

UNICEF & Penal Reform International 2006: Juvenile Justice Training Manual

MODULE FIVE

**PRE-TRIAL DISPOSAL AND
COURT PROCEEDINGS**

FACILITATOR'S GUIDE

MODULE FIVE

OVERVIEW

OBJECTIVES

At the end of this module participants will:

- Understand the importance of prosecutorial discretion, learn about experiences that aim to divert children away from formal court process.
- Understand the importance of the preliminary inquiry in order to assist the court in the choice of its decisions regarding child offenders.
- Know the rules underpinning a detention decision by a court and be able to
- Apply their knowledge to practical cases.
- Be aware of community justice practices.

TIME [4 Hours]

CONTENT

- 5.1 Major Steps in the Juvenile Justice Process: Prosecutorial Discretion
- 5.2 Major Steps in the Juvenile Justice Process: From Initial Appearance to Court
- 5.3 Traditional and Community Justice Approaches.

MODULE OUTLINE

Sessions	Method	Resources	Time
5.1 Major Steps in the Juvenile Justice Process: Prosecutorial Discretion	Case study	Handout 1, Steps Involved in Prosecution; Handout 2, Prosecution; Exercise 1, Prosecutorial Discretion; Exercise 2, Diversion by Prosecutor	1 hr 20 mins
	Develop checklist		
5.2 Major Steps in the Juvenile Justice Process: From Initial Appearance to Court	Presentation	Slides 1 – 9; Exercise 3, The Judicial Process; Exercise 4, The case of Gerry Gault; Handout 3, Pre-trial Chart; Handout 4, From Initial Appearance to Court; Handout 5, Formal Trial; Handout 6, Court-Related Proceedings	1 hr 40 mins
	Role Play Case study		
5.3 Traditional and Community Justice Approaches	Sharing programme experiences	Handout 7, The Issues of Traditional or Community Justice	60

**SESSION 5.1 MAJOR STEPS IN THE JUVENILE JUSTICE PROCESS
PROSECUTORIAL DISCRETION**

Purpose Understand the importance of prosecutorial discretion and the factors involved in deciding on discretionary options.

Preparation Write objectives on flip chart, review slides, photocopy handouts.

Materials Handout 1, Steps Involved in Prosecution; Handout 2, Prosecution; Exercise 1, Prosecutorial Discretion; Exercise 2, Diversion by Prosecutor.

Equipment 5 flip charts and markers.

Activities	Time Estimate (minutes)
<ul style="list-style-type: none"> • Introduce the module objectives on flip chart. • Introduce the session objectives. • Group discussion of case study on prosecution. 	5

Steps:

1. Divide the participants into four groups. Distribute Exercise 1. Assign two groups case study A) and the other two groups case study B). Refer the participants to Handout 1 showing the steps involved in prosecution. They can use this material in completing the exercise.	10
---	----

2. Ask the participants to read through the case study. Explain that each group should act as the prosecutor, present their decision and explain why they took that decision. Give the groups ten minutes to discuss the case.	25
--	----

3. Remind the participants that they should look at the diversionary options available for both children. They should look at the child's background.

4. Ask the two groups focusing on case A to share their conclusions with the plenary. Quickly note their responses on flip chart. Ask the plenary if they agree with them. Answers should include:

Case A: In this case, the Prosecutor decides that it was a first offence, no one was hurt and the child demonstrates a need for services. The child was placed on probation.

5. Ask the other two groups focusing on case B to share their conclusions with the plenary. Again quickly note their response on flip chart and ask the plenary if they agree with them. Answers should include:

Case B: The decision taken in this case was to send the child to Court. The child was a repeat offender and a member of a gang. He has committed a serious offence and does not receive suitable supervision in the home and is in need of services.

The Prosecutor may refer the child to diversionary measures such as: Giving the child a caution or warning; the caution takes the form of a letter to the child and the parents. Referring the child to an extrajudicial program (diversionary option); intended for more serious offences and offenders that would not be dealt with by warnings, cautions and referrals.

6. You should ensure that participants follow the steps involved in prosecution and again refer them to Handout 1, Steps Involved in Prosecution. Distribute Handout 2 on prosecution and refer participants to the section on extrajudicial measures.
- Develop a checklist of actions to encourage a supportive environment for discretionary measures being adopted in groups.

Steps:

1. Divide the participants into groups of five. Distribute Exercise 2, examples A & B, diversion by prosecution in South Africa.
2. Ask the participants to read the case study and explain that they have approximately 20 minutes to discuss the following:

20

A similar type of project is about to be introduced in your country, develop a checklist of actions that you need to implement to ensure a supportive environment for the project. Indicate who needs to be involved in each action.

3. Give each group a flip chart and ask them to select a presenter.
4. Ask one group to volunteer to present their checklist. The remaining groups should add the actions and related stakeholders that have not yet been mentioned.
5. Arrange for the complete list to be typed up and distributed.

20

SESSION 5.2 MAJOR STEPS IN THE JUVENILE JUSTICE PROCESS: FROM INITIAL APPEARANCE TO COURT

Purpose Understand the steps involved in the judicial process and the importance of the preliminary inquiry in order to assist the Court in the choice of its decision regarding child offenders.

Preparation Write objectives on flip chart, review slides, photocopy handouts.

Materials Exercise 3, Judicial Process; Exercise 4, The Case of Gerry Gault; Handout 3 Pre-trial chart, Handout 4 From Initial Appearance to Court; Handout 5 Formal Court Procedures; Handout 6 Court-Related Proceeding.

Equipment Laptop with PowerPoint, projector, flip chart and marker pens.

Activities	Time Estimate (minutes)
<ul style="list-style-type: none"> • Introduce the session objectives • Review the flowchart showing the steps involved in pre-trial. 	
<p style="margin-left: 20px;"><u>Steps:</u></p> <ol style="list-style-type: none"> 1. In plenary, distribute Handout 3 (adapted from the system prevailing in Canada) ask the group to read through it and ask if they have any questions for clarification. 2. Ask the plenary to see if they can identify any points of difference with the system they are familiar with in their country of work. 	5
<ul style="list-style-type: none"> • Show slides 2-10 and distribute Handout 5 on the formal trial court proceedings. 	15
<ul style="list-style-type: none"> • 'Fishbowl' role play of the judicial process <p style="margin-left: 20px;"><u>Steps:</u></p> <ol style="list-style-type: none"> 1. Distribute exercise 3 and ask the participants to spend 5 minutes reading through the case study. 2. Ask for three volunteers to play the roles of the probation officer, prosecutor and judge,¹ and give them 15 minutes to prepare their role play. 3. While the volunteers prepare, ask the remaining participants to 	15

¹ You may want to pre-select three participants who have experience with this issue ahead of time.

4. consider the following question:
 “What would be your decision and what are the considerations affecting your choice?”
5. Role play for 5 minutes – ask the observers to note the key issues emerging from the role play. 5
6. Ask each of the role players to explain the position that they took vis-a-vis Bruno’s case. 10
7. To conclude, ask the plenary the following questions: 15
 “Do you agree with the decision of the probation officer?”
 “Do you agree with the decision of the prosecutor?”
 “Do you agree with the decision of the judge?”
 “What are the key issues that each of them should consider?”
8. Quickly note their responses on flip chart. You may want to arrange to have the points typed up and distributed among the participants. Ensure that the debriefing includes the following:
 - How the probation officer or social worker, prosecutor and judge are connected to each other in the system that it is important for all actors to work together and emphasize that the intervention by a probation officer or social worker can influence the process.
9. You can extend this activity further by asking participants to discuss how they think Bruno feels where he is going through the system and meeting different actors. Ask them the plenary the following questions:
 Would Bruno understand what is happening at each stage?
 Who is would explain the process to him?
 Which of the actor in the system does the child have most contact with? Why?
 - Discuss the case study of Gerry Gault and a fair judicial process in groups
Steps:
 1. Distribute Exercise 4, on the US court case of Gerry Gault. Ask the participants to spend a few minutes reading through the case. 15
 2. In the groups that they are already sitting in, ask each group to discuss and identify the fair and unfair things that happened to Gerry Gault. For example, **Fair:** A juvenile court judge heard his case, Mrs. Cook complained. Gerry was not held in an adult jail. **Unfair:** The police didn’t call his parents first; Mrs. Cook did not

show up in court; the punishment was too harsh.

3. Draw a line vertically down the middle of a flip chart and write **'fair'** and **'unfair'** as the two column headings.
4. To debrief, ask the groups to share their ideas about what was fair or unfair. Quickly note their responses on flip chart, probing the participants to explain why they thought these events were fair or unfair.

20

Debriefing points should include:

Gerry's parents also thought their son's case was handled unfairly and that he had been denied his due process rights so they appealed the case. Discuss the terms *appeal* and *due process*.

Explain that due process means that legal proceedings must be carried out according to established rules and principles in order to be fair. Point out to participants that they have already decided that Gerry's case was unfair. Ask them, "Do you think Gerry received due process of law? Why or why not?"

Explain that eventually Gerry's case went to the Supreme Court of the United States. Refer students back to their list of fair and unfair actions. Ask them, "What issue do you think the U.S. Supreme Court had to decide in Gerry's case?" Explain that the question before the Court was "Were Gerry's due process rights violated?"

The U.S. Supreme Court decided that Gerry Gault did not receive due process of law. The Court said that the US Constitution guarantees that no one, including children, can be deprived of life, liberty, or property without due process of law. This decision ensures that children are given due process in juvenile court, and it lists the rights that children must have when they are in juvenile court. In this case, the Supreme Court ruled that children have the following rights when accused of offences for which they can be incarcerated:

Right to notice of charges: children and their families must be told exactly what they are accused of before their hearing in order to prepare their case.

Right to counsel: children must be told they have a right to a lawyer. If a juvenile does not have enough money to pay the lawyer, the court must appoint one.

Right to confront and cross-examine witnesses: children are entitled to hear the testimony of any witnesses and their accusers.

Privilege against self-incrimination and the right to remain silent: children must be told they have a right to refuse to answer a question or give testimony against themselves. They also must be told they have a right to remain silent and that anything they say may be used against them.

- Refer participants to Handout 4, From Initial Appearance to Court; Handout 5 Formal Court Procedures; Handout 6 Court-Related Proceeding. .

SESSION 5.3 TRADITIONAL AND COMMUNITY JUSTICE APPROACHES

Purpose Share experiences of traditional and community justice practices.

Preparation Write objectives on flip chart, review slides, photocopy handouts.

Materials **Pre-module assignment:** to read examples Ghana and Australia in handout 7; the Issues of Traditional or Community Justice.

Equipment Laptop with PowerPoint, projector, flip chart and marker pens.

Activities **Time Estimate**

- Introduce the session objectives.
- Group work discussing traditional or community justice systems.

Steps:

1. Explain that increasing attention is being paid to reviving such systems and capitalizing on the benefits, as traditional and informal justice systems have a key role to play in the pre-trial diversion process.
2. Refer participants to the examples of community justice in Ghana and Australia from Handout 7 and check if everyone had the opportunity to read them. Ask if there are any comments they would like to make in plenary.
3. Ask the plenary if they know what are the differences with formal justice process? They should mention that: Community justice focuses on the maintenance of community harmony and the restoration of good practices.
Community justice falls outside the authority of international instruments, such as the Convention on the Rights of the Child. This raises questions about the respect of the rights of children in this process. The system carries risks as it rests on the power of the judicial authority embodied in the local chieftainship or community elders.
4. Ask the plenary if they know what are some of the advantages of the traditional system?
The responses should include: Informality of procedure and setting; locates the offence within the local environment and brings together families and communities in a participatory process to restore the status quo; the chief's decision is more likely to be a lasting and acceptable settlement.

10

- Share your experiences related to traditional or community justice systems and the ways to introduce them to formal juvenile justice systems.

Steps:

1. Divide the participants into four groups. Ask the participants to take it in turns to describe their experiences with traditional or community justice systems. 25
2. Give each group a flip chart and explain that you would like the groups to present to plenary on the lessons learned and challenges.

- **ALTERNATIVE OPTION:** If participants feel that they don't have experiences to share ask them to discuss the examples of Ghana and Australia. They should discuss what they think would be the challenges of introducing a similar approach in their country.

3. Each group should present the key points of their discussion. The debriefing should mention some of the following points:
 No one should be subjected to discrimination based on sex or any other status by either formal courts or informal justice forums. Physical punishments – whether imposed by formal courts or informal justice forums – amount to inhuman or degrading treatment, which is absolutely prohibited. States have an obligation to protect all those under their jurisdiction from such treatment. States should make it an offence for traditional or informal adjudicators to order physically coercive punishments, to try a person under duress or *in absentia*, or to try a person for serious offences such as murder or rape. These laws should be actively enforced and forums in which such offences are repeatedly committed should be outlawed. Some States have legitimized community justice system by recognizing their roles. In some countries, they are formalized in the justice system or incorporated into the modern justice system through the introduction of restorative justice. 25

- Refer participants to Handout 7; the Issues of Traditional or Community Justice, in the participant's manual.

Power Point Slides 1- 9

The slides are available on the CD-ROM

Speaking Points

Pre-trial Steps
Step 1

A hearing may be held to determine whether to detain or release the child.

Outcome 1: The court finds no cause to detain the child and must order the child's release

Outcome 2: The court decides the child should be detained

Juvenile Justice Manual, Module Five, 1

1

Pre-trial steps
Step 2

If the court decides the child should be detained, it must inquire about a responsible person:

- Is a responsible person available?
- Is the child willing to be placed in the responsible person's care?

Outcome 1: A responsible person is available and the child is willing to be placed in his or her care

Outcome 2: A responsible person is not available or the child is not willing to be placed in his or her care

Juvenile Justice Manual, Module Five, 2

2

Pre-trial steps
Step 3

The court orders a child to be detained in custody.

Juvenile Justice Manual, Module Five, 3

3

Requirements at Initial Appearance

Information or indictment to be read to the child with the view to:

- Ensure that the child understands the charge.
- Explain to the child the consequences and procedure, where applicable, associated with his/her to a sentence.
- Explain, if appropriate, that the child may plead guilty or not guilty.

Juvenile Justice Manual, Module Five, 4

4

Information or indictment to be read to the child; Inform the child of his or her right to retain counsel, if not already represented by counsel.

Legal Representation

- The court must advise the child of the right to counsel
- The court must give the child a reasonable opportunity to obtain counsel

© 2016 Justice Services, Module Five, 4

5

Preliminary Inquiry

- Intended to examine the child's background in order to assist the judge in the choice of sentencing options
- Essential if the court is to act in proportion not only to the circumstances and gravity of the offence but also to the circumstances and needs of the juvenile and of society
- Should be heard at the start of the trial to provide basic information for the proceedings rather than before sentencing

© 2016 Justice Services, Module Five, 5

6

Medical, psychiatric or psychological report may be ordered at any stage of the proceedings for the following purposes: considering release from pre-trial detention; hearing on appropriateness of a sentence; making or reviewing a sentence; considering continuation of custody beyond the custodial portion of a sentence of custody and supervision;
Setting supervision conditions.

Assessment by a qualified person either on the consent of both the child and the prosecutor, or otherwise, where the court believes that such assessment is necessary; the court has reasonable grounds to believe that the child might be suffering from a physical or mental illness or disorder, a psychological disorder, an emotional disturbance, or a learning or mental disability; the child has a history of repeated child convictions; or the child is alleged to have committed a serious violent offence.

Pre-trial release decisions

- May be made at the initial appearance
- May occur at other hearings or may be changed at another time during the process

Detention decision

- Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances
- Children should be held separately from adults

© 2016 Justice Services, Module Five, 6

7

Guiding principles

- Presumption of innocence
- Detention not be a substitute for child protection measures
- Time-limits on pre-trial detention

© 2016 Justice Services, Module Five, 7

8

Possible grounds for detention

- To ensure the child's attendance in court
- For the protection or safety of the public, having regard to all the circumstances, including any substantial likelihood that the child will commit a criminal offence or interfere with the administration of justice
- Where 'any other just cause' is shown, including where the detention is necessary to maintain confidence in the administration of justice

© 2015 Justice Services, Module Five 9

ADDITIONAL READING

Manual on Human Rights for Judges, Prosecutors and Lawyers (chapter 10) at; <http://www.ohchr.org/english/about/publications/training.htm>

Children and the Court: How can we improve the availability and disposition of legal forums? By Frederick Noel Zaal (January 1999) at; www.law.wits.ac.za/Salc/issue/forum.pdf

Prosecutorial attitudes towards diversion, 1998 by L.M. Muntingh, Nicro National office, Cape Town, 1998 at; <http://www.nicro.org.za/publications/>

See also Child Justice in Africa, A guide to good practice, Julia Sloth-Nielsen and Jacqui Gallinetti, Community Law Centre, University of Western Cape (2004) (available at; <http://www.communitylawcentre.org.za/children/publications.php#practice>)

CHECKLIST FOR FACILITATORS

Key Message/ Reflective Questions
Remember diversion is possible through all proceedings from prosecutor level to adjudication.
Remember that the accused child (as accused adult) must at all times be given the possibility of answering charges and challenge evidence.
Encourage development of child-friendly proceedings for enabling children's participation.

CONDUCTING DISCUSSIONS

Good discussion can ensure that the best ideas in a group are pooled, analyzed and used for decision-making and conclusions. In preparing for any discussion, the facilitator should consider the background of the members of the group: what they already know, what they can contribute, and whether or not any objections or conflicts can be anticipated.

One valuable tool for directing discussion is the use of questions. The facilitator should have a list of questions prepared in advance, although other questions may come up naturally in the course of the discussion. General questions stimulate thinking and avoid embarrassing someone who may not yet be ready to respond. Direct questions can draw out the experience of a specific participant whom the facilitator knows is an expert, who is shy but has knowledge or experience to share, or who is interrupting the group process by either holding private conversation or monopolizing the discussion.

Questions should be used to guide the discussion in order to convey the specific objectives or learning points set out for the session. Questions should be brief, clear and simply worded. They should cover one point only. After asking a question, give members of the group time to think before expecting answers.

A less structured discussion provides an opportunity for free exchange of ideas, experience and information-sharing among participants. It is important for the facilitator to know when to sit back and let the group dynamic take its course and when to step in, to bring the discussion back to the main topic. Keeping the discussion on topic is helped if the facilitator has prepared in advance an outline of the points to be covered in the time specified. (Many of the modules provide these points in the Process section.) Refer to the outline about fifteen minutes before the end of the time allotted for the discussion, and use it to bring forward any points that have not yet been mentioned.

IDEAS FOR BREAKING INTO GROUPS

Set up the workshop room to facilitate group work. It is best to arrange the groups from the beginning, rather than leaving the groups to organize themselves. This ensures the best mix of views and experience to provide for lively participation. Throughout the workshop mix the groups up, in order to allow more varied exchanges of views. Here are a few ideas of how to **divide people into sub-groups** in an appropriate way:

- Have people count off according to the number of groups you are making: 1, 2, 3, 4, 1, 2, 3, 4...
- If you have different questions or topics for different sub-groups, have people sign up according to interest, but ask people to have a second choice in mind in case too many people are interested in the same topic and not enough for another! Have all people born from January to March in one group, April to June in another..
- Divide the groups ahead of time according to specific criteria (such as length of employment with UNICEF, male and female, expertise in the topic....) and just assign people to a team.
- Have people work with the participants they know the least well so they can get to know new people.
- Have people work in their normal work groups to solve specific problems of relevance to them.
- Use a game to divide people, such as having them stand in a circle and then get into a 'lifeboat' of 5 people quickly, then 3 people... until they are in groups of the size you desire.
- Have people turn to a neighbour if there is a group of 2 - or to the 2 people sitting beside them if it is a team of 3...

MODULE FIVE

**PRE-TRIAL DISPOSAL AND
COURT PROCEEDINGS**

PARTICIPANT'S MATERIALS

OBJECTIVES

At the end of this module participants will:

- Understand the importance of prosecutorial discretion; learn about experiences that aim to divert children away from formal court process.
- Understand the importance of the preliminary inquiry in order to assist the court in the choice of its decisions regarding child offenders.
- Know the rules underpinning a detention decision by a court and be able to apply their knowledge to practical cases.
- Be aware of community justice practices.

TIME [4 Hours]

CONTENT

- 5.1 Major Steps in the Juvenile Justice Process: Prosecutorial Discretion
- 5.2 Major Steps in the Juvenile Justice Process: From Initial Appearance to Court
- 5.3 Traditional and Community Justice Approaches.

MODULE FIVE

EXERCISE 1

Prosecutorial Discretion

Case study A: The child is an 11 year-old male who gets into an argument with a classmate at school. The argument escalates to a point where the child picks up a pencil and threatens to stab the classmate. Technically, the child can be charged with aggravated assault because he threatened his classmate with a weapon, which could have caused serious bodily injury. Upon further investigation, it is determined that the child comes from a single parent home headed by his mother who works two jobs and has little time to supervise him. Additionally, he has been diagnosed with a learning disorder and behaviour disorder. Finally, looking at the child's past record it was found that he has no prior referrals; this is his first offence.

Case study B: The child is a 15 year-old male who is a self declared member of a street gang. He has been expelled from school for fighting with another student. The reason for the fight is not very clear but school authorities determined that he was the aggressor. A couple of days after expulsion the child meets up with another member of his street gang and they decide to spend their Wednesday morning driving around their neighbourhood in an automobile. Upon reaching the school that he was expelled from the child recognizes the student he fought with standing in front of the school along with a multitude of other students. At this point, he pulls out a handgun and fires all nine rounds in the direction of the students. No one is killed but two students are hit, one in the leg and the other in arm. Upon further investigation, it is determined that the child has three prior referrals to the Court for assault, theft and unlawful carrying of a weapon. He was once on probation but completed it successfully. Additionally, it is discovered that he lives with his grandmother because his father is deceased and his mother is in prison for a drug offence.

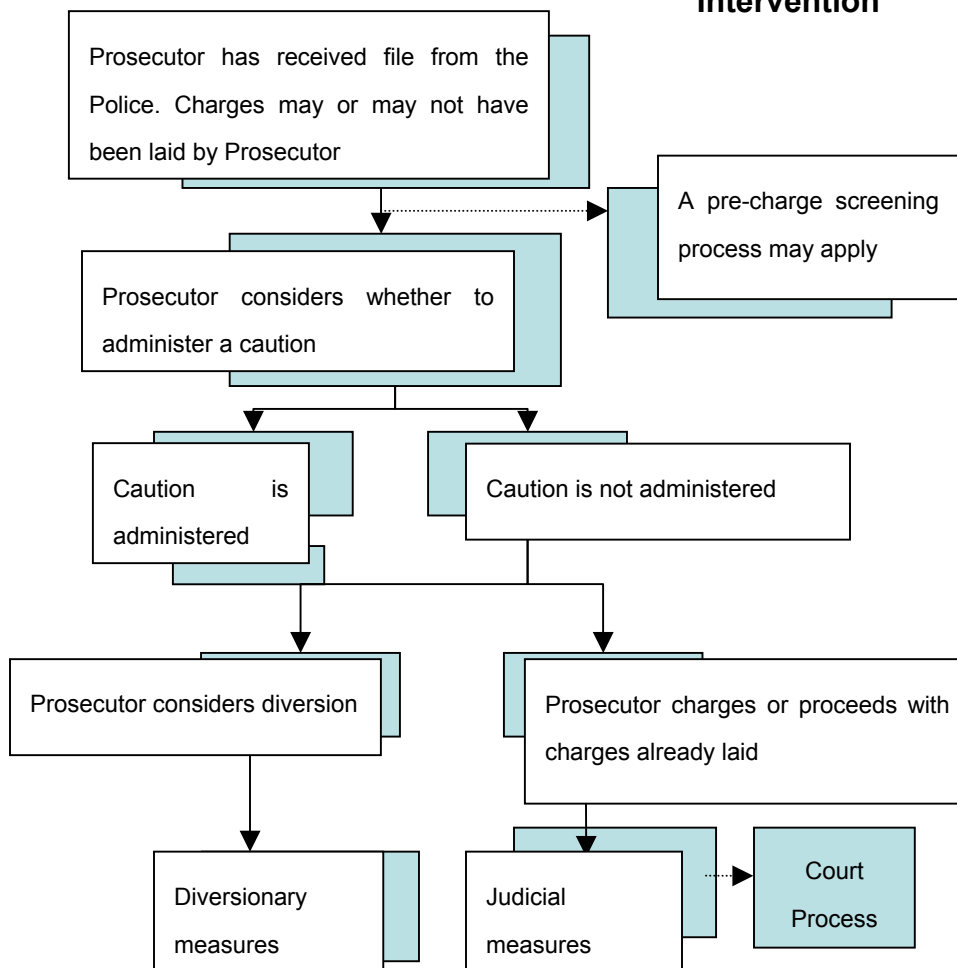
The grandmother has good intentions and tries to discipline him but is just too old to do so effectively. The child is very sympathetic-looking and presents himself very well. Furthermore just two weeks prior to this offence he was tried for aggravated assault where he shot an adult with a rifle. The Jury convicted him and sentenced him to five years' probation.

Task: Put yourself in the position of the prosecutor, present your decision and explain why you took that decision.

MODULE FIVE HANDOUT1

Steps Involved in Prosecution

Chart: Prosecutor's Intervention



Diversion by Prosecutor

Example A: Child Empowerment Scheme and Pre-Trial Community Service in South Africa.

Background:

The Child Empowerment scheme was established as a joint effort by the National Institute for Crime Prevention and the Rehabilitation of Offenders (NICRO), and the office of the Attorney General to divert child offenders. It has been in operation since 1992 and feedback has been very positive. Ideally, the programme should be used as a pre-trial option in order to avoid a criminal record at a young age, which could jeopardize their future. However, it can be also used as part of a sentence. If the child offender meets the criteria for referral, the court, with the assistance of a probation officer, refers him/her to the programme.

The Child Empowerment scheme is a life skills programme comprised of six sessions held one afternoon per week over six consecutive weeks. The programme encourages the child offenders to behave within broadly acceptable societal norms in order to prevent further involvement in criminal activities. Parents or guardians also attend the first and last sessions.

Selection Criteria:

AGE: the most suitable age of the children included in the Child Empowerment Scheme is between 12 and 18 years. Prosecutors may however use their own discretion to include children of other ages e.g. 19 years and still attending school.

ADDRESS: The child person referred to the programme must have a fixed address. This allows a certain amount of control to be exercised over the whereabouts of the child .

GUARDIAN: A parent or a guardian of the child who is prepared to take co-responsibility for his or her attendance must be present.

OFFENCE: Armed robbery, murder and rape offenders are excluded from the programme, as are offenders with a long criminal record. However, the children do not have to be first time offenders in order to qualify.

GUILT: The child must plead or be planning to plead guilty on the charges.

Referral Procedures:

The Child Empowerment Scheme should ideally be used as a diversionary procedure, which minimizes exposure to the criminal justice system and the negative consequences of being labeled as 'delinquent'. It can also be used a pre-condition with a sentence formally handed down through the court, e.g. postponed or suspended sentences.

Pre-trial Referral:

One prosecutor should be designated at every court to handle referrals. In most cases, the prosecutor of the juvenile court would be the logical choice. If the court concerned does not have at its disposal a specific court that handles child offender exclusively, that court can appoint any other experienced prosecutor.

The Prosecutor concerned, as well as the investigating officer and social worker, should study the court roll every day to identify candidates for referral. A Probation officer (or social worker) should be appointed to every court to assist child offenders and advise the Prosecutor on their suitability for the programme. The decision to divert depends solely on the discretion of the Prosecutor. However, the advice of the investigating officer and social worker are often required.

As soon as the child offenders are identified, they are presented to the senior prosecutor for approval, accompanied by the investigating officer and probation officer. The child offenders and their parents are fully informed about the Child Empowerment scheme. The child and his/her parents/guardians sign sworn statements. In this regard, it is important to state clearly that participation is voluntary. It should also be made clear to the persons concerned that the case would only be withdrawn if the offender meets all the requirements. The fact that the offender will not have a criminal record should be stressed. It must in addition be explained to the parents/guardians that they should attend the first and the last session of the programme with their child. They must also be informed that the alternative is to attend court until the case against the child offender is concluded.

The Prosecutor keeps a register of all children whose cases are withdrawn (not only those who are referred to the Child Empowerment Scheme). The following information should be written in table form: annual consecutive number, case number, name, gender, language, crime, way of settling (whether the case was withdrawn or prosecution continued), date of settling and comments (whether a child offender was referred to the Child Empowerment Scheme and/or whether the withdrawal was coupled with another condition).

When using the Empowerment scheme as a diversion, the Prosecutor can follow one of two procedures: the case can be withdrawn immediately or the case can be postponed to a date after completion of the Child Empowerment Scheme.

After the child offender has completed the course, he/se returns to court with an evaluation from the course facilitator. The content is discussed with the Prosecutor and action is taken accordingly.

Programme Content:

The Child Empowerment scheme is a six-session course, each session having specific objectives, topics and methods. The overall goal of the course is to encourage the juvenile offender to behave within acceptable societal norms through participation in a life-skills training program. The course deals with the causes of crime, the seriousness and consequences of the offence, the importance of a positive self-concept, the need for

assertive behavior and for responsible decision-making. It also offers an opportunity for parents and children to understand each other better.

The following section provides an overview of the course:

1. Crime awareness: children and parents participate in this session, which aims to inform and create awareness of:

- The aim and content of the program.
- The nature and causes of crime.
- The effects of crime.
- The seriousness and consequences of a criminal record.
- The experiences and feelings resulting from their involvement in crime and the criminal justice system, parent's experiences of the offence.

2. Self-concept: Only the child attends this session, which has the following objectives:

- To broaden the child's self-knowledge.
- To create awareness of factors that influence self-content.
- To allow children to reflect on how their contact with the criminal justice system influenced their self-concept.
- To promote and motivate self-acceptance and a positive attitude towards oneself.

3. Assertiveness: Only children attend this session, which has the following objectives:

- To differentiate between aggressive, passive and assertive behavior.
- To create awareness of the advantages of assertive behavior.
- To provide an opportunity to act out different ways of improving assertive behavior.

4. Decision making: Only children attend this session, which has the following objectives:

- To make children aware of the importance of responsible decision making.
- To make connections between decision-making and crime, self concept and assertive behaviour.

- To examine the influence of peer pressure on decision making.
 - To begin the process of constructive decision making and planning for future goals.
- 5. Norms and laws:** Only children attend the session which has the following objectives:
- To examine societal norms and their influence on daily life.
 - To highlight the consequences of societal norms being ignored.
 - To promote an understanding of the law and the legal system, which attempts to protect societal norms.
- 6. Parent-child relationship:** Children and their parents attend this session, which has the following objectives:
- To create an awareness of the demands, problems and emotions prevalent in various stages of life.
 - To encourage communication and a better understanding between parents or guardians and their children.
 - To evaluate the parent's and child's attitude toward experience of the Child Empowerment Scheme.

Example B: Pre-trial Community Service in South Africa**Background**

The Pre-trial Community Service Programme is a diversionary option, which allows the offender to serve a certain number of hours at a non-profit organization in his or her free time without payment. Charges are withdrawn on the condition that the service is completed within a given time at a minimum number of hours per month.

Since the early 1980s, Community Service Orders have been in operation and served as the basis for pre-trial community service, which started formally in Cape Town at the request of Prosecutors. Their concern was that they are often confronted with cases in which prosecution is not the best option but wanted the offender to be held accountable and take responsibility for the crime. In cooperation with NICRO, the Programme was started and has handled nearly 200 cases during the first 18 months.

Selection criteria

Cases complying with some or all of the following criteria can be considered for the Pre-trial Community Service:

- The offence should be a minor one.
- The prosecution wants to withdraw the case but does not want the accused to walk away without a sanction.
- It is considered not to be in the best interest of the offender, victim or society that the offender is convicted.
- There are special circumstances surrounding the case.
- The accused accepts his/her guilt, shows remorse and responsibility.
- The accused is a first offender (recidivists can also be accepted to the program).
- The accused is over 14 years of age.
- The accused has special skills, which can be put to good use in the community.
- The accused has a stable lifestyle, for example a contactable address (work or home).

- The community service can serve some purpose of reparation and victim healing.

NICRO is making an in-depth assessment of the offender. The prosecutor should complete a basic assessment according to the above guidelines. Should NICRO find the person not suitable for community service this will be reported and explained to the Prosecutor, who will usually proceed with the case.

In the Prosecutor's assessment of the accused, additional guidelines can be employed to assess the person's suitability. These are:

- Is the accused dependent on alcohol or drugs?
- Is the accused mentally well or are any personality disorders apparent?
- Is the offender a violent person?

Should the response to any of these be positive, it is unlikely that he/she will be a successful community server.

Referral procedure

The procedure for Pre-Trial Community Service starts with the Prosecutor withdrawing the charge on the condition that the accused performs community service. It is imperative that the accused admits guilt on the charges otherwise Pre-Trial Community Service is not suitable and the case should proceed to court where the accused will have the opportunity to state his or her case. The prosecutor should then phone or fax the following details of the case to NICRO:

- Name
- Address
- Telephone number at home and/or work
- Details of parents
- The charge and description of the offence
- Court case number
- Docket number, if any
- The name and particulars of the victim if there is one
- Any special comments or points of concern

The accused is then instructed by the Prosecutor to contact NICRO within one week to make an appointment for an assessment interview. The interview with the offender determines his or her suitability for community service. If he or she is found to be suitable for community service, NICRO determines the number of hours that will be served as well as the placement agency.

After the assessment interview, which normally lasts 30-60 minutes, NICRO selects a placement where the server will perform the service. A contract, stipulating the conditions of service, is drawn up. The most important points of the contract are that:

- The server will perform a specified number of hours of service at a specified placement.

- The service will start on a certain date and has to be completed by a certain date.
- Should the server not comply with the conditions of the contract, the case will be referred back to the prosecutor for further action, i.e. to continue with prosecution.
- The server is then accompanied to the placement by NICRO staff member to be introduced to the supervisor and to sign the contract. The contract is signed in triplicate by the server, the supervisor at the placement and the NICRO staff members responsible for the case. Each signatory receives a copy. The placement is also supplied with time sheets to record the hours worked by server. The time sheets, which are the only valid records of service performed, are returned to NICRO every month until the service is completed. Once the service is completed, this is reported to the Prosecutor and the case can be closed.

Assessment interview

The assessment interview has the objective of determining the offender's suitability for community service. In a short time, the interview attempts to form an overall picture of the offender's personality and socio-economic circumstances. In general, the following topics are covered during the interview:

- Bibliographical information
- What happened at the crime
- Why was the crime committed
- The offender's willingness to perform community service and understanding of the responsibility that needs to be taken
- The offender's interests, hobbies and skills
- The available time the offender has to perform community service
- Support structures
- Physical health
- Emotional state of mind
- Substance abuse
- The offender's contact with the police
- The offender's contact with the criminal justice process.

Hours served

On average, a pre-trial server is instructed to perform 40-60 hours of service. However 120 hours for more serious offence is not an exception.

Review of Pre-Trial Community Service

Nearly 95% of all the pre-trial servers comply with their contract. This success rate is ascribed to the personalized attention each client receives and to the fair number of hours offenders receive. Efforts are made to accommodate the server's preferences and skills as far as possible to increase motivation and impact. Where necessary, Pre-Trial Community service will be combined with other options such as Child Empowerment Scheme, Victim Offender Mediation, and Family Groups Conferences.

Placement for Community Service

Any non-profit organization, agency or institution that delivers a service to the community can be considered as a possible placement for community service. Examples of existing placements include the following:

- Homes or hospitals for the physically and mentally handicapped public general hospital
- Libraries
- Municipalities
- Children's homes
- Old ages homes
- Police stations.

The success of community service largely depends on the placements and it is therefore imperative that the placements and their personnel are treated well and their wishes and preferences are respected. Community servers should not be used as free labour to replace potential paid jobs. They should also not be used to serve individual needs, except the needs of victims in special cases.

Activity: A similar type of project is about to be introduced in your country, develop a checklist of actions that you need to implement to ensure a supportive environment for the project. Indicate who needs to be involved for each action.

Prosecution

The Prosecutor is charged to seek justice in juvenile cases as in adult prosecutions. When he/she prosecutes children in the juvenile system, however, he/she is further charged to give special attention to the interests and needs of the accused child to the extent that it does not conflict with the duty to faithfully and fully represent the interests of the State and the community.

After an arrest, the police presents information about the case and about the child offender to the Prosecutor, who will decide if formal charges will be filed with the court. If no charges are filed, the child must be released.

The Prosecutor has a central role in diversion or the formal adjudication process. In the case of diversions, prosecutors can divert the offence from formal prosecution, allowing the child offender to go on probation for a period of time and preventing a charge appearing on his/her record. This is the opposite of formal adjudication where a child is charged and prosecuted, and ultimately that offence ends up on that child's record.

Some of the criteria for deciding between formal adjudication or diversion is the seriousness of the alleged offence, the role of the child in the offence, the child's age and maturity, the availability of appropriate treatment for the child, whether he/she admits to guilt or involvement in the offence charged, the provisions for restitution to the victims, the prior record of the child and the danger or threat posed by the child to the person or property of others.

The Prosecutor may adopt diversionary measures such as:

- Giving the child a caution or warning.
- Referring the child to an extrajudicial sanctions programme.

Prosecutors' Cautions

Prosecutors' cautions are similar to police cautions but prosecutors give the caution after the police refers the case to them. The caution takes the form of a letter to the child and the parents.

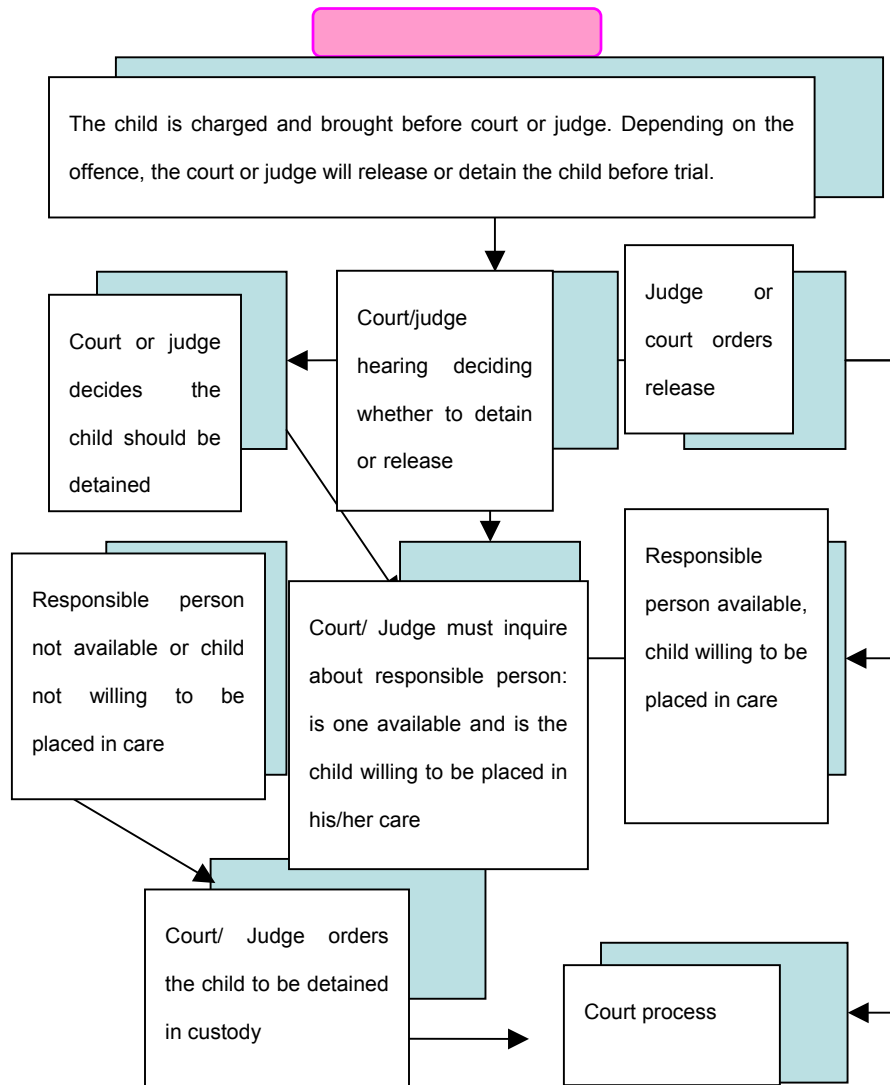
Extrajudicial Measures

This type of measure is intended for more serious offences and offenders that would not be dealt with by warnings, cautions and referrals. In comparison to other types of measures, a more formal set of rules applies to these measures. They may be used only if:

- **Caution, warning would not be adequate.** Extrajudicial sanction may be used only if the child cannot be adequately dealt with by other measures such as an informal warning, a police caution, or referral to a community programme.
- **Appropriateness.** The person considering using the sanction must believe that it would be appropriate, given the needs of the child and the interests of society.
- **Informed consent.** The child must have been informed about the sanction, have been advised of his or her right to counsel, have been given an opportunity to consult counsel and then have consented to its use.
- **Acceptance of responsibility.** The child must have accepted responsibility for the act or omission that forms the basis of the offence. An extrajudicial sanction cannot be used if the child denies having a responsibility for the offence or wishes to have the charge dealt with by the court.
- **Sufficient evidence to proceed.** The Prosecutor must believe there is sufficient evidence to proceed with a charge and the prosecution must not be barred.

The fact that a diversionary option has been used with respect to a child who is alleged to have committed an offence does not take away the power to lay a charge or to proceed with a prosecution. The court has the power, however, to dismiss the charge in such cases if it believes that the child has totally complied with the terms of the extrajudicial sanction. If the court finds only partial compliance has occurred, it may still dismiss the charge if it believes a prosecution would be unfair in the circumstances in light of the child's performance.

Pre-trial Chart



Judicial Process

Background

Bruno has been charged with assaulting a shop keeper. Bruno is 16 years old and lives on the streets. His mother left home when Bruno was three and he has had no contact with her since. He was thrown out of his home when his father remarried. Bruno has had a number of referrals to Court for theft

Bruno lives in the State of Balama, which includes in its definition of 'delinquent act' any conduct that would be a misdemeanour or felony if committed by an adult. A 'child' is here defined as anyone between the ages of 10 and 17 who is charged with committing a delinquent act. The juvenile code has as its mission the protection of the public and providing child offenders with a course of treatment, rehabilitation and supervision. The country has a secure detention centre with 60 beds, an eight-bed group home for boys, and a probation unit that supervises children prior to trial.

Issue for Discussion

The State law permits pre-trial detention of a child who represents a risk of flight, or who is "a danger to himself or others." Adjudicatory hearings must be held within ten days if Bruno is detained. If Bruno is released, the hearings will be in two to four weeks. The juvenile court can determine that Bruno is not suitable for treatment in the juvenile system after considering:

- The degree of criminal sophistication shown by the child
- Whether the child can be rehabilitated prior to the expiration of the juveniles court's jurisdiction (which, in Balama is the 21st birthday)
- The child's previous history
- The lack of success of previous attempts by the juvenile court to rehabilitate the child
- The circumstances and gravity for the alleged offence

Dispositions in the juvenile court must be made in the least restrictive setting

consistent with protecting the public and the best interests of the child

Role-Play Activity²

Probation Officer. You have the discretion to drop the case, refer Bruno to diversion or community-based accountability programmes or send the case to juvenile court. Are there any considerations that would affect your choice? What are they?

Prosecutor. You have the discretion to drop the case, refer Bruno to diversion or community-based accountability programmes or send the case to juvenile court. Are there any considerations that would affect your choice? What are they?

MODULE FIVE

EXERCISE 3

Judge. The prosecutor has moved to transfer Bruno's case to the court. Are there any considerations that would affect your decision regarding detention? What are they? How would your system have to be configured – either with respect to the processing of cases or alternatives to detention – for you to reach a different conclusion?

Note: You will need to improvise on some of the details of the case and should brief the audience on those details before beginning the role play.

² This exercise can be adapted in order to be used as a mock trial exercise or pro se court exercise.

The Case of Gerry Gault

Gerry Gault, 15 years of age, lives in the US. On Monday, June 8, 1964, at about 10 a.m, he and a friend, Ronald Lewis, were taken into custody by the Sheriff of Gila County. Gerry was then still subject to a six-month probation order which had been entered on February 25, 1964, as a result of his having been in the company of another boy who had stolen a wallet from a lady's purse. The police action on June 8 was taken as the result of a verbal complaint by a neighbour of the boys, Mrs. Cook, about a telephone call made to her in which the caller or callers made lewd or indecent remarks. It will suffice for purposes of this exercise to say that the remarks or questions put to her were of the irritatingly, offensive, adolescent, sexual variety.

At the time Gerry was picked up, his mother and father were both at work. No notice that he was being taken into custody was left at the home. No other steps were taken to advise them that their son had, in effect, been arrested. Gerry was taken to the Children's Detention Home. When his mother arrived home at about 6 o'clock, he was not there. Gerry's older brother was sent to look for him at the trailer home of the Lewis family. He apparently learned then that Gerry was in custody. He so informed his mother. The two of them went to the Detention Home. The deputy probation officer, Flagg, who was also superintendent of the Detention Home, told Mrs. Gault "why Gerry was there" and said that a hearing would be held in Juvenile Court at 3 o'clock the following day, June 9.

Officer Flagg filed a petition with the court on the hearing day, June 9, 1964. It was not served on the Gaults. Indeed, none of them saw this petition until a hearing on August 17, 1964. The petition was entirely formal. It made no reference to any factual basis for the judicial action which it initiated. It recited only that "said minor is under the age of eighteen years and is in need of the protection of this Honourable court; [and that] said minor is a delinquent minor" It called for a hearing and an order regarding "the care and custody of said minor."

On June 9, Gerry, his mother, his older brother, and Probation Officer Flagg appeared before the Juvenile Judge in chambers. Gerry's father was not there. He was at work out of the city.

The neighbour, Mrs. Cook, complained about the phone call but did not show up for court. Instead, a police officer testifies about what Mrs. Cook said. Gerry blamed the call on a friend. He said he did not make the obscene remarks. There were no lawyers present and no record is made of the court testimony.

The juvenile court does not allow juries, so instead a judge heard the case. The judge found that Gerry is guilty and ordered him to be sent to a state reform school. He could stay there until he was 21 years old. An adult found guilty of the same crime could be sent to county jail for no longer than 60 days.

Activity: Identify the fair and unfair things that happened to Gerry. Explain your list.

From Initial Appearance to Court

If, despite the various provisions requiring or allowing release, the child continues to be detained, the child must be brought before a court or a judge without unreasonable delay after the arrest. Most countries' criminal laws limit the period of time that can elapse between arrest and the first court appearance, often to 48 hours.

Although the 'Beijing Rules' stipulate that children have the right to a legal adviser throughout the proceedings, starting as soon after arrest as possible, and should be able to apply free legal aid where it exists, the child's first court appearance may provide the first opportunity for the child or parent to apply for legal representation.

The first appearance also provides an opportunity to ask for reconsideration of a decision to keep the child in custody.

Requirements at Initial Appearance

Information of Charges

After information or indictment is laid against a child, he or she must appear before a court or a judge.

At this first appearance, the court or the judge must:

- Have the information or indictment read to the child.
- Inform the child of his or her right to retain counsel, if not already represented by counsel

The court must:

- Ensure that the child understands the charge
- Explain to the child the consequences and procedure, where applicable. associated with his or her liability to a sentence
- Explain, if appropriate, that the child may plead guilty or not guilty

Legal Representation

When a child attends a hearing without a lawyer, the court must advise the child of the right to counsel and must give the child a reasonable opportunity to obtain counsel. This obligation is imposed on the court regardless of whether the child has already been informed of his or her rights by a police officer, or by any notice that the child has received.

Where the court does not believe that the child attending a hearing without a lawyer understands the charges it must direct the child to be represented by a counsel or to be assisted by a guardian or a parent. However, where it appears that the

interests of the child are in conflict with those of a parent or that it would not be in the best interests of the child, the child court judge shall ensure that the child is represented by a counsel independent of the parent.

Preliminary Inquiry

In various countries there are legal provisions requiring the preparation of 'social inquiry reports' by the probation or social services departments. These reports are intended to examine the child's background in order to assist the judge in the choice of sentencing options.

The social inquiry is essential if the court is to act in proportion not only to the circumstances and gravity of the offence but also to the circumstances and needs of the child and of society. In addition, the inquiry report should be heard at the start of the trial to provide basic information for the proceedings rather than before sentencing.

In addition, a court may order that a medical, psychiatric or psychological report be prepared on a child and submitted to the court. Such reports may be ordered at any stage of the proceedings for the following purposes:

- Considering release from pre-trial detention or an application for review of a bail decision
- Hearing on appropriateness of a sentence
- Making or reviewing a sentence
- Considering continuation of custody beyond the 'custodial portion' of a sentence of custody and supervision
- Setting supervision conditions

A court may order that a child be assessed by a qualified person either on the consent of both the child and the prosecutor, or otherwise, where the court believes that such assessment is necessary for one of the purposes listed above and where:

- The court has reasonable grounds to believe that the child might be suffering from a physical or mental illness or disorder, a psychological disorder, an emotional disturbance, or a learning or mental disability
- The child has a history of repeated child convictions
- The child is alleged to have committed a serious violent offence

Pre-trial Release Decisions

A pretrial-release decision may be made at the initial appearance, but may occur at other hearings or may be changed at another time during the process.

Different jurisdictions do this in different ways. Pre-trial release is most often accomplished through bail, which was traditionally intended to ensure appearance at trial. In some countries, the court may decide to release accused persons on their own recognizance or into the custody of a third party after posting bond or on the promise of satisfying certain conditions (such as taking periodic drug tests for example).

Detention Decision

Pre-trial remand is particularly abusive and excessive and accounts for the majority of children held in institutions in many countries. According to international law, detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. The rules also specify that children should be held separately from adults. That rule is frequently violated completely or partially.

GUIDING PRINCIPLES**Presumption of Innocence**

It is important to remember that a child who is held in pre-trial detention is presumed to be innocent. The presumption of innocence reinforces the basic principle that pre-trial detention should not be used unless it is the last alternative. It also underlies the clear decisions of courts that pre-trial detention is not be used to punish the child.

Detention is not a Substitute for Child Protection Measures

Courts or judges may not use detention as a substitute for appropriate child protection, mental health or other social measures aimed at addressing the needs of the child.

Time-Limits

Some systems set maximum time limits on pre-trial detention. Six months is the maximum in many countries. The pre-trial period can be shortened by giving priority to the investigation of juvenile cases and by judges refusing request for remands.

POSSIBLE GROUNDS FOR DETENTION

The grounds upon which detention may be justified in most of the countries can be summarized as follows:

- Where the detention is necessary to ensure the child's attendance in court.

- Where the detention is necessary for the protection or safety of the public, having regard to all the circumstances, including any substantial likelihood that the child will commit a criminal offence or interfere with the administration of justice.
- On 'any other just cause' being shown, including where the detention is necessary to maintain confidence in the administration of justice. Where a court or a judge is satisfied that one of the grounds is present, he/she may make an order that the child be detained in custody.

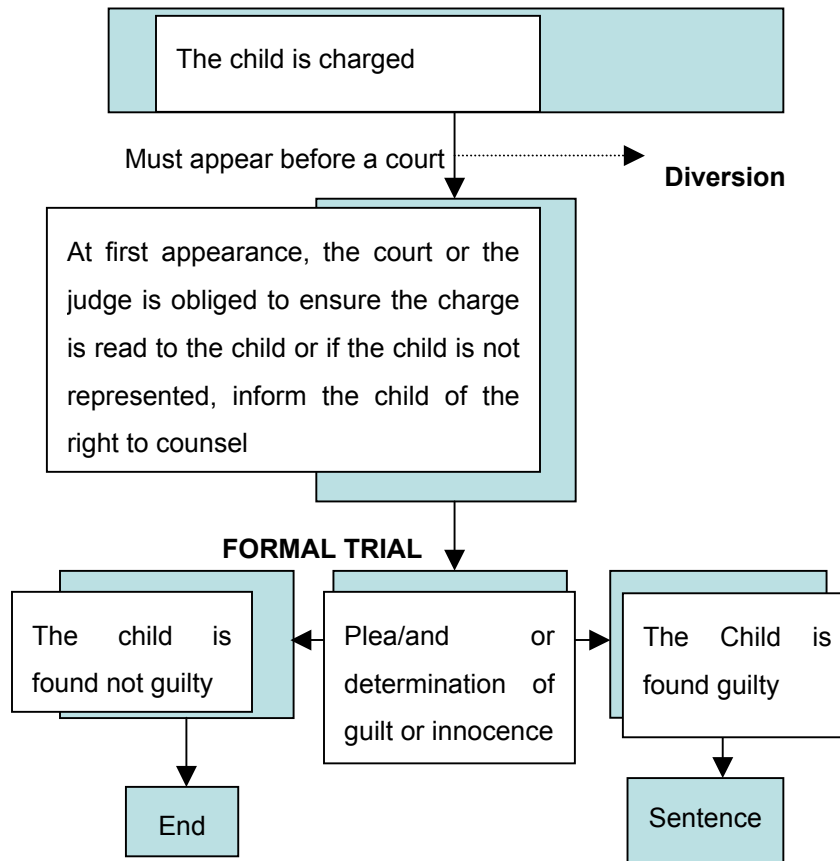
Negative Consequences

Although pre-trial detention is not to be used as punishment, decision-makers, police, prosecutors, court judges, need to be aware of the negative consequences for the child who is detained. These include a major deprivation of liberty and a disruption of education, employment, family life, and social and community involvement. In addition, research indicates that the detention of the child increases his or her chances of being found guilty of the offence and sentenced to custody if found guilty.

Monitoring Children During Pre-Trial Detention

Monitoring is as necessary for children during pre-trial detention as it is during imprisonment. If authorities refuse a formal monitoring system, it can be done informally by lawyers visiting their child clients or by NGOs providing training programmes in houses of detention. The monitoring should include a tracking process for children going through the system to ensure that they are not left languishing in custody because their papers have been lost.

Formal Trial Court Proceedings



Competent Authority

Children going through the criminal justice system should be tried by a competent authority (with legal representation and parental assistance) in an atmosphere of understanding conducive to their best interests. The child should be able to participate in decision-making. All proceedings should take place within the shortest appropriate period and there should be no unnecessary delays.

In deciding on the outcome of any matter involving a child offender, the presiding officer should be guided by the principles of proportionality, the best interests of the child, the least possible restriction on the child's liberty and the right of the community to live in safety. Depriving children of their liberty, either while they await trial or as a sentence, should be a measure of last resort and should be restricted to the shortest possible period of time.

Guiding Principles of a Court's Proceedings**Protection of Privacy**

The child defendant has the right to the protection of privacy because of his or her age. The public is usually excluded from the court's room, and in some countries, all juvenile proceedings are held *in camera*.

Presence of Parents or Guardians and Legal or Other Appropriate Assistance

Parents or guardians have to be involved in the preparation for the trial and present when it takes place. They should be informed in writing by police, prosecutor or judge that a formal trial will take place and that they are invited to attend. If there is a conflict in the family, the parents or guardians can be excluded at least partially in the child's best interests. If the child will not speak when the parents are present, the child will have to be heard separately from them.

Like adults, child accused persons have a right to legal representation from the time of arrest. There is a duty for magistrates to explain the right to legal representation to every accused who appears before the court.

Informing of the Child about the Proceedings and his/her Rights

The setting will be awkward for the child, who is confronted with a judge in robes on a raised bench and a number of people unknown to him or her. This makes it all the more important for the judge to explain the proceedings to the child at the start of the hearing. The child needs to be introduced to court procedure and know what the next steps will be and what the results of each finding or action will have for him or her.

The notification of charges can be done by the prosecutor, judge or a clerk reading aloud. It should be done in child-friendly language so that the child understands what he or she faces.

This is the point at which the judge should inform the child of his or her rights. The child should know that he or she has the right to remain silent and need not even make a plea (if applicable) or confess. The only information the child must give is his or her name and age and, in some countries, address. However, the judge must also explain that failure to speak may be held against the child.

The child has the right (himself or through his/her lawyer) to make a statement, the right to present witnesses and, in principle, to question witnesses at any point in the proceedings. It is up to the judge to decide whether a question is admissible and whether the witness should answer. Even more important is the right of the child to confront prosecution witnesses and to cross-examine them.

In common law countries, cross-examination helps to keep the rights of the prosecution and defence in balance, while under civil law systems, it is up to the judge to decide who gets the floor at which time during the proceedings.

Both sides have the right to due time for preparing the case, but the child also has the right to due and speedy process, particularly when the hearing is closed. This means that there should be a limit on how long a case can be interrupted to await a missing witness or evidence.

The child has the right to have the last word in a hearing. This is a basic right, well established in procedures and important, especially before sentencing, because it allows the child to give the impression the judge or jury will carry with them when they retire.

Finally, the child has the right to disposition of his or her case in due course and to hear and receive in writing the reasoning for a sentence. This is the basis for any challenge of the disposition – the right to appeal to a higher authority.

Grounds for Detention Decision: Investigation and Legal Action against the Detention of Children with Adults in Honduras.

Collaborating Organizations: Casa Alianza UK, CEJIL (Centre for Justice and International Law), CIPRODE (Centre for Investigation and Promotion of Human Rights in Honduras), Save the Children, CODEH (Committee for the Defence of Human Rights in Honduras), COINPRODEH (Coordinator of Institutions for the Rights of the Child)

Background: In 1990, the Congress approved the Children's Code in order to apply the UN Convention on the Rights of the Child. In 1996, however, in response to high levels of violence blamed on children, the Supreme Court implemented a ruling that allowed judges to send underage detainees to jails with adults. This plan was known as an 'Autoacordado' and violated the Constitution of the Republic of Honduras, which, in article 122, prohibits the detention of children in jails designed for adults. Although the Supreme Court's ruling

stated that children should be kept separate from adult prisoners, the cramped and overcrowded conditions in the country's dilapidated jails made the separation impossible.

Project:

Casa Alianza, with the aid of the organizations listed above, started a nation-wide investigation into every single Honduran jail as a first step to document the violations of the human rights of detained children. The investigation revealed that over 800 boys were detained in jails with adults.

Casa Alianza's Legal Aid programme then presented 300 writs of Habeas Corpus for the children to be released or sent to juvenile detention centers, in accordance with the Constitution of Honduras. All but one of the writs were rejected on the grounds that the Supreme Court and the 'Autoacordado' allowed this condition, a decision which failed to recognize that the Constitution was the higher legal norm.

Casa Alianza and CEJIL presented the case of the illegal detention of children with adults to the Inter American Commission on Human Rights (part of the Organisation of American States), exposing the situation and asking for an urgent call to stop sending children to adult jails. After several months, the Inter-American Commission on Human Rights released a report with a recommendation for the State of Honduras to cancel the 'Autoacordado' that allowed the judges to send children to adult jails. At the same time, the Commission told the State to hold those judges legally responsible for approving an unconstitutional policy. Finally, it ordered economic reparations for all minors detained in adult jails. The State had to pay a total of \$188,000 (US \$20 per child per day of illegal imprisonment) in compensation to the victims.

Results:

- Investigating and monitoring the human rights of detained children proved to be an effective protection tool.
- The results of this process allowed Casa Alianza to take advantage of the Inter American system for protection of human rights (Inter-American Commission on Human Rights) to protect the victims by applying international law.
- There was legal reform that reinforced the Constitution of the country in the matter of detained minors. The State finally abandoned the 'Autoacordado' and paid the reparations to the minors, but not one judge was convicted for violating the Constitution.
- Since the report of the Commission, not one judge has sent a minor to an adult jail.

- The process had an impact on public opinion regarding the role of NGOs.
- The results of the effort have set an important precedent (so far as NGOs using local and international law to protect children's rights) and still bring attention to Casa Alianza.
- Other Casa Alianza offices in Central America have imitated the initiative, resulting in a similar investigation in Nicaragua.

Necessary Conditions:

- The NGO must be willing to take a firm stand.
- Cooperation between local and international NGOs.
- Thorough analysis of the veracity of the evidence collected; knowledge of local laws and access to legal support.
- Follow up on the effects of the investigation and the actions taken by a State.
- Need to provide attention to the victims (both emotional and legal support).

Example: Child-Friendly Proceeding: Assisting Children in the IASI Juvenile Courthouse, Romania

Project initiated in March 2001 and coordinated by the Social Alternatives Foundation and the Magistrates Association.

Issue: Insufficient adherence to, and respect for, national and international standards regarding criminal trials involving children as both offenders and victims.

Project: Creating the Juvenile Courthouse IASI, a project which aims at:

1. Ensuring an optimal climate for hearing and judging cases involving children.
2. Building a team of specialists for processing and judging their cases.
3. Reducing the negative consequences suffered by children and their families during the process.

Currently, all cases involving children in the region have been diverted to the Juvenile Courthouse, thus complying with Article 485 of the Criminal Procedure Code.

Description of the project:

In order to achieve its goals, the project undertook the following activities:

- Refurbishing the Juvenile Court with adequate furniture, so that children can feel more comfortable, and providing audio-video systems to allow for the contribution of evidence without being in the actual court.

– Creating an information leaflet outlining the proper investigation and judging mechanisms for cases involving children, with details of social assistance services offered by partner NGOs. These leaflets were given to children under trial, their families and the public.

– The training (through a series of seminars) of 33 specialists to carry out penal cases with children (10 police workers, 8 prosecutors, 7 judges, 2 attorney, 4 social workers, and 2 psychologists). The objectives of this training were:

- Informing participants about the functioning mechanism of the Courthouse.
- Providing them with knowledge about emotional, physical and sexual abuse on children, ways of identifying abuses, counseling services for victims and their families, investigation techniques and rehabilitation methodology.

To ensure correct functioning of the Juvenile Courthouse, a Coordination Committee was created, consisting of 2 representatives from each institution involved in the project in

order to establish a common strategy based on the strategies of each institution and to find optimal solutions to implement the project.

A second seminar was held focusing on child development psychology, and was attended by police workers, prosecutors, judges and members of NGO partners in the project. The objectives of this second seminar were:

- Gaining knowledge in the monitoring of child rights within the family and government institutions;
- Gaining knowledge regarding the negative consequences arising from abuse and neglect.

Lessons learned:

- * Legislative difficulties: Lack of legal framework to promote diversion in cases with children; lack of procedures to avoid multiple interviewing of child victims; not accepting video-audio evidence.
- * Professional difficulties: Need to develop university and post-university preparation in the field of juvenile justice and criminology; need to write some practical manuals for police officers, prosecutors, judges and social workers involved in the juvenile justice system.

Court-Related Proceedings

Description

Court-related procedures use alternative strategies to address issues pertaining to juvenile delinquency. Often, the goal is to reduce caseloads and the stigma associated with traditional and formal justice courts while providing services and support to child offenders.

Children as Judges

Teen courts, also called peer and child courts, represent an alternative approach to the traditional juvenile justice system. Most teen courts require defendants to plead guilty prior to participation in the programme; however, a small number of these courts are structured to determine guilt or innocence. In a teen court, child offenders are held accountable and sentenced by a jury of their peers to community service, counselling, restitution, and/or an apology to the victim.

Teen courts are seen as an effective intervention in many jurisdictions where enforcement of misdemeanor charges is given low priority because of heavy caseloads and the need to focus on more serious offenders. Teen courts also present communities with opportunities to teach children people valuable life and coping skills and promote positive peer influence for children who are defendants and for volunteer children who play a variety of roles in the teen court process. Teen courts mobilize a diverse mix of volunteer children and adults for active and constructive involvement in addressing problems in their towns and cities.

Teen (or child or peer) courts are much like traditional courts in that there are prosecutors and defence attorneys, offenders and victims, and judges and juries, but children rather than adults fill these roles and, most important, determine the disposition. The principal goal of a teen court is to hold child offenders accountable for their behaviour by imposing sanctions that will repair some of the harm imposed on the victim and community. The basic theory behind the use of children in court is that children will respond better to pro-social peers than to adult authority figures. This peer justice approach assumes that, similar to the way in which an association with peers who are themselves offenders is highly correlated with the onset of offending behaviour, peer pressure from pro-social peers may push children towards pro-social behaviour.

Teen courts are generally used for younger children (aged 10 to 15), are charged with less serious offences (e.g., shoplifting, vandalism, and disorderly conduct) and have no prior arrest records. Typically, child offenders are offered teen court as a voluntary alternative to the traditional juvenile justice system.

In general, teen courts follow one of four models: the adult judge, the child judge, the child tribunal, and peer jury. The adult judge model is most popular, representing about

half of all teen courts. It uses child volunteers to serve in the roles of defence attorneys, prosecuting attorneys, and jurors but requires an adult volunteer to serve as the judge. The child judge model uses a similar organizational structure but uses a child to serve in the role of judge. The child tribunal model differs from the other models in that there are no child jurors. The case is presented by the child attorneys to a child judge or judges. Finally, the peer jury model does not use children as defence or prosecuting attorneys. Instead, it operates much like a grand jury. The facts of the case are introduced by a case presenter, and a panel of child jurors interrogates the defendant directly.

Regardless of the model used, the primary function of most teen courts is to determine a fair and appropriate disposition for a child who has already admitted to the charge. Participating children are subject to a wide variety of creative and innovative dispositions that the court may order. Guiding principles are that dispositions should be designed to address the needs of the victim/community, be based on restorative justice principles, and promote positive child development.

Typical dispositions include paying restitution, performing community service, writing formal apologies, or serving on a subsequent teen court jury. Teen courts may also order offenders to attend classes designed to improve their decision-making skills, enhance victim awareness, or deter them from future offending.

The Issue of Traditional or Community Justice

Traditional justice continues to play a central role in conflict resolutions, particularly in rural areas in some countries. Traditional justice frequently operates alongside a formal judiciary and may be seen by many as more accessible, less costly and more relevant than the formal system. Costs of a comprehensive system for child offenders, including probation services and social welfare support are prohibitive in countries that lack basic infrastructures and services. In addition, formal systems and the use of custodial sentences or other measures can have a damaging impact on children. Even where a basic infrastructure is in place, formal justice is often slow, due to inefficiency and inertia within the system. The justice system may also suffer from corrupt practices, lack of facilities and limited sentencing options.

Traditional justice is located at community level in the socio-political institutions normally governed by village elders or chiefs. However, traditional justice has undergone changes and is perhaps more accurately described as 'community justice' rather than 'traditional justice'.

What are the Differences?

Community justice focuses on the maintenance of community harmony and the restoration of good practices. It incorporates not only personal factors but also social, economic and political factors, some of which may be extraneous to the offence itself, but relevant to the community as a whole. Community justice falls outside the authority of international instruments, such as the Convention on the Rights of the Child. This raises question about the respect of the rights of children in this process.

Nevertheless, such a system carries risks as it rests on the power of the judicial authority embodied in the local chieftainship or community elders.

Despite the limitations and potential risks, community justice may have an important role to play. Its advantages lay in its informality of procedure and setting. It locates the offence within the local environment and brings together families and communities in a participatory process to restore the status quo. The chief's decision is more likely to be a lasting and acceptable settlement.

The Role of Traditional or Community Justice Systems

Some of the diversion options introduced above, such as mediation and family group conferencing, are based on traditional, community and informal justice systems. Taking into consideration international human rights standards, increasing attention is being paid to reviving such systems, capitalizing on their benefits, as traditional and informal justice systems have a key role to play in the pre-trial diversion process.

However, this is on the clear understanding that they must be very carefully monitored to ensure that they do not reinforce exploitive or discriminatory community norms that may

discriminate especially against children and girls in particular.

Core Principles when Utilizing Traditional and Informal Justice Systems for Diversion

- No one should be subjected to discrimination based on sex or any other status by either formal courts or informal justice forums.
- Physical punishments – whether imposed by formal courts or informal justice forums – amount to inhuman or degrading treatment, which is absolutely prohibited. States have an obligation to protect all those under their jurisdiction from such treatment.
- States should make it an offence for traditional or informal adjudicators to order physically coercive punishments, to try a person under duress or *in absentia*, or to try a person for serious offences such as murder or rape.
- These laws should be actively enforced and forums in which such offences are repeatedly committed should be outlawed.

Increasingly, governments, development agencies and non-governmental organizations are realizing the potential of such traditional practices to meet the justice needs of marginalized populations, resolve issues of court backlogs, and to enable communities to own and resolve their own conflicts. Some States have legitimized community justice systems by recognizing their roles and in some countries they are formalized in the justice system or incorporated into the modern justice system through the introduction of restorative justice.

Not all informal justice systems are fully traditional systems, however. In some countries, popular forums based or modeled on traditional systems have grown out of a lack of faith in formal systems. In others, non-governmental organizations or even governments have developed dispute resolution structures that are used as alternatives to the formal system.

Example: Community Justice System: Child Panels in Ghana

Background: Ghana's Children's Act (560 of 1998) makes provision for the establishment of Child Panels at district level. A Child Panel has non-judicial functions to mediate in civil and criminal matters concerning children.

A Child Panel consists of the following persons, appointed by the Minister of Social Welfare: the chairperson of the Social Services Sub-Committee of a District Assembly; a member of a women's organization; a representative of the traditional council; the district social worker; a member of the Justice and Security Sub-Committee of the District Assembly, and two other citizens from the community. These latter should be of high moral character and proven integrity; one of the two should be an educationalist.



The child panel is intended to assist with victim-offender mediation in minor criminal matters involving a child, where the circumstances of the offence are not too serious. The Act further provides that a child panel should seek to bring about reconciliation between the child and any person offended by the action of the child. A child appearing before a child panel should be cautioned as to the implications of his or her actions and warned that such behaviour may, in the future, subject him or her to the juvenile justice system.

A child panel may decide to impose a community guidance order on a child or may, in the course of mediation, propose an apology, restitution to the offended person or service by the child to the offended person. A community guidance order means placing the child under the guidance and supervision of a person of good standing in the local community, for the purposes of reform, for a period not exceeding six months.

Regulations to the Act refer specifically to complaints in criminal proceedings and state that, where a minor criminal complaint is lodged at a police station or at a juvenile court, the officer in charge should refer the matter to a Child Panel within the district. The secretary records the proceedings of the child panel. This includes any proposals or settlement agreements reached between the parties. The deliberations before the panel are otherwise informal, and statements by the parties are not required to be under oath.

Project: An initiative to assist District Assemblies set up pilot child panels (in the absence of the regulations) was undertaken by Save the Children in collaboration with other organizations. Over a period of two years, approximately ten child panels were set up as pilot projects: some at district level and others at community level. Community level panelists are elected by the community, and representation is gender-balanced. Meetings are informal and often held in a member's house or garden. A child protection core team of the District Assemblies oversees their work and Save the Children staff act as mentors to the child panels.

Lessons learned: In the absence for the moment of evaluation data, it is not possible to assess the impact of child panels. However, at a theoretical level, some interesting and promising features can be identified. Firstly, the child panels make provision for an alternative to the usual criminal justice processes by being mandated to deal with petty criminal offences. Secondly, the legislation and regulations stipulate that the referral process should happen at police station level, thereby limiting the child's exposure to the criminal justice system. Thirdly, the child panel is made up of a balanced mix of individual representatives from government and civil society, and specifically community

representatives. Fourthly, the panels' method of adjudication is underpinned by a restorative justice philosophy and the harshest sanction it can impose is a community guidance order. Fifthly, the child panel also has the potential to act as an early warning system to identify children who are exhibiting risk behavior.

Example: Community Justice System: Children's Koori Court in Australia

In late 2004, new legislation created a Children's Koori Court in the Australian state of Victoria. The Children and Young Persons (Koori Court) Act 2004 augments 1989 legislation, which established specialized children's courts. With this new initiative, the government is attempting to create a less formal, more culturally relevant justice experience for child aboriginal offenders, their families, and communities.

The Children's Koori courts will address sentencing needs of aboriginal children in all criminal cases with the exception of sexual crimes. To be eligible for this court the offender must plead guilty or have been found guilty of the offence and choose to be processed through the specialized court. In determining a sentence, the court may solicit input from:

- Aboriginal elders or respected persons
- Children's Koori court officers or juvenile justice workers
- Health service providers
- Victims of the offence
- Family members of the offender
- Anyone else the Koori Court considers appropriate

With the purpose of incorporating Aboriginal voices in sentencing decisions, the court is to conduct procedures with "as little formality and technicality" as possible. This includes taking steps to ensure that the proceedings are comprehensible to the child offender, family members of the offender, and any member of the Aboriginal community present in the court.

The Children's Koori courts are modelled after pilot adult Koori courts created by the Magistrates Court (Koori Court) Act of 2002. These courts were created as a result of the Aboriginal Justice Agreement between the State government and Aboriginal communities, which aims to reduce over-representation of indigenous peoples in the criminal justice system. In Victoria, indigenous children aged 10-17 are 16.6 times more likely to be in juvenile detention than non-indigenous children.

In these courts, the physical setting is changed to create a more informal and culturally relevant environment. The magistrate does not wear the garb associated with his office and sits at eye level with the offender. Aboriginal community elders or respected persons sit beside the magistrate and offer insight on the particular case. The process includes all relevant voices to the case including Aboriginal justice officers, community members, and victims in developing a sentencing plan that will lead to rehabilitation.

The adult Koori courts have not been in existence long enough to evaluate their impact on recidivism. However, community and justice leaders are confident that they are having a positive impact on the indigenous community. For example, voluntary participation rates of aboriginal offenders transferred to the Koori court have improved to 90% success compared to less than 50% in the regular magistrate's court.

The Children's Koori court will commence in 2005 for a two-year pilot period.