

# Basic Framework for the Implementation of a Functional Juvenile Justice System



The Commonwealth

Office of Civil and  
Criminal Justice Reform

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# Introduction

Juvenile justice systems must, above all, emphasize the well-being of the juvenile and ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

Across the Commonwealth, a number of challenges exist in respect of an effective juvenile justice system. Not all member countries have, for example, dedicated juvenile justice systems with separate courts and staff. Some countries also do not have adequately resourced social welfare departments which can effectively support the work of the courts in dealing with juveniles. Juveniles may be held in detention facilities alongside adults. Statistical information regarding juveniles who come into contact with the law is often extremely limited, resulting in difficulties in identifying trends in types of offending and in enabling proper planning and effective policy decisions to support juveniles in order to prevent them from coming into conflict with the law. Many countries also have outdated legislation relating to juvenile justice or no relevant legislation at all.

This Commonwealth Basic Framework for the Implementation of a Functional Juvenile Justice System is designed to guide member countries as to the key achievable elements that a juvenile justice system should include, in line with the United Nations Standards Minimum Rules for the Administration of Juvenile Justice, and the United Nations Convention on the Rights of the Child. The Framework is intended to be flexible enough to be adapted to the different national circumstances of individual member countries.

# Background

At their meeting held in 2005 in Accra, Ghana, Commonwealth Law Ministers noted that every Commonwealth country is party to the United Nations Convention on the Rights of the Child. Law Ministers requested the Commonwealth Secretariat to continue to support member countries in complying with the Convention, and to examine good practice in juvenile justice and to bring forward recommendations which could be implemented in Commonwealth member countries.

Subsequent to that meeting, the Commonwealth Secretariat conducted visits to a range of countries for the purposes of reviewing the situation related to juvenile justice. Consultations were held in Barbados, Fiji, Guyana, the Maldives, Namibia, Samoa, Swaziland, Tanzania (Zanzibar) and Zambia. The Commonwealth Secretariat also attended a meeting of the South Pacific Council of Youth and Children's Courts, where the needs of both developed and developing states were discussed. Australia, Fiji, Kiribati, New Zealand, Samoa, Solomon Islands, Tonga and Vanuatu were represented at that meeting.

A draft Basic Framework was considered by Senior Officials of Commonwealth Law Ministries at their Meeting in London in October 2007. Written comments on the draft Basic Framework were subsequently received from a number of countries.

The revised draft Basic Framework for the Implementation of a Functional Juvenile Justice System was presented to Commonwealth Law Ministers at their meeting held 7 to 10 July 2008 in Edinburgh. Law Ministers encouraged the Commonwealth Secretariat to continue to support member countries in their obligations towards the United Nations Convention on the Rights of the Child and recommended the Basic Framework for implementation.

# Basic Framework for the Implementation of a Functional Juvenile Justice System

## The Framework

An effective juvenile system is comprised of a number of necessary components which are inexpensive to implement. With some technical and material assistance from international organisations such as the Commonwealth Secretariat, effective juvenile justice systems are achievable. The following are the suggested basic components of a framework for juvenile justice.

### (1) Principles to be Applied

The “well being of the child” and “the principle of proportionality” are the overarching principles that apply in juvenile justice as set out in Rule 5 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) 1985. Therefore rehabilitation should be the primary aim of any juvenile justice system rather than one of punishment. The Convention on the Rights of the Child 1990 (CRC) provides the statement of fundamental principles that apply in dealing with juveniles.

### (2) The Investigation Process

#### 2(i) Investigation of Juveniles by the Police

Arrest is always the last resort for investigating authorities and where possible proceedings should be initiated by way of summons (CRC Article 37(b)). This will prevent the possibility of juveniles being held in overcrowded detention facilities along with adult detainees. The following actions are recommended subject to the legal requirements of each state jurisdiction:

- where an arrest cannot be avoided, detention should always be considered as a last resort, and efforts should be made to ensure that bail is granted and that appropriate accommodation for juvenile offenders is available;
- where juveniles do not appear at court whilst on bail, this needs to be measured against the adverse effect of their detention in adult facilities;
- parents/guardians should be notified as soon as possible by the investigating authorities and be invited to attend the police station if the juvenile has been arrested (Rule 10; Beijing Rules);

- an independent and appropriate third person be present when interviewing a juvenile. This will ensure that the juvenile is not overwhelmed by the investigative process and that his or her rights (which will be the same as adults being interviewed) are protected subject to the requirements of confidentiality of police investigation where applicable;
- the police need to be trained and be aware of their responsibilities in relation to investigation, arrest and detention (Rule 12; Beijing Rules). This can form part of the curriculum in existing police training institutions;
- juveniles who have committed an offence with one or more adults should be separated at the earliest opportunity from the adult(s). This will prevent undue influence being placed on the juvenile by an adult accused;
- all charges against a juvenile should be heard in the juvenile court. In circumstances where the juvenile is charged with co-offending adults it is suggested that where the juvenile pleads guilty to the charge(s) then those charges be heard before the juvenile court. Where the juvenile is pleading not guilty then those matters are heard before the adult court with the adult co-offenders if they are also pleading not guilty.

## 2(ii) Detention of Juveniles

"Every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so" (CRC Article 37(c)). Detention should not only be restricted to cells but may be carried out in other areas of a detention facility such as an office or a medical room. Such a situation should be envisaged by all detaining institutions and appropriate arrangements made accordingly.

Zambian officials, amongst other states, have been proactive in this area. Specific police stations designated to hold juvenile detainees separately have been resourced. This obviates the expense of building separate detention facilities for juveniles in all police stations. Sensible organisation of resources and facilities can achieve many ends without the need for great expenditure.

## 2(iii) Diversion

Diversion programmes by the police such as a warning process could be put in place for juveniles who commit minor offences rather than having them come before court (Rule 11; Beijing Rules). However this would need to be done with care. There is the potential that members of the police force who are poorly paid or disillusioned may be amenable to accepting bribes to facilitate a warning, which will encourage already prevalent corruption practices. This was a problem in Zambia and the practice of diversion by the police was ultimately stopped.

Innovative schemes such as group family counselling have been used which involve the juvenile's family and in some cases restorative justice initiatives have been used where the victims participate and impress upon the juvenile the harm that has been caused. These initiatives can often lead to the juvenile reconciling with families and victims which is a major step in the rehabilitation of the juvenile. They also represent an opportunity for the victims to start a process of recovery from the harm they have suffered.

The court should also consider diversionary dispositions rather than a formal sentencing process. However it should be remembered that in either process the juvenile's right to defend him/herself against any allegations should be respected.

### **(3) The Court Process**

#### **3(i) Separate Magistrate/Judge Trained**

All states need to consider the appointment of a specific judge/magistrate to head a juvenile court. Ideally such a person should be trained in juvenile justice matters so as to ensure the effective administration of juvenile courts and advocacy within the community. Such an appointment will also promote consistency in the application of the principles that apply in juvenile justice, in particular the "best interests of the juvenile".

An additional member of the judiciary does not need to be appointed or funded. The appointment may be made from the current ranks of the judiciary and a separate juvenile court could be set up within the normal court's weekly timetable, for example, by setting aside a separate day and court room for juvenile cases. This practice would maximise efficiency as the newly appointed head of the juvenile court could consider cases concerning juvenile offenders in the normal courtrooms. This can simply be done by re-organisation of workloads without any additional needs or costs.

#### **3(ii) Separate Court Space**

Ideally, a separate court facility is required to ensure that a conducive atmosphere is created. The formality of adult courts is not required, so areas such as disused offices would be a suitable juvenile justice facility. For example, in Fiji a disused traffic court, which was being used to store old files and equipment, was used to house a separate juvenile court. This was done at little cost with the assistance of AUSAID. Similarly in Zambia, at the urging of the Commonwealth Secretariat, it has been proposed to use an abandoned court to house a separate juvenile court. This will be done at little cost because the infrastructure and building are already present.

A separate juvenile court may include a court room set up in an informal manner, a separate registry and a supplementary room for dealing with cases by conferencing/diversion involving the magistrate, the juvenile, the juvenile's family, social welfare and victims, if necessary.

The facility may also make provision for office space for social welfare departments so that they are immediately available to deliver assessments and assistance when required by the court.

#### **3(iii) Separate Court Registry, Record Keeping and Trained Court Staff**

As indicated above, the juvenile facility may also contain a dedicated registry for the court with registry staff trained in juvenile justice law and procedure (see Rule 22; Beijing Rules), who maintain the court records. The records will form part of important statistical information that is used to examine trends in juvenile justice matters. This will in turn enable authorities to be proactive in addressing increasing social problems affecting juveniles rather than being reactive. The need for relevant information on juveniles has been recognised in Rule 30 of the Beijing Rules as necessary for effective planning and policy formulation.

The registry staff need to be trained in juvenile justice principles and not just in court administration. They will then be in a position to give advice on juvenile court procedures and on the principles underpinning the system. Only one or two registry staff need to be trained and they could be picked from the current ranks of court registry staff. Staff could be provided on a rotation basis, which would then provide training in juvenile justice practice and theory for all court staff.

### 3(iv) Trained Prosecutors

Prosecutors in juvenile courts need not only to be trained in prosecution techniques, but also in the operation of juvenile courts and the principles that apply to this jurisdiction (see Rule 22; Beijing Rules).

Police training colleges exist in most states and it is simply a matter of adjusting the existing curriculum to incorporate juvenile justice matters.

### 3(v) Trial of Juveniles

It is important to remember that juveniles have the same rights as adults in any hearing before a court, and that the juvenile should be informed of those rights. Care needs to be taken that juveniles are not left as spectators in their own trial and should be addressed directly where appropriate. Accordingly:

- the juvenile needs to be able to understand what is happening in the hearing process and the court procedures should reflect that requirement;
- plain language should be used;
- the judge/magistrate needs to explain to the juvenile the procedure that is about to take place and the juvenile should be asked throughout the proceedings whether he/she understands the process and what is being said;
- legal representation needs to be provided for all juveniles appearing before a juvenile court. In jurisdictions where lawyers are not readily available, voluntary lawyer schemes can be developed which would at least ensure some form of legal representation;
- the identity of a juvenile must be protected at all times in any proceedings before a juvenile court (CRC Article 40.2 (vii)). The juvenile's right to privacy should be respected at all stages of legal proceedings in order to avoid harm being caused by undue publicity or by the process of labelling (Rule 8.1; Beijing Rules);
- the presence of parents/guardians at any hearings involving a juvenile is necessary. They should be notified of any hearing date and informed that they should attend court;
- all hearings before a juvenile court need to be heard as soon as possible to ensure that the behaviour and/or the needs of the juvenile are addressed as soon as possible. This will maximise the chances of rehabilitation.

### 3(vi) Sentencing of Juveniles

The "well being of the juvenile" and the principle of "proportionality" are the primary concerns during the sentencing process (Rule 17; Beijing Rules). Therefore rehabilitation of the juvenile should be at the forefront of any sentence being contemplated, and all alternatives to imprisonment should be considered. Where offences are so serious that only a custodial sentence is warranted, any time ordered should involve the shortest time possible (CRC Article 37 (b)).

A variety of dispositions need to be available to a court in sentencing juveniles so as to enable the court to avoid institutionalisation (Rule 18; Beijing Rules) These can include care, guidance and supervision orders; probation; community service orders; financial penalties, compensation and restitution; treatment orders; orders to participate in group counselling and similar activities; orders concerning foster care and other relevant orders.

## (4) Imprisonment/Detention

“Every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so” (CRC Article 37(c)). Appropriate training programmes also need to be provided for the juvenile. Centres should try to avoid combining those juveniles sentenced by the courts and those juveniles in need of care and protection. Ultimately this is the greatest cost that a state will face. Staff should be trained in supervising juveniles.

Strategies need to be developed to fund separate facilities. However, the development of appropriate alternatives to imprisonment would undercut the need for separation. Social welfare departments therefore need to be well resourced and assisted to provide alternatives to imprisonment. In particular, they should be able to provide follow up support for juveniles even when they have completed any court order to ensure the progress and maintenance of the rehabilitation process.

## (5) Support In The Juvenile Justice System

### 5(i) Specific Legislation

Specific juvenile justice legislation needs to be drafted and implemented. This should set out the principles that apply to juveniles in the justice system as well as defining who a juvenile is. A minimum age of criminal responsibility should also be set (Rule 4; Beijing Rules).

A child is defined as being under the age of 18 years by the Convention on the Rights of the Child, Article 1. The age of criminal responsibility should not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity (Rule 4, Beijing Rules).

International assistance is readily available to assist in the drafting and legislative process. For example, the new juvenile legislation in Samoa has been drafted using a model act designed by Peter Boshier, the Chief Judge of the Family Court of New Zealand and previously a judge of the Youth Court of New Zealand with experience of working in the Pacific. The legislation is effective because it is based on and further develops the traditional social structures that exist in the Pacific. Therefore assistance from members of the legal profession with some knowledge about the societal and community structure of the state under consideration is advantageous and should be encouraged where possible.

### 5(ii) Social Welfare Support

The immediate availability and response of social welfare support is important in the functioning of any juvenile court (Rule 16; Beijing Rules), and social welfare departments need to be properly resourced to achieve this end. Welfare workers should be trained in identifying and assessing issues affecting juveniles as well as considering how to provide support for the juveniles after they have been dealt with by the court. Social welfare departments therefore require access to adequate resources for field work.

Although there may be some additional costs, such as the provision of a vehicle to enable welfare workers to carry out their work, much of this could be achieved through the proper allocation of resources and the development of supporting networks within the government, private business organisations and NGOs which could quickly assist in providing necessary support (Rule 25; Beijing Rules). Such a system has been developed and tried in the Ba region of Fiji by an individual local

magistrate who is committed to the principles of juvenile justice. This has resulted in a decrease in offending because the community as a whole has provided ongoing support, and this has been achieved with minimal cost.

Many developing states have a comparative advantage in that traditional village and social structures are still in place that could be used to provide the necessary support that social welfare departments need. A linking of these traditional institutions with the social welfare departments would provide a valuable form of support in juvenile justice matters at minimal cost.

### **5(iii) Legal Representation**

Lawyers, wherever possible, need to be available to advise and represent juveniles in court (CRC Article 37(d)). Where there is a lack of lawyers, Law Societies and/or Bar Associations can be organised to provide this assistance on a voluntary basis as part of their support of the legal system and the community.

### **5(iv) Public Awareness Campaigns**

These campaigns may be organised to ensure that the community understands the principles that apply to juvenile justice and therefore ensure public support for juvenile justice as well as placing pressure on governments to support juvenile justice initiatives. In too many situations vocal groups are advocating that juveniles be treated in the same manner as adults, which would invariably frustrate the rehabilitation of a juvenile. This has further repercussions of repeated and probably more serious offending. The principles that apply to juvenile justice are not only designed to protect and rehabilitate the juvenile but also protect the public from ongoing offending.

These campaigns can also be directed at juveniles to ensure that they understand that certain actions are wrong and have consequences for themselves as well as their victims, potential or actual. Campaigns in schools and other youth organisations would be appropriate.

### **5(v) Juvenile Support Groups**

To ensure that a juvenile justice system operates effectively and efficiently, support is required. This can include judges/magistrates in charge of juvenile courts, social welfare departments, police, NGOs that provide support for juveniles and other community organisations such as schools, and youth groups that work with juveniles. Representation from business groups would also be beneficial as they could also act as a conduit in providing the public voice on juvenile issues. An example of this being done is Barbados where the magistrate in charge of juvenile matters convenes regular meetings of such stakeholders to examine how to support the juvenile justice system.

The establishment of regional associations, which can address issues within juvenile justice systems such as the SPCYCC, should be considered as they can provide valuable support for states that are developing their juvenile justice systems. This can be provided by way of advice, mentoring and material assistance as they bring together not only the judiciary but also numerous support groups such as UNICEF, donors and the Commonwealth Secretariat. Such an organisation would represent a valuable resource in developing juvenile justice systems.

### **5(vi) Statistical Information to be kept on Juveniles that identifies Issues and Trends**

The court needs to be provided with sufficient resources to enable it to compile statistics from its records. This record would be in addition to statistics of other authorities such as social welfare departments and the police, and would assist in identifying current trends in juvenile justice issues. This would enable authorities to be more proactive in preventing problems rather than simply responding to problems as they arise (Rule 30; Beijing Rules).

Statistical information is currently compiled by courts and other authorities so there is no significant additional cost in this process. It is just a matter of collating all this information on juveniles and developing conclusions by analysing this information. IT programmes can be developed to do this and with the assistance of donor agencies or private business donations this is readily achievable at little extra cost to a state.

### **(6) Juveniles In Need Of Care And Protection**

It is a matter for each jurisdiction to decide if juveniles in need of care and protection are dealt with by a juvenile court or a family court. In either case it is important that the juvenile is treated as someone in need of care and protection and not as an offender. Ideally therefore, juveniles in need of care should not be accommodated in the same facilities as juvenile offenders although it is recognised that this is an additional cost to the government. If this cannot be avoided, then efforts should be made to ensure that the needs of those in need of care and protection are met and that they are not treated as part of a group of juvenile offenders.

Alternative facilities need to be provided such as foster care, or the juvenile should be allowed to return to the family under supervision and assistance orders (CRC Article 20.3).

The juvenile has the right to legal representation and the right to speak in any trial or hearing (CRC Article 12.2). This would enable the child in need of care to have some say in the manner in which he or she is cared for by the state, for example, to be able to say that they do not wish to be separated from siblings who may also be in need of care. A periodic review of juveniles in care needs to be conducted to ensure that juveniles are not kept in care beyond the necessity of their case (CRC Article 25).

### **(7) Juveniles As Victims**

Special arrangements need to be developed in dealing with juvenile victims of crime. Trained investigators and medical examiners should be available as well as trained prosecutors, court staff and members of the judiciary.

In particular, special arrangements can be made for juvenile victims to give evidence in another room within the courthouse using video links, where considered reasonable and necessary. The victim would therefore avoid experiencing the unnecessary trauma of facing the offender in the courtroom, which could adversely affect the quality of their evidence. Such technology is now commonplace and relatively inexpensive although a cheaper alternative such as screens around the witness box could be used in the courtroom as well.

Pre-trial support to juvenile victims needs to be provided by prior explanation of the legal process. The prosecution may also apply for permission for a trusted person to sit with the juvenile victim during the course of giving evidence. However, this will be subject to objection by the defence in which case the court should then decide upon the applications having regard to the well-being of the juvenile victim.

Cases that involve juveniles as victims, especially in sexual offences, need to be dealt with expeditiously by the police, and the courts should ensure that the juvenile does not have to wait unreasonable periods of time to give evidence. Unfortunately defence counsels have been known to delay the hearing of cases, and then argue that the juvenile's evidence is suspect because of the length of time that has elapsed since the alleged commission of the offence. Delays are also used as a means of indirect pressure on the juvenile victim to withdraw allegations because of the psychological burden on them of having these matters unresolved for long periods of time. The reasons underlying any application for an adjournment need therefore to be examined carefully and resisted unless it would be in the interests of justice to grant it.

States need to take all appropriate measures to promote the physical and psychological recovery and social integration of a juvenile victim (CRC Article 39). In all of these matters the privacy of the juvenile is to be respected.



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