for the offence committed. However, it should be ensured that this is done in a supervised manner that does not place the child at further risk of abuse, either by the victim or others during the reparation work.
- iii. **Counselling:** Counselling if properly done is very rehabilitative and could lead to positive behaviour change. Such an approach will be geared towards getting the child to understand what s/he has done, with a trained counsellor taking him/her through a counselling process that is expected to have positive psycho-social effects in terms of mitigating future occurrences. However, with counselling of the offender, the benefits to the victim of the offence might be less tangible.
- iv. **Mediation:** This process will bring together the child and the victim of the offence, with the aim of reconciling them and determining the needs of the victim. This process should also include family and community leadership. Involving these actors will be essential in ensuring the safety and security of the

child, mitigating stereotypes and stigmatization and at the same time get their support in helping the child improve their behaviour in society.

- v. **Constructive use of leisure time:** In assessing the nature of the offence committed and the reasons behind the action of the child, it should be determined whether there is any relationship with the child having too much free time and getting into mischief due to this or whether that is caused by factors such as peer influences, lack of parental supervision or children living in inadequate care situations. If that is the case, the Panel should determine what should determine how the child should use his/her leisure time or where the intervention of the MSWGCA is required to take appropriate steps. For offences caused due to free time, recommendations could include doing community service, household chores, studying in a library, alternative education programme or recreation programmes. The child would be effectively monitored to ensure that s/he is using the time as determined by the Child Panel.
- vi. **Police Caution:** In certain cases, the child will be cautioned by the police, with the police explaining the consequences if there is a repeat of the offence. However, such an interaction will be witnessed by a child protection expert/social worker and the police also doing the caution has to be trained on dealing with children.
- vii. **Education/Training Programmes:** A key typology of diversion is education/training programmes. Such programmes may be specifically designed for diversion or could be in existence, with children going through diversion included in them. Such programmes may include training in life skills and anger management, which could be used for offences related to noise causing, insulting conduct and threatening remarks.

3. THE CHILD PANEL MODEL

For diversion to be implemented, there needs to be a Child Panel established in each district of the country with the aim of cascading them to the chiefdom levels within the shortest possible time. However, to avoid cost implications, the panels have to be fully integrated into government structures, preferably the Ministry of Local Government and Rural Development (MLGRD), with the responsibilities of membership in the Board integrated into the Terms of Reference (ToR) of government officials and non-government officials, who should be willing and able to participate on a voluntary basis. The Panel will play the following role:

- i. Assess every case brought before them by the police or the judiciary for diversion and determine the diversion pathway to take and the support that the child offender and the victim will need;
- ii. Inform all partners that should be involved in the process, which the child will go through' of the role they should play. For instance, agencies that may be required to provide psycho-social support or agencies that will monitor where the child will be doing community service;
- iii. Provide a probation officer that will be following through on the progress of the child and reporting to the Panel;
- iv. Assess the progress made or not made by the child and end or extend the period that the child should go through the process.
- v. Child Panels have the power to place a community guidance order on the child with the agreement of those present. This means placing a child under the guidance of a person of good standing in the community for not longer than a period of 6 months. However, while this approach can facilitate one-to-one mentoring, having one person to supervise a child could also pose a risk of isolation, abuse and lack of accountability. It might be better to have a community action group or CBO/NGO do the supervision. Ideally these groups and individuals should be trained in their roles.

3.1 CONSTITUTING THE CHILD PANEL

Every Child Panel should comprise of not more than seven people including the parents and community members. It is important that a parent/guardian and the community are involved as they have a crucial role to play in the rehabilitation of the child and mitigating stereotypes and stigmatization. Coupled with this, it is recommended to have fewer people than the nine members proposed in the CRA of 2007 as such a large number could undermine confidentiality and could also be intimidating for the child. It is important that there is a good gender balance in every panel constituted.

Each panel should comprise of the following (as feasible):

- i. Chairperson. Nominated by the district council;
- ii. Member of a Child Welfare Committee ;
- iii. Representative from the Chiefdom council;
- iv. District Social Welfare officer (who will act as secretary);
- v. Member of the Local Police Partnership Board;
- vi. Parent/Guardian; and
- vii. Community representative.

The Panel can function if at least five of those listed above are present, including the parent and community representative, as it may in some cases be difficult to have all of those listed present at the same time. The absence of one or two people should not affect the activities of the Panel, thereby delaying a decision on the case and placing the child at risk for being referred back to the formal justice system.

3.2 INTERIM MEASURES

Due to the fact that it will take time for the Child Panel model to be established and piloted, the CJWG should have interim measures in place that will ensure that diversion begins to take place immediately within police stations and at the community level. In the police station, the police should have at least two informal actors preferably members of the LPPB and CWC or any person deemed fit to perform such a role. However, the services provided should be on a voluntary basis. Similar measures could be established within communities, however, the CJWG has to monitor the setting up of them to mitigate abuse of the process and has to be embedded in community structures such as the CWC, with

the involvement of people deemed to be capable of performing such roles. The method of assessment of cases has to be based on the eligibility criteria set above.

4. ROLE OF STAKEHOLDERS

The process of implementing diversion in Sierra Leone has to be a multi-stakeholder endeavour with all relevant stakeholders including the formal and informal actors horizontally integrated into the process. This section defines the roles that stakeholders could play in diversion and how those roles could be enhanced to achieve the objectives of diversion and ensure sustainability of efforts.

4.1 FORMAL INSTITUTIONS AND SPECIALISED AGENCIES

Inasmuch as institutions such as the SLP, Judiciary, MSWGCA and the MLGRD may have frontline roles to play, other institutions such as the Ministry of Education, Science and Technology (MEST), the Ministry of Health and Sanitation (MOHS) with support from specialised UN agencies such as UNICEF and the World Health Organisation (WHO) are essential in providing health, education and other services essential to the rehabilitation process of the child. These institutions and their roles in the process of diverting children from the formal justice system are indicated below.

a. The Sierra Leone Police

When an act that is inconsistent with the law is done by a child, the first line of action is to inform the police. It is worthy to mention that diversion may have to cut across departments in SLP for better protection of children who may come into contact with other departments, e.g. CID or general duties. As such, all departments that come across children should be trained on diversion to ensure that they are prepared to handle cases that they come across. However, for emphasis is placed on the FSU in this section, which does not necessarily mean other sections will not deal with diversion.

The first step that the police should take will include:

- Hand the child over to the FSU/Social worker in the police unit or post;

- The FSU officer and the social worker should determine if the child is below the minimum age and if the child is below that age, the child will be handed over to the social worker who will take the child back to the community. However, appropriate steps are to be taken to address the factors informing the abnormal behaviour of the child;
- If the child is within the age of responsibility, the FSU officer and the social worker should determine after assessing the allegation, if the child should either go through diversion or the formal justice system. Should it be determined that the child should go through the diversion process, s/he will be handed over by the social worker to the Child Panel. If it is established that the offence warrants prosecution, the police will seek the advice of the public prosecutor. However in every step taken, it should be ensured that the rights and welfare of the child are fully protected and the child should not be exposed to any potential physical or psychological harm;
- Police should invest in training its staff on specific child protection issues that will better position them to deal with children in conflict with the law.

b. The Ministry of Social Welfare, Gender and Children's Affairs

The MSWGCA is one of the lead institutions in the process of diverting children from the formal justice system. The MSWGCA has a unique advantage as its mandate cuts across social (family/community related issues) and children. Thus, it is strategically positioned to protect and promote the rights and welfare of children in conflict with the law. At the moment, the Ministry has 16 social workers deployed in some FSU's in the country. Key roles of the MSWGCA in relation to diversion should be:

- Providing social workers trained in child protection across the country;
- Working with designated FSU officers to determine the age and the pathway for children in conflict with the law;
- Work with families and communities in improving the behaviour of child offenders below the minimum age;
- Participate in every Child Panel;
- Provide specialised services such as psycho-social support;
- Monitor children that are going through diversion;

- Undertake proactive measures such as awareness raising and sensitization in communities that are geared towards mitigating children from committing offences.

c. The Judiciary

Diversion can take place at any point in the judicial process and as such the judiciary is a key player in the process. A magistrate or judge could base his or her decision on the nature of the case, the factors that contributed to the acts or actions of the child, the contexts under which the child grew up; the knowledge of the child of the offence s/he committed, whether it is a first offence or not. Based on these factors, the magistrate or judge could determine whether diversion will be the most appropriate line to follow.

d. The Ministry of Local Government and Rural Development

The Child panel will be hosted by the MLGRD and it will be represented in all of the panels. The Ministry also has a crucial role to play in the sustainability of the panels. However, the capacity of the Ministry has to be enhanced to enable it efficiently and effectively carry out its responsibilities in relation to the Child Panels.

e. Specialised Services

Specialised MDAs and organisations such as the MOHS and MEST are vital to the diversion process as they will provide education, health and psycho-social support that are essential for the rehabilitation of the child. For instance, the MEST should be able to provide support with Accelerated Learning Programmes (ALP) and specialised trainings for out of school children and potentially support the child's reintegration back into the formal school system where this is feasible.

4.2 CIVIL SOCIETY ORGANISATIONS

Civil society organisations have to be mobilised and encouraged to support the process of diversion. Organisations such as Defence for Children International and AdvocAid which

are specialised child protection services could play a leading role in complementing the activities of the GoSL and monitoring and evaluating the diversion process to ensure that best practices of child rights and accountability are followed. Key roles they could play in strengthening the process are:

- The referral of cases they come across in their line of work to the rightful authority;
- Provide specialised services based on their area of expertise;
- Monitor the rehabilitation process of a child;
- Undertake awareness raising and sensitization programmes in communities on issues related to children and the law and to strengthen understanding of the diversion process and how this works.

4.3 ROLE OF THE INFORMAL JUSTICE MECHANISMS AND ACTORS

Informal structures such as the LPPB and the CWC and actors such as the family and the community and its leadership have a vital role to play in relation to diversion. Their involvement, participation and ownership of the process has to be fostered and not treated as a mere essentialist approach. To begin with, the family and community members are the primary caregivers and front liners living with children in their homes and communities and they are the social capital that the process needs if it is to be successful. They are also ultimately responsible for providing guidance and supervision to all children in their homes and communities, before, during and after a diversion process takes place. As such, their awareness and knowledge of what to do and where to refer/report when offences are committed significantly helps in de-escalating tension and taking the right steps. Coupled with this, they have several other roles to play if their capacity is enhanced through awareness raising, sensitization and mobilization on issues related to children and the justice systems. These roles include:

- Protecting juvenile offenders from violence by community members when they are accused of committing an offence;
- Providing all necessary support to the police in investigating a report;
- Participating in child panels and CWCs. Members participating have to be selected by the community members;

- Supporting the reintegration and rehabilitation of children. Locally acceptable psycho-social approaches should be assessed and supported as rehabilitation could be a lengthy process depending on the psycho-social status of the child; it must be facilitated by individuals that the child trusts, with the support of trained social workers and other service providers.
- Preventing stereotypes and stigmatization against children in conflict with the law or that that have been in conflict with the law;
- Providing feedback to the Child Panel or designated person(s) on the behaviour of children going through diversion; and
- Taking proactive measures to mitigate against children's involvement in crimes; this include parents sensitised on the meaning of parenting, getting involved in the lives of their children, providing supervision, and protecting the rights and welfare of children.

5. CONDITIONS THAT MUST EXIST FOR DIVERSION TO BE SUCCESSFUL

For the implementation of a Diversion Framework to be successful in Sierra Leone, there are certain conditions that should exist. These conditions are listed and assessed in this section.

- i. A well-defined legislative and institutional framework on diversion:** For diversion to be implemented, there is the need for an existing formal diversion legislative framework from where it derives its mandate. This will mainstream diversion and prevent it from being used as an ad-hoc approach as is currently the case.
- ii. Resources available and dedicated to the implementation of diversion:** The implementation of diversion requires resources to be available to the process. Though it will be embedded in government structures, there will be the need for resources to support the rehabilitation needs of the victims and the offenders. To foster the efficient use of limited resources that will be available, ensure complementarity and avoid duplication of efforts, cooperation, collaboration and coordination among the relevant stakeholders has to be promoted. Even with this, due to the limited resources available, it is important that a gradual scaling up process is used through a piloting model, which will inform the replication of diversion in other areas of the country.
- iii. Capacity building for institutions and actors central to the diversion process:** Significant capacity building is required for both formal and informal sector actors on diversion. At the moment, the capacity available is very limited and institutions also need to transform their approaches to dealing with children. Alongside this, systems and structures need to be established that are children friendly and support the process of diverting children from formal justice systems. With the informal actors, capacity could be built through awareness raising, sensitization and constant constructive engagement with the leadership of local communities. It should be noted that family and community members would form a key component of the Child Panel. The informal actors provide the social capital that is needed to promote reacceptance, healing,

rehabilitation, safety and security of the child, and to mitigate stigmatization and stereotypes.

- iv. Active and Effective Referral Pathways:** There is the need for an efficient and effective referral pathway if diversion is to be successful. Children going through diversion will require follow-up care after diversion of cases. Institutions providing such care should be available and should have the capacity to provide the care required. Key support that the child will require would be health, psycho-social and education related.
- v. Political will:** A diversion process needs immense political will to demonstrate a shift from the usual practices of dealing with children in conflict with the law. The principal duty bearer, that should protect and promote the rights and welfare of the children of Sierra Leone, is the GoSL and its demonstration of political will in creating the enabling environment, legal frameworks, provision of resources, and ownership of the process alongside the informal actors will go a long way in protecting and promoting the rights and welfare of children in conflict with the law.
- vi. Multi-sectoral response:** For diversion to be effectively implemented, a multi-sectoral response mechanism is required. Such a response require adequate coordination, cooperation and collaboration among all relevant actors and should take a proactive rather than a reactive approach.

6. MONITORING AND EVALUATING THE IMPLEMENTATION OF DIVERSION IN SIERRA LEONE

To ensure the successful implementation of diversion, a monitoring and evaluation framework should be developed that will be used to track the efficiency and effectiveness of the process and the impact it is creating in the lives of the children going through diversion. The findings from the M&E process will be used to take corrective measures where challenges or gaps are identified.

Monitoring will be done by a small group of officers provided by member institutions of the Child Justice Working Group (CJWG) and the secretariat of the Child Panel within the MLGRD, to reduce the burden of direct and specific costs on the GoSL and to ensure sustainability. Thus, the institutions should be encouraged to add the responsibility within the ToR of the designated personnel. Monitoring will be done regularly with reports provided to the CJWG. There will be a specific M&E officer that will be collecting, collating and managing data collected from the diversion process. This officer will be stationed at the MLGRD and will be coordinating with the M&E officer of the JSCO.

Evaluation: At least one evaluation on the diversion process should be carried out every year by external experts. An external evaluation process will be of value addition to the process as it will assist in identifying areas for improvement. This will enable the relevant stakeholders improve on their roles and the services they provide to children in conflict with the law.