

## **HELP & SHELTER & RED THREAD RECOMMENDATIONS ON THE JUVENILE JUSTICE BILL – MAY 2016**

### **Removal of all Statute Offences**

All Status offences must be removed immediately from the law books of Guyana

- (a) Status offences are acts, which when committed by children, adolescents and teenagers are considered to be offences but if committed by adults are not offences. These include truancy, wandering, consumption of alcohol, gambling, immoral conduct and refusal to obey parents and guardians
- (b) Adolescents and teenagers committed to NOC for such offences should be ASAP removed offered the best of rehabilitation services and re-integrated using best practices into society

### **DIVERSION MEASURES**

Diversion measures MUST only apply in circumstances where the adolescent or teenager's actions would lead to charges and prosecution. Diversion must NOT be used by the Guyana Police Force against adolescents and teens whose actions would not be offences including status offences referred to above.

Diversion measures must also be in keeping with the child's age/religion/sex/gender identity/religion/culture/views/disability

Diversion programmes should be limited for first-time offences and possibly second offenders but should not be used for recidivists i.e. adolescents/teen serial offenders

Diversion should not be used and is not appropriate for the most serious offences such as murder, rape

If a charge cannot be made against a child/adolescent/teen then there should be no legal or diversion measure and the case must be dropped.

### **NGO Participation in Diversion Programmes & Support Services**

NGOs and other civil society organizations who have a good track record, reputation and who already offer child protection services including counselling and other support services to children, adolescents and youth should form part of a network of organizations utilized for diversion programmes. Services such as counselling, substance abuse treatment and education, anger management classes, conflict resolution, life skills, child abuse behavior changes etc could be offered so as to deal with the root causes of the child/adolescent/teen behavior..

Such NGOs should be assessed and certified to carry out such services. A list of certified NGOs to be made available to juvenile courts, GPF, Director of Sports and other relevant persons.

A curricula should be developed for life skills sessions which child/adolescent/teen should complete; community service programmes; mediation between offender and victim; family conferencing; apprentice schemes are some other examples of diversion programmes

Guidelines and protocols need to be established for consistency within the diversion system. While some leeway should be granted based on individual circumstances of the child and offence, sanctions should be fair and equitable i.e. number of hours of community service an adolescent/teen in conflict with the law must complete and should be in keeping with the offence

The Beijing Rules promote the use of NGOs, local institutions and other community resources for the rehabilitation of the children. It states that 'co-operation with the community is indispensable if the directives of the competent authority are to be carried out effectively'.

### **Confidentiality**

Confidentiality MUST be a fundamental principle for diversion programmes as trust and confidence in the programme and individuals running the programme would be undermined if a child is asked and discloses personal and sensitive information and this is revealed during programme or after.

In mediation or cautioning, the child should be free to talk in the knowledge that what they say will remain confidential, including where diversion does not work and court proceedings follow. An offender should be able to refer to an advocate if he or she experiences bad treatment

### **AGE OF CRIMINAL RESPONSIBILITY**

A child under the age of criminal prosecution lacks the capacity to commit a crime. This means they are immune from criminal prosecution – they cannot be formally charged by authorities with an offence nor be subjected to any criminal law procedures or measures.

The significance of the minimum age of criminal responsibility is that it recognises that a child has attained the emotional, mental and intellectual maturity to be held responsible for their actions. Under Article 40(3) of the CRC, States are encouraged to establish a minimum age below which children are presumed not to have the capacity to infringe the criminal law.

We propose that the age of criminal responsibility be 15 years

### **Mentally disabled youth in conflict with the law**

Special measures must be in place to address situations of mentally disabled adolescents and teens in conflict with the law. Since many of these have a mental understanding far below their age they should never be remanded to custodial care or found guilty of offences for which they do not understand consequences of such offences

Release from custody without warrant by police section 28 of the JJB –should be 12 hr instead of 16 hrs

### **COURT**

We recommend the establishment of special juvenile justice courts. In the interim we will support the JJB provision for any court to be deemed a juvenile court to hear a juvenile case once certain measures/support services are put into effect such as;

### **Probation reports/assessments/services**

- Specially trained social workers be available to assess children in conflict with the law and prepare accurate and credible assessment reports for courts in each jurisdiction [see assessment guidelines below]
- Special waiting rooms available for adolescent/teen in conflict with the law, apart from other adult offenders in courts
- Court support counsellors/child advocates available to guide and support the adolescent/teen through the legal process in all jurisdiction. NGOs such as Help Shelter and Red Thread who are experienced in this field should be utilized

- Video links be made available for testimony of adolescents/teens to be heard without having to be physically in court. In the absence of video links, screens should also be available and utilized in a similar manner in court. Nibbi screens made from renewable forest products should be utilized as they are lightweight and can easily be moved and removed

### **Questioning and cross-examination**

- International conventions and best practices recommend that children need be questioned in a child-sensitive manner to reduce potential intimidation and abuse. The magistracy and judiciary have a pivotal role in ensuring that Guyana's juvenile courts uphold these standards. Experience has shown that this is best achieved when questioning is undertaken in the format of a talk with the child as opposed to a one-sided or adversarial examination.
- Taking into account that a child's attention span is less than that of an adult, appropriate breaks in questioning should be allowed in keeping with the adolescent's/teen's age and maturity. Limits must be placed on the number of questions the adolescent/teen is asked so as not to confuse him or her.
- Cross-examination must be carefully monitored as to the way in which questions are asked and the tone used. Asking irrelevant questions designed to intimidate or upset the child should be disallowed and restricted as should using words and language beyond a child's level of understanding
- Translators and court support advocates must be available for indigenous youth in conflict with the law, Guyana has 9 different indigenous peoples, some of whom English is their second language
- Sign language experts must be made available for deaf youth who may come into conflict with the law as should other expertise for persons with the range of other disabilities

### **SPECIALIZED UNIT/ TRAINING FOR POLICE**

Specialized juvenile units to be established in each region with appropriately trained officers

Police officers should be specially instructed and trained in child rights, child development, ethics, child protection, how to interview children and all procedures as set out in the JJB. Beijing Rules state: 'as police are the first point of contact with the juvenile justice system, it is most important that they act in an informed and appropriate manner

### **PSYCHOLOGY DEGREE PROGRAMMES FOR JUVENILE JUSTICE/CHILD PROTECTION SYSTEM**

A degree programme in child psychology must be introduced as a priority at UG. Child psychologists are a requirement for Guyana's juvenile justice system to function effectively and particularly for addressing the trauma of child abuse, child neglect and other behavioural problems associated with children in conflict with the law.

Additionally the UG Medical School should ASAP introduce psychiatry as a specialized area of medicine

### **ASSESSMENTS/PROBATION REPORTS BY SPECIALLY TRAINED, QUALIFIED SOCIAL WORKERS**

The assessment, and the report that results from it, should be prepared and written by a qualified social worker or probation officer, attached to, or linked with, the court.

Many complaints have been made about the quality of probation reports made to Courts in Guyana by Government probation officers. As one lawyer said it does not matter what the case is, the reports are very much the same.

Example of structure of a probation report structure: ASSET – UK

1. Living arrangements
2. Family and personal relationships
3. Education, training and employment
4. Community/neighbourhood
5. Lifestyle
6. Substance use
7. Physical health
8. Emotional and mental health
9. Perception of self and other people
10. Thinking and behaviour
11. Attitudes to offending
12. Motivation to change
13. Positive factors
14. Indicators of vulnerability
15. Indicators of serious harm to others

## **DETENTION**

### **Staff**

Staff for detention centres should be carefully chosen and should have the requisite skills needed. Staff should be multi-disciplinary and should include counsellors, social workers, educators, psychologists, vocational instructors, health workers etc. Staff should be carefully screened to ensure that they have never been arrested, charged or convicted for any offence against a child or any other offence. Staff recruited should want to work with children and have the right attitudes for working with children in conflict with the law.

All staff and management of a detention centre must be committed to establishing a safe and secure environment and should be positive role models for all the adolescents/teens in their care. In the performance of their duties, they should respect and protect the fundamental rights of all children, in particular, as follows:

- No staff of a detention centre or any trade school or educational facility may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever
- All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities
- All personnel should ensure the full protection of the physical and mental health of children, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required
- All personnel should respect the right of the child to privacy, and, in particular, should safeguard all confidential matters concerning children or their families learned as a result of their professional capacity

### **Staff training**

Staff should receive in service training on topics such as child development, child psychology, child welfare, international standards on the rights of the child, anger management, conflict resolution, sexual and reproductive health and rights etc, gender identity etc. They should be encouraged to maintain and improve their knowledge and professional capacity.

Staff should also receive adequate remuneration so as to attract suitable persons and should reflect the cultural, ethnic, religious, gender and geographic diversity of Guyana.

### **Involvement of NGOs and civil society**

Institutions in the juvenile justice sector should encourage and support NGOs in offering a range of support services to adolescents and teens. The trade schools should have their curricula revamped in keeping with modern practices and methodologies.

### **Social care plans/complaints**

- When an adolescent/teen is detained it is vital that an individual social care plan be developed for the duration of their sentence. This plan should be developed as soon as possible after admission, and be based on their background, needs, characteristics and risk factors.
- Detention's ultimate goal should be the successful reintegration of the adolescent/teen into society and all interventions need to be properly resourced and complaints investigators trained. Formal and informal complaints mechanisms can encourage detention facilities to be transparent and accountable for realizing the rights of children in their care. They can also act as a deterrent to violations of children's rights and bring serious abuses against children into the public domain.

Adolescents/teens should be made aware on entering an institution what the procedure is for raising issues or complaints. Adolescents/teens may be afraid to raise concerns or issues for fear of punishment or victimization by staff for doing so and they should be reassured of their right to raise concerns or complaints confidentially if necessary.

### **MONITORING AND EVALUATION**

Any juvenile justice system will only be as good as the monitoring and evaluation system in place. Little emphasis is usually placed on this aspect. A key area of monitoring and evaluation is independent monitoring of state institutions.

### **INDEPENDENT MONITORING MECHANISMS**

International standards state that children should only be detained as a last resort and for the shortest possible time. Nonetheless, many children are detained and their rights violated in detention. Facilities where children are held are often isolated from the community and therefore, when rights are violated it often goes unnoticed. The existence and work of independent monitoring mechanisms is important to try and prevent violations and to report when violations do occur and to ensure that conditions of detention are in compliance with national and international standards, and that of children's human rights.

### **Judicial monitoring**

Judges often have a formal role of prison oversight by visiting places of detention and hearing prisoners', including children's, complaints.

### **JUVENILE JUSTICE COMMITTEE**

We recommend that the composition of the juvenile justice committee be expanded to include regional, youth and civil society representation who have experience and a good track record of working with youth and adolescents. We further propose that the JJC be independent from ministerial control. We also propose additional layers of monitoring

### **REINTEGRATION**

- All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. (Havana Rules, Rules 79-80)
- The essential aim of treatment of every child shall be his or her reformation, re-integration into his or her family and social rehabilitation. (African Charter on the Rights and Welfare of the Child, Article 17; American Convention on Human Rights, Article 5)
- There should be a continuity of care between treatment provided within the prison and treatment provided in the community following release. (Standard Minimum Rules for the Treatment of Prisoners, Rule 81)
- Competent authorities should provide suitable residence, employment, clothing, and sufficient means for a person to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community. (Beijing Rules, Rule 80)
- Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time. Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community and community support should be encouraged. (Beijing Rules, Rule 28)

Evidence has shown that many children in custody come from chaotic and disruptive backgrounds. Children are often placed in custodial facilities that are far away from their homes e.g. NOC, this makes reintegration difficult as families are often not able to visit their children while they are in detention. At the end of their sentence many find it very difficult to adapt back into a home environment. Thus the need for half way homes to help with the transition process