



**American Bar Association
Africa Law Initiative
and
United Nations Children's Fund**

ASSESSMENT OF THE LIBERIAN JUVENILE JUSTICE SYSTEM

**Monrovia, Liberia
July 2006**

Assessment Team: Judge Karen Aileen Howze, Judge Edward Twea,
Professor Kristin Henning and Professor Susan Kreston
Coordinators: Liga E. Mutia and Anthony Valcke, ABA-Africa
Fatuma Ibrahim and Alfred Mutiti, UNICEF

**AMERICAN BAR ASSOCIATION – AFRICA LAW INITIATIVE
AND UNITED NATIONS CHILDREN’S FUND**

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SUMMARY

At the request of the United Nations Children’s Fund (UNICEF) Liberia, the American Bar Association – Africa Law Initiative (ABA-Africa) conducted an assessment of the Liberian juvenile justice system. This is a summary of the findings of Juvenile Justice Assessment Team. In accordance of the Terms of Reference provided by UNICEF, the Report also makes recommendations on several fronts: legal representation for children; juvenile justice legislation; social service network for children adjudicated delinquent, neglected or in need of care and protection, and administration of the judiciary. The Report identifies short- and long-term goals leading to the development of a true juvenile justice system in Liberia.

As in many sub-Saharan African countries, the notion of juvenile justice in Liberia is just beginning to take hold. As the country continues to build its juvenile justice system in the post-war reconstruction, the Juvenile Procedural Code may prove to be one of the system’s greatest assets. The existing Juvenile Court and Juvenile Court Procedural Codes – drafted as part of the Judiciary Law before the war – provide a solid foundation and framework for the development of a comprehensive juvenile justice system in Liberia. However, the Juvenile Procedural Code – like any other Code – is subject to misinterpretation. Hence the need for clear and consistent legislation and Court rules to create a uniform and efficient system of adjudicating juvenile cases across the country.

The administration of justice in Liberia is hampered by the lack of judges, lawyers and courtrooms in many counties, causing a huge backlog of criminal cases, including those involving juveniles. One of the major challenges to the Liberian justice reform as identified by the UN Mission to Liberia’s Legal and Judicial Systems Support Division (UNMIL L&J) is that of improving the juvenile justice system, particularly by complementing the newly reactivated Juvenile Court with facilities for the separate pre-trial detention and post-trial incarceration (if necessary) of minors, in line with the Convention on the Rights of the Child (CRC). Juvenile offenders are currently incarcerated in the same jail blocks (generally in separate cells) as adult offenders. Girls, in particular continue to be victimized by the system as they are subject to frequent rapes, commercial sexual exploitation, teen pregnancy and sexually transmitted diseases. These challenges are huge and progress is slowly being made, as key players in the Ministry of

Justice, Ministry of Health and Social Service, and the Judiciary seem committed to making the change.

Despite the enormity of the post-war nation-building challenges facing Liberia, the executive, judicial and legislative branches have labored to begin addressing the needs of Liberia's children. The current environment therefore provides a great opportunity to create or revamp the juvenile justice system in Liberia.

The brutality and violence that juveniles have experienced in Liberia cannot go unnoticed and begs for immediate action. The creation of the juvenile justice system must therefore be addressed holistically to change the mentality and lives of these young people and children who may have engaged in criminal acts, but are themselves victims of the Liberian conflict.

In carrying out its assessment mission, the Juvenile Justice Assessment Team met with key stakeholders from the Ministry of Justice, the Judiciary, the Juvenile Judge, police officers, prison officers and administrators, representatives of international organizations and non-governmental organizations (NGOs) and child advocates. The overarching sentiment gleaned from all these meetings was the need for infrastructure; training of judges, lawyers, prosecutors, police, social workers and other persons who come in contact with children's issues; the need for basic supplies; and the need for communication and cohesiveness among the agencies and NGOs involved in juvenile cases.

The recommendations below reflect the Juvenile Justice Assessment Team's impression of what the juvenile justice system in Liberia needs, including both short-term quick impact projects which could be carried out at small cost and long-term projects which entail more planning and greater funding. The recommendations are aimed at moving the juvenile justice system forward, with short-term goals being those that can be accomplished from one (1) to six (6) months, and long term goals -- those which will take longer than six (6) months to accomplish -- in the effort to create a functional juvenile justice system that the people of Liberia can have confidence in and that will improve the quality of life for children, families and entire communities throughout the nation of Liberia.

However, the recommendations do not replace the need for a comprehensive long-term strategy aimed at achieving the general welfare and educational needs of the children of Liberia in their entirety.

RECOMMENDATIONS TO EXPAND LEGAL REPRESENTATION IN THE JUVENILE JUSTICE SYSTEM

Recommendation 1: *Develop prison visitation and detention monitoring teams.*

Juvenile Identification Project

Quick Impact: A Juvenile Identification Project should be set up to identify youth in prisons. A team of advocates (lawyers, law students, and non-lawyers) should be formally convened to expand the efforts of UNMIL, Don Bosco Homes and other organizations to visit systematically and consistently all Liberian prisons in order to identify juveniles who should not be there (either because of age, extended length of stay, engagement in petty or non-criminal conduct, mental health concerns, etc.). A systematic database should be developed to track the placement, treatment and movement of these children into and out of prisons. Efforts should be made to locate parents or other appropriate alternatives to imprisonment and to advocate before the relevant Court for the release of these youth from prison. The results of such monitoring should be communicated to the Judiciary, Ministry of Justice and providers of legal assistance.

Special attention needs to be given to detention facilities located outside of Monrovia City. Neither UNMIL nor Don Bosco Homes has the resources, time or capacity to provide the routine and systematic monitoring needed to identify and remove all juveniles from Liberian prisons. The Juvenile Justice Assessment Team visited the Monrovia Central Prison and met 12 juveniles who all, with the exception of one, reported that they had been incarcerated for five (5) months to 18 months. The vast majority of these children report that they met with a judge in an office, but were never given a full court hearing with witnesses, were never allowed to tell their story, and were never returned to court for any further hearings.

Conditions of Confinement, Co-mingling of Delinquent and Neglected Children, and Prison Abuses

Quick Impact: A Prison Monitoring Project should be set up by formally convening a team of advocates (lawyers, law students, and non-lawyers) to visit systematically and consistently all Liberian prisons and detention facilities in order to identify conditions of confinement and ensure that appropriate measures are put in place to prevent co-mingling and abuses, and where abuses do take place, that these are thoroughly investigated and prosecuted.

Both UNMIL and Don Bosco Homes reported instances of physical abuse in the prisons. Further systematic investigation is needed to determine the extent and nature of any such abuses. In addition, efforts should be made to assess and monitor the

extent of co-mingling not only between adults and children, but also between children who are alleged to be delinquent with children who are alleged to be neglected or in need of care and protection. At the Monrovia Central Prison, the Juvenile Justice Assessment Team observed that, although separate sleeping quarters are provided for adults and children, children and adults are co-mingled at meal times, in the bathrooms and in other communal divisions of the prison.

Moreover, there were obvious concerns about the conditions of confinement for all of the detainees. Children are being detained in tiny cellblocks with 2 to 5 other youth with no outdoor time for exercise and recreation. The food appeared barely edible, and the cell block sizes were unbearably small and were visibly too small to allow multiple inmates to sleep lying down at once. Many of the inmates were wearing the same clothes they entered the facility with many months before and there was tremendous overcrowding. Because there were no uniforms for the guards, the demarcation between prisoners and guards was virtually impossible. The presence of uniformed guards may increase the possibility of outdoor time for prisoners.

Law students would be a good source of personnel for both types of detention reform teams.

Recommendation 2: *Develop court monitoring teams.*

Quick Impact: Lawyers (or law students and other advocates) with training in juvenile court law and procedure are needed to routinely and systematically observe Juvenile Court proceedings and Magisterial Court hearings for juveniles and to provide the respective judges with whatever assistance they might need. Monitors should track the return times for juveniles scheduled for follow-up proceedings, determine whether juvenile prosecutors have been identified and appointed, determine whether juveniles fully understand their rights and have been appointed counsel, and determine whether creative alternatives to incarceration are being identified and pro-actively explored and contacted by the Court especially in those cases in which a parent or guardian cannot be located. In Magisterial Courts, monitors need to determine whether adequate inquiry is made regarding the age of defendants who appear before them.

Recommendation 3: *Develop and provide specialized training for Juvenile Public Defenders, Juvenile Prosecutors and other lawyers for children.*

It is recommended that the Chief Justice appoint one or more public defenders who are specially assigned and trained to represent juveniles. In the alternative, it is recommended that the Chief Justice allocate a portion of each Public Defender's time (in Monrovia as well as in the counties) to the representation of juveniles. It is recommended that the Ministry of Justice similarly identify, train and assign prosecutors to work in the Juvenile Court.

Advocates with expertise in juvenile court should be provided to mentor and train Juvenile Public Defenders and Juvenile Prosecutors. One possible model is that developed by PAE in training and supervising Public Defenders at the Temple of Justice and Prosecutors in the Ministry of Justice. A specialized training curriculum for juvenile lawyers should include education about child and adolescent development as well as training on the laws and procedures that govern delinquency, neglect and care and protection cases. Specialized training must also give attention to the transfer of juveniles from adult criminal proceedings to juvenile court and to the prevention of transfer of juveniles from juvenile court to criminal court. The training should also sensitize defense lawyers to the particular vulnerability of youth to confessions and to unlawful searches and seizures by the police and others.

Recommendation 4: *Engage in legislative advocacy and draft written Rules of Juvenile Court to provide accurate and consistent implementation of the Juvenile Procedural Code by all judicial officers with jurisdiction over Juvenile matters.*

It is recommended that the Chief Justice promulgate written Rules of Juvenile Court to supplement the existing Juvenile Court Procedural Code. Rules of Court would be useful in ensuring that Magisterial Judges who have less consistent contact with juveniles will have easily accessible and uniform guidelines for the administration of juvenile justice throughout the court system. Legislative authority for such Rules is provided in Juvenile Procedure Code §11.2. An extensive discussion of possible Rules of Court is provided by the Assessment Team in its assessment of the Liberian Juvenile Court Legislation. Suggestions for *statutory* reform of the Juvenile Procedural Code are also provided in the Team’s assessment of the existing legislation.

Recommendation 5: *Creative use of law students in the immediate work of the Juvenile Court.*

Quick Impact: In addition to the establishment of a comprehensive Legal Aid Clinic at the Law School, there seems to be support among juvenile justice stakeholders for the use of law students in some volunteer capacity. Students may be willing to work for academic credit, for a minimal or nominal stipend, or in unpaid internships to “get a feel for the profession” or to supplement their resumes. Students may be actively engaged in a number of the recommendations listed herein, including the Prison Visitation and Detention Monitoring Teams, the Court Monitoring Teams, and Judicial Clerkships.

Law students may also be assigned to individual juveniles as non-lawyer “guardians *ad litem*” (as opposed to “law guardians”) to engage in every aspect of advocacy for the child, except arguing in court. The law students could help the child understand his/her rights (to silence, to legal representation, to timely adjudication and disposition, etc.), look into the educational and mental health needs of the child, gather records, investigate allegations, help locate defense witnesses and defense evidence, monitor the child’s length of detention, monitor conditions of confinement,

draft legal pleadings, help locate parents, and ensure that services are identified to ameliorate the conditions that led to the neglect, delinquency, or care and protection petition.

Recommendation 6: *Use paralegals to assist public defenders, prosecutors and private attorneys.*

If funds were available, a team of paralegals could be trained to assist the very small number of public defenders and private attorneys who are available to represent children in the country. Presumably, as in other jurisdictions, paralegals could be trained to do preparatory legal work short of actual legal representation in court, including many of the tasks listed above in the creative use of law students.

Paralegals could be trained and supervised by the Liberian National Bar Association and/or the Association of Legal Assistance Providers. The obvious benefit of paralegals is the reduced salary that they command. However, as indicated by the Chief Justice, national and international organizations should not be training paralegals for the illegal practice of law.

Recommendation 7: *Continued development of a Legal Aid Clinic at the Law School.*

Advocates will need the full support of the Chief Justice, the Liberian National Bar Association and the Dean of the Law School for the development of an effective Legal Aid Clinic. Hopefully, as advocates identify creative ways to use law students outside of the courtroom, the clinic will earn credibility and respect among the relevant parties.

Recommendation 8: *Raise additional scholarship money for law students who will commit to serve as lawyers for children upon graduation; continued financial and material support and training for law students interested in Juvenile Court (especially in the counties).*

The Ministry of Justice and the Judiciary have both provided scholarships to students of the Law School committed to public service after graduation (prosecutors, court clerks and public defenders). The scholarships should be revised to provide assistance in the order of \$1000 per year per student, plus tuition costs and books. In return, the graduate attorney would work for the respective agency upon graduation for a number of years (currently three). It appears that the Judiciary's scholarship is proving relatively successful thus far, although the first pool of lawyers just graduated from law school earlier this year. Further funding should to be made available to support this effort and to *specifically target attorneys who will work in the juvenile justice system.*

Recommendation 9: *Develop strategies to support pro bono initiatives among the Liberian National Bar Association.*

The efforts of the Liberian National Bar Association (LNBA) in seeking to boost pro-bono case assignments must be given the full support of all interested parties. The LNBA should be encouraged to make it compulsory for the legal profession to provide pro-bono legal representation by making it a condition of continued membership to the Bar. The international donor community should make adequate funding available for this endeavor. Advocates should work with the LNBA and ALAP to explore the possibilities and limitations of pro bono advocacy.

Recommendation 10: *Community education on the right to counsel so that juveniles and their parents are aware of and fully understand the right.*

Although the Juvenile Procedural Code clearly provides for the right to counsel, the Code seems to put the onus on the child or his parent to ask for a lawyer. Advocates need to engage in community education regarding the right to counsel. Advocates may develop simple cards, posters or brochures to explain all rights in the juvenile justice system to children and parents. Cards or posters may be distributed and/or prominently displayed in police stations, prisons, the Temple of Justice and other places the parent or child is likely to see. Thought needs to be given for how to engage in community education for the illiterate portion of the Liberian population. Advocates may consider holding community education forums at various community locations.

Recommendation 11: *Develop strategies to bring attention to the Due Process Rights of parents who face temporary loss of custody of their children or permanent loss of parental rights; develop a cadre of lawyers available to represent parents in neglect proceedings.*

There appears to have been no initiatives or discussions among the national and international organizations regarding the due process rights of parents in abuse and neglect and termination of parental rights proceedings. Considerable attention needs to be given to this issue and a comprehensive response needs to be developed to include legislative amendments, training, community education, and the provision of legal representation. Additional discussion of this issue is provided by the Juvenile Justice Assessment Team in its assessment of the Liberian Juvenile Procedural Code

Recommendation 12: *Develop a program for Judicial clerkships (not clerks of the court) with specialized training in Juvenile Court Proceedings.*

Judicial Clerks specialized in Juvenile Court matters would be especially beneficial in Magisterial Courts where the judges do not specialize or consistently handle juvenile justice issues and do not have the same adjustment and mentality as the specialized Juvenile Court Judge. Care should be taken to ensure that judicial clerks do not impede or overlap with the duties of the appointed Clerk of Court and that the judicial clerks do not inadvertently take on the role of “advocate for the child” and thereby compromise the neutrality of the court. However, with some thought and additional

investigation, it is likely that some juvenile-specific duties may be appropriately delegated to the judicial clerk, including helping the judge maintain familiarity and proper interpretation of the juvenile law, application of the proper juvenile court process, age ascertainment of persons who appear before the court,¹ and familiarity with services specifically available to juveniles who appear before the court.

It should be noted that judicial clerkships are not foreign to the Liberian justice system as the Chief Justice recently appointed six (6) recent law graduates to serve as clerks to the Supreme Court.

Recommendation 13: *Obtain and distribute complete copies of Juvenile Procedure Code, Civil Procedure Code, Criminal Procedure Code and Penal Code to Juvenile Court Judge and every Magisterial Judge serving in a juvenile court capacity.*

Quick Impact: UNMIL reports that many of the judges in Liberia do not have copies of the relevant legal codes. UNMIL also reported instances of magisterial judges in the counties making up offenses that do not exist in the code. UNMIL and PAE indicated that funding in excess of \$180,000 is required in order to obtain a full set of the Liberian Code and Liberian Law Reports for the Supreme Court and Circuit Courts, but excluding the Magisterial Courts. At least one full set of the Code and Law Reports needs to also be provided to the Law School and the National Law Library. UNMIL noted that it does not have the funds to achieve this objective, but the United States Agency for International Development (USAID) and PAE are in the process of securing funding.

In the absence of funding for furnishing a complete set of the Code and Law Reports to all courts in Liberia, it is recommended that copies of the Juvenile Procedure Code, Civil Procedure Code, Criminal Procedure Code and Penal Code should be provided to the Juvenile Court Judge and every Magisterial Judge serving in a juvenile court capacity.

Recommendation 14: *Develop strategies for community education on the constitutional limitations of sassiewood and mob justice*

The Supreme Court has rules that sassiewood and other customary practices are unconstitutional unless the person concerned submits to it voluntarily and it is not life threatening. The Juvenile Justice Assessment Team understands that the Solicitor General is particularly passionate about the abolition of sassiewood and presumably would be amenable (and even grateful) for any strategic planning to increase community education about the Constitutional limitations of customary law. Currently sassiewood is accepted and applied not only by the average lay persons in the counties, but also by influential government officials and professionals in the counties.

¹ UNMIL Legal reports that it often doesn't occur to Magistrates to inquire as to the age of the person who appears before them.

RECOMMENDATIONS TO ALIGN JUVENILE COURT PRACTICE WITH JUVENILE PROCEDURAL CODE

Recommendation 15: *Ensuring the full implementation of the Juvenile Procedural Code.*

Quick Impact: The office of the Chief Justice should approach the President to appoint clerks, a Chief Probation officer and other probation officers to the Juvenile Court.

Quick Impact: Special mentoring, training and material support should be provided to the current Juvenile Court judge and her staff in Montserrado County. Training should comprise refresher courses on Juvenile Court procedures and children's rights, and instruction on trial procedures and case management practices.

Quick Impact: A Continuing Legal Education Program should be provided to the sitting Juvenile Court judge so that she may become an expert in the ever-evolving best practices in the administration of juvenile courts across the world. International partners and advocates may sponsor an international visit for the judge to visit juvenile courts so that best practices may be observed first hand.

Quick Impact: The Juvenile Court should review of the status of all juveniles detained at Monrovia Central Prison.

Quick Impact: The Juvenile Court aides should develop a list of the few non-prison facilities that do currently exist for the care and protection of juveniles in order to identify alternatives to incarceration for the placement of juveniles in protective custody.

Quick Impact: The Ministry of Justice should provide specially colored T-shirts to juveniles in custody for easy identification.

Quick Impact: The Chief Justice should designate specific magistrates throughout the counties to assume juvenile court jurisdiction.

Quick Impact: The Juvenile Court should produce statistics on weekly and monthly dispositions of juvenile cases and status of juveniles in custody.

Quick Impact: The Juvenile Court should publish weekly calendar for hearings and review of juvenile cases to all stakeholders.

Quick Impact: The Juvenile Court orders in juvenile matters should always contain the date that the child is to return to court.

Quick Impact: The Juvenile Court should call a meeting of stakeholders and collaborating NGOs in juvenile justice to work out cooperation and coordination.

Quick Impact: The Minister of Justice should designate separate cells with separate access and yard for juveniles at Monrovia Central Prison. In the longer term, a specialized juvenile detention and rehabilitation centre should be established.

Quick Impact: A mechanism for the monitoring of Justices of the Peace should be put in place to ensure that they do not encroach upon the jurisdictional powers of other courts in juvenile cases. Justices of the Peace should not have any contact with juveniles but sometimes they do. Various stakeholders expressed concerns about alleged abuse of power by these Justices. Further investigation is required to ascertain the nature and extent of any abuses and to develop a comprehensive and effective response to the problem.

Recommendation 16: Ensuring the full implementation of the Juvenile Procedural Code.

The Juvenile Court at the Temple of Justice should be refurbished and re-equipped. The Juvenile Court judge must be given a fully functioning courtroom – not just office space. The Juvenile Court must be equipped with all of the material and substantive resources necessary for the full blown trial of contested juvenile court proceedings. Although relaxed formality and diversion is appropriate in many juvenile cases, due process standards should not be compromised by a lack of resources, especially in cases where the child will be institutionalized or imprisoned – regardless of whether he has a parent or guardian.

Juvenile court prosecutors and juvenile court defenders must be readily and immediately available for the Juvenile Court judge to appoint in juvenile cases. Under no circumstances should victims have to locate and pay for their own prosecutors. Under no circumstances should indigent children have to locate and pay for their own lawyers.

The Ministry of Justice and Chief Justice should redesign committal forms for juveniles to include date of birth or age as determined by the police or courts.

The Judiciary should train and retrain the designated magistrates and their clerks in special juvenile court procedures and child rights. Training should focus on special Juvenile Court procedures and children’s rights as well as Liberian juvenile law, the penal code, trial and evidentiary procedures, and case management techniques.

The Magisterial Courts designated by the Chief Justice to assume juvenile court jurisdiction (see above) should file monthly reports of juvenile cases (including

delinquency, neglect cases and those involving children in need of care and protection) to the Chief Justice.

The Chief Justice should enter into a Memorandum of Understanding (MOU) or Operational Agreement (OA) with relevant organizations (UNMIL and NGOs) on the monitoring of designated juvenile court activities and the collection of statistical data.

The Chief Justice and Ministry of Justice should jointly call a meeting of stakeholders to establish a Multi-Disciplinary Team on juvenile justice reform, possibly within the ambit of a reactivated Juvenile Justice Forum.

The Multi-Disciplinary Team should identify and register NGOs, CBOs, FBOs and individuals in the juvenile justice sector who are willing to participate in the reform process.

Recommendation 17: Ensuring the full implementation of the Juvenile Procedural Code outside Monrovia.

The Judiciary should establish new juvenile courts in two (2) counties, to be situated according to statistical data collected through the monitoring of juvenile cases (see above).

The Chief Justice should designate a specific administrative assistant to co-ordinate the activities and needs of the juvenile courts throughout the country.

A study tour of all juvenile courts should be conducted for the benefit of the juvenile court judges and the administrator.

The juvenile courts should be situated away from other court centers.

The Judiciary should develop probation services for the juvenile courts.

The Multi-Disciplinary Team should enter into MOU or OA with identified and registered NGO to provide support services at police, court and prisons in the counties.

The Multi-Disciplinary Team should develop a two-year work plan on reforms or adjustments in the juvenile justice sector, based on experiences gathered.

A Multi-Disciplinary Team should be replicated wherever a juvenile court is established.

The Juvenile Procedural Code should be reviewed periodically to ensure its conformity with the Convention on the Rights of the Child.

RECOMMENDATIONS TO INTRODUCE DIVERSION IN THE JUVENILE JUSTICE SYSTEM

Recommendation 18: *Diversion should be mandatory in appropriate cases.*

Quick impact: The Chief Justice should mandate the juvenile court and the designated magistrates to develop a judicial strategy for the development and implementation of diversion program for children accused of offenses.

The juvenile court judge and designated magistrates along with court clerks, probation officers and other interested organizations should create and serve on a Multi-Disciplinary Team that will be responsible for the program's development and monitoring its implementation and effectiveness over time.

RECOMMENDATIONS TO DEVELOP A FUNCTIONING JUVENILE JUSTICE SYSTEM

Recommendation 19: *The roles of all government agencies, executive and judicial in the development of a functional child protection system need to be clarified as well as the role of the non-governmental and private sectors (NGOs and community-based organizations) (short-term projects).*

The Juvenile Justice Forum should immediately be reactivated with an adjustment in its purpose and its membership. The following high level government officials should participate: the Chief Justice, the Minister of Justice, the Minister of Gender and Development, the Minister of Education, the Minister of Social Welfare, the Minister of Health, and the highest financial officer of Liberia, along with any other ministers with responsibility for services to children and youth. The meeting should be mediated by a neutral non-governmental organization skilled in facilitating the strategic planning process so that candid discussions can be held and a strategic plan can be developed with specific time frames for the development of a long-term, viable child protection system that would also include some quick impact projects.

Liberia's international partners involved in justice reform, educational development, child welfare, and other youth related services should meet to share information regarding projects that they have undertaken, the effectiveness of programs to date and ways that Liberia's partners can work more effectively to maximize the resources available to assist in child protection programs across Liberia.

Recommendation 20: *Develop a data collection and tracking system for children and youth who have contact with the juvenile justice system.*

The Executive and the Judiciary should jointly develop a data collection system to begin tracking all children who are alleged to be neglected, delinquent or in need of care and protection across the republic as well as those children who have been adjudicated neglected, delinquent or in need of care and protection. The data needs to be made available to the government and the Judiciary, as well as other organizations involved in child welfare and legal assistance

Recommendation 21: *Develop a case tracking and coding system for cases involving children who are neglected, delinquent, or in need of care and protection.*

The current case tracking and coding project underway under the direction of the Chief Justice should immediately be expanded to include court proceedings and case management involving matters under the Juvenile Procedural Code.

Recommendation 22: *The practice of placing children who are neglected or in need of care and protection in prisons – which is a violation of their human rights – must end immediately.*

Quick Impact: The Juvenile Court judge and the magistrate judges who hear the cases of neglected children and those in need of care and supervision should be provided with information about the programs that are available to provide placements for children in these categories. In addition, the space availability in each program should be provided to the appropriate government agency and the court daily so that placements can be facilitated as neglect cases and cases involving children in need of care and protection are brought to court.

Recommendation 23: *A formula should be developed for determining the costs per child for all children in care based upon the type of services needed to meet the needs of the children who are neglected, delinquent and those in need of care and protection.*

Quick Impact: Since some NGOs are currently providing child welfare and other care services to children who are neglected and children who are in need of care and protection, that these organizations should meet and develop a formula that can be proposed to the reconstituted Juvenile Justice Forum to establish costs-per-child for out-of-home care of children who are neglected and in need of care and protection. For example, if it costs \$42,000 to care for 100 children for six months, the costs should be broken down to show the costs for room and board, the costs for social work services, the costs for mental health services, the costs for education if provided by the facility, the cost for medical care, recreation, and clothing.

Quick impact: The government should determine how much of the per child costs it will pay initially and provide timeframes for increasing those contribution over the life of each contract until the government is fully financially supporting all of the costs for the care of children who are neglected, delinquent or in need of care and protection.

The government of Liberia through the Office of the President should develop a long-term, multi-year strategic plan for financing all services required to provide care for children who are neglected, delinquent or in need of care and protection.

Recommendation 24: *Develop a proposal for the costs of building and maintaining of detention and rehabilitation facilities for children who are delinquent, neglected and those in need of care and protection.*

Quick impact: The government should develop a plan for the development of a detention center in Montserrado County in collaboration with NGOs that have expressed an interest and begin discussions with Liberian business interests including international corporations and their foundations arms to determine whether such interests would support the costs of building a facility, maintaining the physical facility once built or providing the financial support for services to promote the rehabilitation of youth who are detained.

Quick impact: The revitalized Juvenile Justice Forum should develop the approach that the executive branch and the judiciary will employ to address the needs of children who are accused and found to have committed serious juvenile offenses including placement options (secure detention, rehabilitation centers or training centers and vocational schools, treatment centers, etc.). A plan should be developed with timeframes, costs and levels of services to be provided to children that will promote their reentry into society.

Quick impact: The government should establish a multi-year development plan setting a specific date when the government would assume all responsibility for the maintenance and care of children committed to detention facilities.

Recommendation 25: *Identify, develop and support strong community-based organizations to assist in serving children and families.*

Quick impact: Local community leaders and organizations should be identified and involved in the development of child protection practices that are culturally sound and that promote the Rule of Law as the national children's agenda is forged.

Quick impact: NGOs that have been involved in community capacity building in Liberia should come together to assess the post-war status of those organizations and individuals who received training and demonstrated the capacity to provide community based services so that they can begin building a grass roots network of support within communities to provide support for children and families.

Recommendation 26: *Develop a protocol for the use of Family Group Conferencing and Family Team meetings in neglect, delinquency and cases involving children in need of care and protection that would maximize community-based organizations in supporting children and families.*

Quick impact: The current practice of family team meetings utilized by some NGOs should be extended to all cases involving children whether the cases are resolved prior to the filing of a petition in court or post petition.

Recommendation 27: *Develop a strategy to facilitate the prosecution of juvenile court cases and to provide support for victims and witnesses in serious cases of juvenile crime or abuse of children.*

Quick impact: Until victim support centers can be established throughout the country, the government and other participating agencies should assist community-based support organizations (such as NGOs, community groups, religious organizations, schools, etc.) to provide a safe place for youth to report abuse and to receive peer and professional support as they proceed through the court system whether juvenile court or criminal court.

Quick impact: The government should develop an education campaign focused on the penalties for interference with the prosecution of cases involving abuse of children or serious juvenile crime. The government should identify the specific past practices – such as payment to families where serious offenses are involved, informal restitution without court process or enrollment of the arrangements before the court to dispose of cases – and communicate to the public that these practices serve to erode the Rule of Law and the efforts to ensure safety for children.

Victim support centers should be developed throughout the country to provide a safe place for youth to report abuse and to receive peer as well as professional support as they proceed through the justice system.

A Children's Advocacy Center should be developed to lessen the trauma experienced by children who have been abused and are often subjected to multiple interviews as all relevant parties attempt to investigate and prepare for the prosecution of the abuse.

Recommendation 28: *Professionals who currently have the expertise to service children and youth who are neglected, delinquent or in need of care and protection should be identified and provided with training that focuses on the development of a Multi-Disciplinary Team approach to address the service needs in juvenile justice cases.*

The training can be incorporated into existing trainings provided by international donors, NGOs and the government. Short and long term multidisciplinary strategy implementation should be addressed in the development of any training curriculum as well as methods that can be used to bring MDT processes where resources are scarce or limited.

Recommendation 29: *A pilot program should be established to implement Multi-Disciplinary Teams in assessment and service delivery should be developed to*

focus initially on Monrovia, extend out into the county and then develop a plan for expansion to the counties based upon needs assessments based upon data collection over a six month period.

A pilot program which is focused on Monrovia could utilize the existing specialist police section, social workers and NGOs that are presently responding to juvenile justice issues. Additional members, such as mental health, education, probation and corrections representatives, should be included in the development of the pilot MDT program.

INTRODUCTION

1. At the request of the United Nations Children's Fund (UNICEF) Liberia, the American Bar Association – Africa Law Initiative (ABA-Africa) conducted an assessment of the Liberian juvenile justice system. This is a summary of the findings of Juvenile Justice Assessment Team. In accordance of the Terms of Reference provided by UNICEF, the Report also makes recommendations on several fronts: legal representation for children; juvenile justice legislation; social service network for children adjudicated delinquent, neglected or in need of care and protection, and administration of the judiciary. The Report identifies short- and long-term goals leading to the development of a true juvenile justice system in Liberia.
2. As in many sub-Saharan African countries, the notion of juvenile justice in Liberia is just beginning to take hold. As the country continues to build its juvenile justice system in the post-war reconstruction, the Juvenile Procedural Code may prove to be one of the system's greatest assets. The existing Juvenile Court and Juvenile Court Procedural Codes – drafted as part of the Judiciary Law before the war – provide a solid foundation and framework for the development of a comprehensive juvenile justice system in Liberia. However, the Juvenile Procedural Code – like any other Code – is subject to misinterpretation. Hence the need for clear and consistent legislation and Court rules to create a uniform and efficient system of adjudicating juvenile cases across the country.
3. The administration of justice in Liberia is hampered by the lack of judges, lawyers and courtrooms in many counties, causing a huge backlog of criminal cases, including those involving juveniles. One of the major challenges to the Liberian justice reform as identified by the UN Mission to Liberia's Legal and Judicial Systems Support Division (UNMIL L&J) is that of improving the juvenile justice system, particularly by complementing the newly reactivated Juvenile Court with facilities for the separate pre-trial detention and post-trial incarceration (if necessary) of minors, in line with the Convention on the Rights of the Child (CRC). Juvenile offenders are currently incarcerated in the same jail blocks (generally in separate cells) as adult offenders. Girls, in particular continue to be victimized by the system as they are subject to frequent rapes, commercial sexual exploitation, teen pregnancy and sexually transmitted diseases. These challenges are huge and progress is slowly being made, as key players in the Ministry of Justice, Ministry of Health and Social Service, and the Judiciary seem committed to making the change.
4. Despite the enormity of the post-war nation-building challenges facing Liberia, the executive, judicial and legislative branches have labored to begin addressing the needs of Liberia's children. The current environment therefore provides a great opportunity to create or revamp the juvenile justice system in Liberia.
5. The brutality and violence that juveniles have experienced in Liberia cannot go unnoticed and begs for immediate action. The creation of the juvenile justice system must therefore be addressed holistically to change the mentality and lives of these

young people and children who may have engaged in criminal acts, but are themselves victims of the Liberian conflict.

6. In carrying out its assessment mission, the Juvenile Justice Assessment Team met with key stakeholders from the Ministry of Justice, the Judiciary, the Juvenile Judge, police officers, prison officers and administrators, representatives of international organizations and non-governmental organizations (NGOs) and child advocates. The overarching sentiment gleaned from all these meetings was the need for infrastructure; training of judges, lawyers, prosecutors, police, social workers and other persons who come in contact with children's issues; the need for basic supplies; and the need for communication and cohesiveness among the agencies and NGOs involved in juvenile cases.
7. The recommendations below reflect the Juvenile Justice Assessment Team's impression of what the juvenile justice system in Liberia needs, including both short-term quick impact projects which could be carried out at small cost and long-term projects which entail more planning and greater funding. The recommendations are aimed at moving the juvenile justice system forward, with short-term goals being those that can be accomplished from one (1) to six (6) months, and long term goals -- those which will take longer than six (6) months to accomplish -- in the effort to create a functional juvenile justice system that the people of Liberia can have confidence in and that will improve the quality of life for children, families and entire communities throughout the nation of Liberia.
8. However, the recommendations do not replace the need for a comprehensive long-term strategy aimed at achieving the general welfare and educational needs of the children of Liberia in their entirety.

I. LEGAL REPRESENTATION

A. The Law

Lawyers for children

9. The existing Juvenile Procedural Code provides a good framework for the right to counsel for children who risk institutional confinement. Section 11.91 of the Code clearly declares the right of juveniles to be represented by counsel in any juvenile court proceeding which may result in the institutional confinement of the juvenile. Assuming that “institutional confinement” is read broadly to include not only confinement in prison but also other confinement in other institutions – such as “Youth Camp,” youth opportunity centers, child welfare centers supervised by the Bureau of Child Welfare, and institutions suitable for the placement of neglected children – the right to counsel therefore extends to children in delinquency, neglect and care and protection proceedings. The provision indicates that juveniles should be advised of their right to counsel and provides for the child’s immediate consultation with counsel when requested. The declaration is explicitly “based on a finding that counsel is often indispensable to a practical realization of the process of law and may be helpful in making reasoned determinations of fact and proper orders of disposition.”
10. Three concerns need to be addressed in the statute regarding the representation of children:
 - a. Firstly, the term “institutional confinement” should be defined broadly and inclusively so as to encapsulate all forms of confinement as identified above.
 - b. Secondly, the law appears to put the onus on the child to request counsel (see Section 11.91(4)). As the pool of qualified lawyers in Liberia grows, the court should automatically appoint lawyers for the child, without requiring the child’s request. Children (and their parents) rarely understand the need for and importance of legal representation. We understand that the Chief Justice has tabled amendments to statute which should give all indigent defendants in criminal proceedings the right to free legal representation to be provided by public defense counsel. The same right should therefore also be given to all children involved in legal proceedings, regardless of their parents’ financial means.
 - c. Finally, the existing Juvenile Procedure Code offers no provision for the right to counsel for parents who are accused of abuse and neglect and risk the temporary or permanent loss of parental rights. This is a general omission throughout the entire Juvenile Procedural Code which needs to be rectified.

B. Current Capacity for Legal Representation and Statement of Need

11. There is a dire need for increasing the number of qualified lawyers admitted to the Liberian National Bar. Lawyers are needed to serve as prosecutors under the Ministry of Justice, public defenders under the Judiciary, and private and pro bono lawyers for both children accused of delinquency or being in need of care and protection and parents accused of abuse or neglect. Highly qualified lawyers are also needed to serve in the capacity of Magistrate and Associate Magistrate Judges. It is important to observe that no one is allowed to practice law in Liberia unless they hold Liberian citizenship and this reduces the possibilities for the short-term appointment of non-Liberians to fill the penury in lawyers.
12. Presently, the justice system suffers from a lack of resources and a lack of lawyers. There remains a tremendous backlog of cases with few lawyers on either side of the adversarial system to ensure timely resolution of cases. Unfortunately, there is also evidence of corruption notwithstanding the presence of many qualified leaders who have good motives and are committed to the rule of law and justice. Corruption surfaces because criminal cases remain stagnant and offenders remain incarcerated until and unless vigorous victims or defense lawyers pay money or offer incentives in kind to make cases “disappear” or to push cases through the system.

Prosecution of cases

13. The prosecutorial function falls under the purview of the Ministry of Justice. The Ministry is in the process of expanding and training its pool of prosecutors. Initially, UNMIL was able to secure the participation of 4 national lawyers to serve as “consultants” for the Ministry of Justice. These consultants essentially served in the prosecutorial function. Following a review of the country’s prosecutorial needs in view of budgetary constraints and financial sustainability, the Ministry has an immediate need for twelve (12) prosecutors, of which five (5) were reported by the Ministry to have been appointed (comprising four (4) original consultants plus one newly graduated lawyer). We understand the salary for these lawyers has been fixed at \$800 per month.
14. Some of these prosecutors will be expected to be sent out into the counties outside Montserrado without an uplift in salary to compensate for the harsher living conditions. Unfortunately the Ministry is facing difficulties in recruiting lawyers to fill positions in the interior, given that lawyers in private practice can earn in excess of \$1000 per month at law firms in Monrovia and working in the counties entails a significant drop in the standards of living and reduced access to amenities as compared to working in Monrovia.
15. The Juvenile Justice Assessment Team was informed that in the past the Ministry has operated a scholarship program for law students who were then bonded to work with the Ministry for three years after graduation, but the program is dormant and would need to be reactivated.

Public defense

16. Public Defenders fall within the control of the Judiciary. Until recently, there were only six (6) defenders for the entire country with the youngest one being 55 years old. The Juvenile Justice Assessment Team was informed that one has unfortunately passed away recently and the another has suffered a stroke. Until June 2006, there were only two (2) public defenders employed at the Temple of Justice in Monrovia. Moreover, it was reported to us that these Public Defenders had not been appointed to represent defendants in criminal cases for over 18 months.
17. However, under the auspices of the Chief Justice, a Public Defense Office has been created which will have an initial staff of 18 public defenders, with four (4) public defense counsel earmarked for Monrovia and one public defender situated in each of the 14 counties outside Montserrado. US State Department Contractor PAE has been tasked with the implementation of a pilot Public Defense Office project in the Temple of Justice with four (4) public defenders covering Monrovia. The Chief Justice has decided to promote one (1) of the two (2) existing Public Defenders at the Temple of Justice to the role of Chief Defender. A further seven (7) lawyers are currently being vetted by the Judiciary and are expected to take up their appointments in the counties, leaving a current immediate need for a further seven (7) public defenders. In summary, there is now one (1) Chief Public Defender and a total of three (3) staff Public Defenders in Monrovia, who are all recent law graduates. These Public Defenders have been assigned cases and each defender has about ten (10) case assignments.
18. PAE has secured funds to fund the training and supervision of the four (4) public defenders in the Monrovia pilot project for at least 6 months and the project is likely to be extended by a further 6 months. In addition, UNMIL has earmarked funding for the hiring of the entire projected 12 public defenders for an initial six (6) months and the UK's Department for International Development (DFID) has expressed an interest in providing funding for an additional six (6) months. Following the recent passing of an Act to give budgetary independence to the Judiciary, the Judiciary intends to assume responsibility for funding these positions in the future, although the Juvenile Justice Assessment Team understands that the Judiciary was awarded 80 percent of the requested budget for this financial year.
19. Scholarships are still being awarded by the Judiciary to secure the commitment of law students to work for the Judiciary upon graduation. UNMIL has recommended the amount of the scholarship be increased to at least \$1000.00 per year, together with payment of fees and the furnishing of books and materials. A pool of 12 lawyers from the recently graduated class at the Law School is now committed to work for the Judiciary. It appears that the Chief Justice is in the process of assigning six (6) lawyers to serve as Supreme Court clerks, three (3) lawyers to serve as public defenders in Monrovia (as part of PAE's pilot project), and three (3) lawyers to be deployed as public defenders in the counties.

20. There appear to be no lawyers or law students *specifically targeted* by any national or international organization for training and grooming for *specific work in the juvenile justice system*. Approximately 56 students graduated from the Louis Arthur Grimes Law School in Monrovia this year. The expectation is that 30-50 students will graduate each year for the next three years creating a larger pool of lawyers available for the representation of defendants. These lawyers will need to be specially trained, supported and encouraged to provide legal representation in the juvenile justice system.
21. The need for qualified legal representation is even more critical in the counties outside of Montserrado. The Juvenile Justice Assessment Team visited the Tubmanburg Magisterial Court in Bomi County. There are only two private lawyers available to represent defendants, who are often unable to attend hearings. The court has no county attorney or defense lawyer who is permanently and solely stationed in the Tubmanburg courthouse. The court lacks basic necessities such as well paid court staff, permanently stationed lawyers, adequate building space, electricity, fans, water and handcuffs to secure detainees. The court has no incentives to offer lawyers to encourage them to come and work in Bomi. The vast majority of lawyers prefer to work in Monrovia. As a result, cases are routinely “settled” through informal negotiations. The judge and five (5) or six (6) court staff that the Assessment Team met were keenly aware of breaches of basic human rights such as the detention of juveniles with adults and the detention of convicted prisoners with suspects, but are working under impractical conditions. The Assessment Team was led to believe that the conditions in counties outside of Bomi County are even worse.

C. Efforts by the National and International Community Regarding Legal Representation

UNMIL Legal & Judicial Systems Division

22. The Juvenile Justice Assessment Team met with Dr. Alfred Fofie, Director of UNMIL’s Legal and Judicial System Support Division (UNMIL), and with one of the UNMIL staff attorneys, Fraser Hirst, who is particularly committed to juvenile justice work.
23. UNMIL has taken an interest in juvenile justice reform since May 2004. Over time, UNMIL has worked with other organizations to challenge the practice of confining juveniles with adults in Liberian prisons; to convince police that parents should not bring their children to the police station simply because they are angry or frustrated with the child; and to convince magistrate judges and circuit court judges to release children who are inappropriately detained or inappropriately made to appear before the court.
24. UNMIL believes they have earned the respect of many magistrate judges who are now receptive to UNMIL’s interventions on behalf of individual children who come

to their attention. Unfortunately, UNMIL can only intervene when cases actually reach court and so come to their attention. Many cases never make it to court; other cases that do reach court often do not come to the attention of UNMIL. For example, UNMIL reported that there are a number of instances in which Magistrate Judges may – unwittingly or not – have violated the law by requesting a monetary bond for the release of juveniles who appear before them. In one high profile case, a Magistrate was accused of improper sexual conduct towards a 14-year-old girl who could not post bond. The judge is now on trial himself for these allegations. There is cause to believe that there are many such similar cases that escape UNMIL’s attention.

25. UNMIL Human Rights Officers also engage in ad hoc visits to Liberian prisons and at times identify juveniles who are detained while awaiting trial. In some cases, UNMIL has worked with national and international NGOs to locate parents of juveniles detained for extended periods of time and has been able to secure the release of some juveniles from prison. For example, in the week preceding the Juvenile Justice Assessment Team’s visit to Liberia, UNMIL reported that it assisted in securing the release of four juveniles from prison. Three of the juveniles had been charged with criminal trespass and one had been charged with petty theft. These youth had been detained for over two months without adjudication. UNMIL spoke of other cases in which the juvenile court judge felt she had no choice but to place children in “protective custody” and order their detention in prison in situations where the children appeared without parents, the parents could not be located, and no appropriate facilities were identified for the care and protection of these children.²
26. UNMIL reports that the majority of juveniles currently detained in Liberian prisons have not committed series offenses, but warn that the number and severity of juvenile offenders may increase because the system is overburdened and not paying sufficient attention to the needs of the vulnerable children. Most of UNMIL’s work relates to juveniles in Monrovia, but they do have UN Human Rights Officers in 10 or 11 counties who are reporting the same issues seen in Monrovia. UNMIL is also in the process of building and/or renovating thirteen (13) court houses throughout the country.
27. UNMIL expressed strong interest in further strategizing and collaborating around juvenile justice reform. UNMIL maintains written reports to document the monthly, daily and emergency interventions by its staff. A number of these reports are included in the Appendix to this report. UNMIL’s reports, together with those compiled by other organizations, should be reviewed to determine exactly how many children have been aided over the last two years and determine where children’s needs remain unmet.

² It is not clear why Don Bosco Homes was not identified as a possible appropriate location for confining these youth while awaiting trial. UNMIL indicated that it is seeking funds for the construction of a Rehabilitation Center where youths could be placed in protective custody.

28. UNMIL reports that it has conducted 11 training programs in the last two (2) years. Training has been conducted for magistrate judges, justices of the peace, court clerks, county and city attorneys. UNMIL has not conducted any training for public defenders. The county and city attorneys trained by UNMIL are not qualified lawyers or members of the Liberian National Bar Association, and so they are not allowed to argue cases in court but serve in an “apprenticeship” capacity. However, UNMIL identified that it had originally appointed 4 consultants to work as prosecutors. Following budgetary considerations, the country’s prosecution capabilities have been reorganized to increase the number of prosecutors to 12 at a salary level that the government considers sustainable (but below the minimum expected remuneration level of lawyers in private practice). The Ministry of Justice indicated that five (5) prosecutors have already been appointed, but a further seven (7) positions for prosecutors need to be filled to bring the total number of prosecutors to 12.
29. UNMIL has also been involved in the training of police, but reports that training alone is not enough because the police lack basic tools such as batons and handcuffs, not to mention sufficient vehicles and weapons, and thus cannot inspire respect from the Liberian population, let alone fear in offenders.

Don Bosco Homes

30. The Juvenile Justice Assessment Team met with Joe Weah, the Deputy Director of Don Bosco Homes (which operates separately from other Don Bosco facilities such as the Youth Centre in Matadi) and with Onike Gooding-Freeman, the Don Bosco staff member who is responsible for youth in the juvenile justice system and the Safe Home for children.
31. Don Bosco Homes (Don Bosco) has three divisions: Outreach, Welfare, and Training. Through the Outreach Division, Don Bosco attempts to locate children in the streets who are homeless, sexually exploited, abused and in other vulnerable situations. The Outreach Division also attempts to conduct periodic visits to the prison to identify children, determine why the children are in prison, and ascertain whether the children know how to contact their families. Ms. Gooding-Freeman reports that most children are never taken to court. When the children do go to court Don Bosco social workers will attempt to accompany them if they are involved. Don Bosco will also continue to work with families when there is an active legal case.
32. The Welfare Division attempts to locate parents of children they identify in the prison, attempts to secure alternative living options for children whose parents cannot be located, engages in counseling and school integrity and will house children in the Safe House when no other options are available. While in the Safe House, children receive psychosocial evaluations, literacy training, medical attention, and others services. The Safe House does not have the capabilities to house serious juvenile offenders (at present there are only a few serious offenders being housed there). Don Bosco is trying to develop a program, with funding from UNMIL or other donors, that would create a rehabilitative center for children in Monrovia Central Prison.

33. Whilst Don Bosco also has a presence in River Cess, Grand Bassa, Cape Mount and Margibi, there is currently only one Safe House located in Virginia, Montserrado county and there is a need for similar safe houses to be set up in Kakata, Gbarnga and other populated centers.
34. Ms. Gooding-Freeman reports that juveniles in prison need advocates who can speak for the children. She called for the juvenile court system to be fully re-activated to enable each child the opportunity to be heard, either through or with the assistance of an advocate. When Ms. Gooding-Freeman finds a child who is in serious need of an advocate, she contacts AFELL, NACROG, UNICEF, UNMIL and other NGOs who may be willing to help.

PAE-HSC Justice Sector Support Program

35. The Juvenile Justice Assessment Team met with John Dawson, Marti Troy and Robert March of PAE-HSC's Justice Sector Support Program (PAE) under contract to the US State Department, which has been in operation in Liberia for six (6) months. PAE are currently in discussions to extend their mandate by an additional six (6) to 12 months. Its mandate is to identify justice and rule of law needs in Liberia and put forward proposals on where and how to allocate resources. PAE is currently providing consultancy services to the Ministry of Justice (capacity building, infrastructure, training and case management) and the Judiciary (implementation of the Public Defense Office at the Temple of Justice).
36. Although PAE's work on the Justice Sector Support Program is presently focused entirely on adult criminal proceedings, the Justice Sector Support Program could be used as a basis for assisting the juvenile justice system. Presently, PAE indicated that it has neither the time nor the resources to take provide specialized resources to reform of the juvenile justice system.
37. Aside from PAE's training and consultancy advice as regards prosecutions, PAE has been tasked with the implementation of a pilot Public Defense Office project under the auspices of the Chief Justice with four (4) public defenders covering Monrovia and based in the Temple of Justice. PAE is also overseeing the refurbishment of offices at the Temple of Justice including office space for the Public Defense Office, which is being expanded and refurbished.
38. The pilot Public Defense Office project is being implemented by PAE under the direction of Ms Marti Troy. Whilst PAE's work is presently confined to Monrovia, this may in time be extended to the counties. Whilst PAE's initial project contemplated the training of the two existing Public Defenders in Monrovia, following UNMIL's commitment to fund additional public defense counsel in line with the government's budgetary considerations, the size of the Public Defense Office in Monrovia was doubled. Prior to the initiation of this project, there were only two (2) existing public defenders working in Monrovia who had not been assigned to

cases in over a year and a half. The Chief Justice has decided to promote one (1) of the two (2) existing Public Defenders at the Temple of Justice to the role of Chief Defender as part of the four (4) public defenders working in the pilot project.

39. Ms. Troy essentially serves as supervisor and trainer for the four (4) Public Defenders in Monrovia and work has started in earnest in reducing the backlog of cases and each defender has been assigned about 10 cases each.
40. PAE confirmed that a pool of 12 lawyers from the recently graduated class at the law school is now committed to working in the Judiciary, consisting in six (6) lawyers who will be employed as Supreme Court clerks, three (3) lawyers who currently serve as public defenders pilot with the Public Defense Office project, and three (3) lawyers who will be deployed to serve as public defenders in the counties.
41. PAE initially provided one month of intensive training and provides on-going case oversight for the Public Defenders. Further training will be delivered on investigative techniques, trial skills, and other practical aspects of court proceedings. Ms Troy has been working with the Public Defenders to file a significant number of motions to dismiss for breach of requirements under Liberian law relating to the expediting of cases. Although these young lawyers have only been practicing for one month, they are already being appointed murder cases, despite their obvious lack of experience. The hope is that in the future, law students will be able to serve as investigative interns in the Public Defender Office, which will provide students with practical exposure to the court process.
42. The Public Defenders face a number of challenges including corruption among court clerks who refuse to accept motions, provide information or produce files without first securing monetary inducements or incentives in kind (such as files and other office supplies) from defense counsel. Although the Chief Justice and at least one Magistrate Judge have instructed that such practice be stopped, the practices continue unabated.
43. Although PAE has not focused on juvenile justice issues, several observations were made on how to achieve progress in that area. PAE identified some of the needs of the Juvenile Court, namely:
 - a. The identification of prosecutors who are able to prosecute juvenile cases;
 - b. The identification lawyers who are able and committed to represent juveniles in Juvenile Court;
 - c. The establishment of procedures for formal court hearings that meet due process standards in the juvenile cases that come before the Juvenile Court;

- d. The identification of alternatives to incarceration which can be provided to the judge for the placement of juveniles (for example, by making use of Don Bosco Homes);
 - e. The establishment and careful monitoring of time frames for the prosecution of juveniles; and
 - f. The development comprehensive case management and transcript systems for docketing and tracking juvenile cases.
44. Although there are juvenile cases in which non-delinquent conduct and minor delinquent infractions can be resolved informally, PAE indicated that there are some cases that come before the Juvenile Court involving serious offenses (rape, murder, trafficking) that can only be resolved in a true adversarial fashion with lawyers on both sides presenting and challenging evidence. In these cases, it would be inappropriate to conduct hearings in the judge's chambers. Victims and defendants must be kept *separately*. Not every case lends itself to informal resolution, thus a fully operating juvenile courtroom needs to be re-built.
45. Although the key stakeholders at the Ministry of Justice and the Judiciary are genuinely dedicated to the rule of law, including juvenile justice, and are committed to making change, PAE believes their work is hampered by lack of resources and the overwhelming nature of the problems in the justice system. As a result, juvenile justice gets little or no attention at all. Furthermore, there are little or no incentives from donors or donor countries to tackle the huge problem of the juvenile justice system. The Ministry of Justice and the Judiciary are currently focused on crisis management and on enhancing the judiciary, the police, prosecutors, facilities and treatment. Children in the juvenile justice system remain a low priority at present. Juvenile court observers are clearly needed to identify and respond to needs and issues in juvenile court.

Association of Female Lawyers in Liberia (AFELL)

46. AFELL is the Association of Female Lawyers in Liberia. AFELL has expressed a commitment to pro bono representation and community service and has previously provided free legal representation to indigent women and children who have faced indignities and inhumanities such as abuse, rape, and lack of parental support. AFELL also advocated for the establishment of the juvenile court and is a member of the Association of Legal Assistance Providers (ALAP) convened to address the need for legal aid in the country. Although AFELL may have been appointed in a handful of juvenile cases, it was reported that AFELL is not currently providing representation in juvenile courts on a systematic or consistent basis.

Association of Legal Assistance Providers (ALAP)

47. ALAP is a recently-formed umbrella organization convened to coordinate the work and speak as one voice regarding the need for legal aid in the country. ALAP hopes to conduct joint training initiatives, set up legal aid clinics and provide assistance or legal representation in cases identified through court monitoring activities by various NGOs as well as UNMIL. UNMIL has agreed to provide support to ALAP in the form of training and logistical assistance. Unfortunately, ALAP is reportedly extremely short on funds which is hindering their ability to provide pro bono legal advice.
48. ALAP member organizations include: FIND (Foundation for International Dignity); FOHRD (Foundation for Human Rights and Democracy), AFELL (Association of Female Lawyers of Liberia), CHRDLs (unknown), CPHR (unknown), and the Justice and Peace Program developed by the United Methodist Church.

Liberian National Bar Association (LNBA)

49. The LNBA is currently seeking to boost pro-bono case assignments taken on by its members. The LNBA is considering making it compulsory for its members to provide pro-bono legal representation by making a condition of continued membership to the Bar. However, in order for such an initiative to be successful and welcomed by the legal profession, the LNBA has determined that it will require the establishment a communal funding mechanism whereby pro bono work could be remunerated according to a fixed fee according to the type of pro bono representation. The LNBA is looking to the international donor community to fund this fixed-fee mechanism in the short-term.

American Bar Association – Africa Law Initiative (ABA-Africa)

50. ABA-Africa is actively involved in the establishment of a Legal Aid Clinic in conjunction with the Louis Arthur Grimes School of Law and a victim support center in Monrovia.
51. The Legal Aid Clinic, which will be staffed by final-year law students, will provide assistance in the legal representation of defendants who are accused of crimes, in collaboration with members of the Liberian National Bar Association and the Public Defense Office. Students will be identified to work in the Legal Aid Clinic based on their commitment to public service and their ability to work in the counties once they have successfully completed their studies at the Law School. In exchange for their long-term commitment to public service, the students will be provided a scholarship to underwrite the costs of their law school tuition.

Other Groups Involved in Legal Assistance and Related Programs

52. In addition to the above organizations, the Juvenile Justice Assessment Team was also made aware that the following organizations are also engaged in one or more of the following activities: the provision of care to juvenile delinquents or those in need of care and protection, the monitoring of court activities, the visitation of detention facilities and/or the provision of legal assistance:
- a. American Refugee Committee (ARC)
 - b. Community Housing Finance (CHF)
 - c. Christian Children's Fund (CCF)
 - d. Children's Assistance Programme (CAP)
 - e. Foundation for Human Rights & Democracy (FOHRD)
 - f. Foundation for International Dignity (FIND)
 - g. International Committee of the Red Cross (ICRC)
 - h. International Rescue Committee (IRC)
 - i. Justice & Peace Commission (JPC)
 - j. National Child Rights Observation Group (NACROG)
 - k. Norwegian Rescue Committee (NRC)
 - l. Penal Reform International
 - m. Save the Children
 - n. World Vision

D. RECOMMENDATIONS

Recommendation 1: *Develop prison visitation and detention monitoring teams.*

Juvenile Identification Project

53. **Quick Impact:** A Juvenile Identification Project should be set up to identify youth in prisons. A team of advocates (lawyers, law students, and non-lawyers) should be formally convened to expand the efforts of UNMIL, Don Bosco Homes and other organizations to visit systematically and consistently all Liberian prisons in order to identify juveniles who should not be there (either because of age, extended length of stay, engagement in petty or non-criminal conduct, mental health concerns, etc.). A systematic database should be developed to track the placement, treatment and movement of these children into and out of prisons. Efforts should be made to locate parents or other appropriate alternatives to imprisonment and to advocate before the relevant Court for the release of these youth from prison. The results of such monitoring should be communicated to the Judiciary, Ministry of Justice and providers of legal assistance.
54. Special attention needs to be given to detention facilities located outside of Monrovia City. Neither UNMIL nor Don Bosco Homes has the resources, time or capacity to provide the routine and systematic monitoring needed to identify and remove all juveniles from Liberian prisons. The Juvenile Justice Assessment Team visited the

Monrovia Central Prison and met 12 juveniles who all, with the exception of one, reported that they had been incarcerated for five (5) months to 18 months. The vast majority of these children report that they met with a judge in an office, but were never given a full court hearing with witnesses, were never allowed to tell their story, and were never returned to court for any further hearings.

Conditions of Confinement, Co-mingling of Delinquent and Neglected Children, and Prison Abuses

55. **Quick Impact:** A Prison Monitoring Project should be set up by formally convening a team of advocates (lawyers, law students, and non-lawyers) to visit systematically and consistently all Liberian prisons and detention facilities in order to identify conditions of confinement and ensure that appropriate measures are put in place to prevent co-mingling and abuses, and where abuses do take place, that these are thoroughly investigated and prosecuted.
56. Both UNMIL and Don Bosco Homes reported instances of physical abuse in the prisons. Further systematic investigation is needed to determine the extent and nature of any such abuses. In addition, efforts should be made to assess and monitor the extent of co-mingling not only between adults and children, but also between children who are alleged to be delinquent with children who are alleged to be neglected or in need of care and protection. At the Monrovia Central Prison, the Juvenile Justice Assessment Team observed that, although separate sleeping quarters are provided for adults and children, children and adults are co-mingled at meal times, in the bathrooms and in other communal divisions of the prison.
57. Moreover, there were obvious concerns about the conditions of confinement for all of the detainees. Children are being detained in tiny cellblocks with 2 to 5 other youth with no outdoor time for exercise and recreation. The food appeared barely edible, and the cell block sizes were unbearably small and were visibly too small to allow multiple inmates to sleep lying down at once. Many of the inmates were wearing the same clothes they entered the facility with many months before and there was tremendous overcrowding. Because there were no uniforms for the guards, the demarcation between prisoners and guards was virtually impossible. The presence of uniformed guards may increase the possibility of outdoor time for prisoners.
58. Law students would be a good source of personnel for both types of detention reform teams.

Recommendation 2: *Develop court monitoring teams.*

59. **Quick Impact:** Lawyers (or law students and other advocates) with training in juvenile court law and procedure are needed to routinely and systematically observe Juvenile Court proceedings and Magisterial Court hearings for juveniles and to provide the respective judges with whatever assistance they might need. Monitors should track the return times for juveniles scheduled for follow-up proceedings,

determine whether juvenile prosecutors have been identified and appointed, determine whether juveniles fully understand their rights and have been appointed counsel, and determine whether creative alternatives to incarceration are being identified and pro-actively explored and contacted by the Court especially in those cases in which a parent or guardian cannot be located. In Magisterial Courts, monitors need to determine whether adequate inquiry is made regarding the age of defendants who appear before them.

Recommendation 3: *Develop and provide specialized training for Juvenile Public Defenders, Juvenile Prosecutors and other lawyers for children.*

60. It is recommended that the Chief Justice appoint one or more public defenders who are specially assigned and trained to represent juveniles. In the alternative, it is recommended that the Chief Justice allocate a portion of each Public Defender's time (in Monrovia as well as in the counties) to the representation of juveniles. It is recommended that the Ministry of Justice similarly identify, train and assign prosecutors to work in the Juvenile Court.
61. Advocates with expertise in juvenile court should be provided to mentor and train Juvenile Public Defenders and Juvenile Prosecutors. One possible model is that developed by PAE in training and supervising Public Defenders at the Temple of Justice and Prosecutors in the Ministry of Justice. A specialized training curriculum for juvenile lawyers should include education about child and adolescent development as well as training on the laws and procedures that govern delinquency, neglect and care and protection cases. Specialized training must also give attention to the transfer of juveniles from adult criminal proceedings to juvenile court and to the prevention of transfer of juveniles from juvenile court to criminal court. The training should also sensitize defense lawyers to the particular vulnerability of youth to confessions and to unlawful searches and seizures by the police and others.

Recommendation 4: *Engage in legislative advocacy and draft written Rules of Juvenile Court to provide accurate and consistent implementation of the Juvenile Procedural Code by all judicial officers with jurisdiction over Juvenile matters.*

62. It is recommended that the Chief Justice promulgate written Rules of Juvenile Court to supplement the existing Juvenile Court Procedural Code. Rules of Court would be useful in ensuring that Magisterial Judges who have less consistent contact with juveniles will have easily accessible and uniform guidelines for the administration of juvenile justice throughout the court system. Legislative authority for such Rules is provided in Juvenile Procedural Code Section 11.2. An extensive discussion of possible Rules of Court is provided by the Assessment Team in its assessment of the Liberian Juvenile Court Legislation. Suggestions for *statutory* reform of the Juvenile Procedural Code are also provided in the Team's assessment of the existing legislation.

Recommendation 5: *Creative use of law students in the immediate work of the Juvenile Court.*

63. **Quick Impact:** In addition to the establishment of a comprehensive Legal Aid Clinic at the Law School, there seems to be support among juvenile justice stakeholders for the use of law students in some volunteer capacity. Students may be willing to work for academic credit, for a minimal or nominal stipend, or in unpaid internships to “get a feel for the profession” or to supplement their resumes. Students may be actively engaged in a number of the recommendations listed herein, including the Prison Visitation and Detention Monitoring Teams, the Court Monitoring Teams, and Judicial Clerkships.
64. Law students may also be assigned to individual juveniles as non-lawyer “guardians *ad litem*” (as opposed to “law guardians”) to engage in every aspect of advocacy for the child, except arguing in court. The law students could help the child understand his/her rights (to silence, to legal representation, to timely adjudication and disposition, etc.), look into the educational and mental health needs of the child, gather records, investigate allegations, help locate defense witnesses and defense evidence, monitor the child’s length of detention, monitor conditions of confinement, draft legal pleadings, help locate parents, and ensure that services are identified to ameliorate the conditions that led to the neglect, delinquency, or care and protection petition.

Recommendation 6. *Use paralegals to assist public defenders, prosecutors and private attorneys.*

65. If funds were available, a team of paralegals could be trained to assist the very small number of public defenders and private attorneys who are available to represent children in the country. Presumably, as in other jurisdictions, paralegals could be trained to do preparatory legal work short of actual legal representation in court, including many of the tasks listed above in the creative use of law students.
66. Paralegals could be trained and supervised by the Liberian National Bar Association and/or the Association of Legal Assistance Providers. The obvious benefit of paralegals is the reduced salary that they command. However, as indicated by the Chief Justice, national and international organizations should not be training paralegals for the illegal practice of law.

Recommendation 7: *Continued development of a Legal Aid Clinic at the Law School.*

67. Advocates will need the full support of the Chief Justice, the Liberian National Bar Association and the Dean of the Law School for the development of an effective Legal Aid Clinic. Hopefully, as advocates identify creative ways to use law students outside of the courtroom, the clinic will earn credibility and respect among the relevant parties.

Recommendation 8: *Raise additional scholarship money for law students who will commit to serve as lawyers for children upon graduation; continued financial and material support and training for law students interested in Juvenile Court (especially in the counties).*

68. The Ministry of Justice and the Judiciary have both provided scholarships to students of the Law School committed to public service after graduation (prosecutors, court clerks and public defenders). The scholarships should be revised to provide assistance in the order of \$1000 per year per student, plus tuition costs and books. In return, the graduate attorney would work for the respective agency upon graduation for a number of years (currently three). It appears that the Judiciary's scholarship is proving relatively successful thus far, although the first pool of lawyers just graduated from law school earlier this year. Further funding should be made available to support this effort and to *specifically target attorneys who will work in the juvenile justice system.*

Recommendation 9: *Develop strategies to support pro bono initiatives among the Liberian National Bar Association.*

69. The efforts of the Liberian National Bar Association (LNBA) in seeking to boost pro-bono case assignments must be given the full support of all interested parties. The LNBA should be encouraged to make it compulsory for the legal profession to provide pro-bono legal representation by making it a condition of continued membership to the Bar. The international donor community should make adequate funding available for this endeavor. Advocates should work with the LNBA and ALAP to explore the possibilities and limitations of pro bono advocacy.

Recommendation 10: *Community education on the right to counsel so that juveniles and their parents are aware of and fully understand the right.*

70. Although the Juvenile Procedural Code clearly provides for the right to counsel, the Code seems to put the onus on the child or his parent to ask for a lawyer. Advocates need to engage in community education regarding the right to counsel. Advocates may develop simple cards, posters or brochures to explain all rights in the juvenile justice system to children and parents. Cards or posters may be distributed and/or

prominently displayed in police stations, prisons, the Temple of Justice and other places the parent or child is likely to see. Thought needs to be given for how to engage in community education for the illiterate portion of the Liberian population. Advocates may consider holding community education forums at various community locations.

Recommendation 11: *Develop strategies to bring attention to the Due Process Rights of parents who face temporary loss of custody of their children or permanent loss of parental rights; develop a cadre of lawyers available to represent parents in neglect proceedings.*

71. There appears to have been no initiatives or discussions among the national and international organizations regarding the due process rights of parents in abuse and neglect and termination of parental rights proceedings. Considerable attention needs to be given to this issue and a comprehensive response needs to be developed to include legislative amendments, training, community education, and the provision of legal representation. Additional discussion of this issue is provided by the Juvenile Justice Assessment Team in its assessment of the Liberian Juvenile Procedural Code

Recommendation 12: *Develop a program for Judicial clerkships (not clerks of the court) with specialized training in Juvenile Court Proceedings.*

72. Judicial Clerks specialized in Juvenile Court matters would be especially beneficial in Magisterial Courts where the judges do not specialize or consistently handle juvenile justice issues and do not have the same adjustment and mentality as the specialized Juvenile Court Judge. Care should be taken to ensure that judicial clerks do not impede or overlap with the duties of the appointed Clerk of Court and that the judicial clerks do not inadvertently take on the role of “advocate for the child” and thereby compromise the neutrality of the court. However, with some thought and additional investigation, it is likely that some juvenile-specific duties may be appropriately delegated to the judicial clerk, including helping the judge maintain familiarity and proper interpretation of the juvenile law, application of the proper juvenile court process, age ascertainment of persons who appear before the court,³ and familiarity with services specifically available to juveniles who appear before the court.
73. It should be noted that judicial clerkships are not foreign to the Liberian justice system as the Chief Justice recently appointed six (6) recent law graduates to serve as clerks to the Supreme Court.

³ UNMIL Legal reports that it often doesn't occur to Magistrates to inquire as to the age of the person who appears before them.

Recommendation 13: *Obtain and distribute complete copies of Juvenile Procedure Code, Civil Procedure Code, Criminal Procedure Code and Penal Code to Juvenile Court Judge and every Magisterial Judge serving in a juvenile court capacity.*

74. **Quick Impact:** UNMIL reports that many of the judges in Liberia do not have copies of the relevant legal codes. UNMIL also reported instances of magisterial judges in the counties making up offenses that do not exist in the code. UNMIL and PAE indicated that funding in excess of \$180,000 is required in order to obtain a full set of the Liberian Code and Liberian Law Reports for the Supreme Court and Circuit Courts, but excluding the Magisterial Courts. At least one full set of the Code and Law Reports needs to also be provided to the Law School and the National Law Library. UNMIL noted that it does not have the funds to achieve this objective, but the United States Agency for International Development (USAID) and PAE are in the process of securing funding.
75. In the absence of funding for furnishing a complete set of the Code and Law Reports to all courts in Liberia, it is recommended that copies of the Juvenile Procedure Code, Civil Procedure Code, Criminal Procedure Code and Penal Code should be provided to the Juvenile Court Judge and every Magisterial Judge serving in a juvenile court capacity.

Recommendation 14: *Develop strategies for community education on the constitutional limitations of sassiewood and mob justice*

76. The Supreme Court has rules that sassiewood and other customary practices are unconstitutional unless the person concerned submits to it voluntarily and it is not life threatening. The Juvenile Justice Assessment Team understands that the Solicitor General is particularly passionate about the abolition of sassiewood and presumably would be amenable (and even grateful) for any strategic planning to increase community education about the Constitutional limitations of customary law. Currently sassiewood is accepted and applied not only by the average lay persons in the counties, but also by influential government officials and professionals in the counties.

II. JUDICIAL AND ADMINISTRATIVE STRUCTURES OF THE JUVENILE JUSTICE SYSTEM

77. Liberia has comprehensive laws governing Juvenile Justice. These laws have existed since 1971. The Judiciary Laws, Chapters 10 and 11, provide for the establishment of juvenile courts and the procedural rules that apply to proceedings before them. However it is not until 1997 that a juvenile court was established and only in Monrovia, Montserrado County.
78. The analysis that follows will examine the legal framework, the current position and attempt to suggest the ways forward in the rebuilding of the juvenile justice system.

A. Legal Framework

79. Chapter 10 of the Judiciary Law which establishes juvenile courts and provides them with “exclusive original jurisdiction in special proceedings concerning juveniles.”⁴ These special proceedings are provided for in Chapter 11 of the Juvenile Court Procedural Code. A juvenile is a child under 18 years of age. For purposes of delinquency, a child under seven (7) years of age is incapable of being a delinquent: absolute incapacity is deemed to exist by law.⁵ On the other hand, a child over 16 years of age who is alleged to have committed a crime which, if committed by an adult would be punishable by death or life imprisonment or is charged with any violation of the Vehicle and Traffic Law, will not be subject to special proceedings.⁶
80. It is important to bear in mind the purpose and construction of the special procedures. Section 11.3 of the code provides that:

The purpose of this Code is to provide a due process of law for the just determination of all causes coming within the jurisdiction of the juvenile courts...to protect the welfare of juveniles and the community. This Code shall be liberally construed to the end that each juvenile coming under juvenile court jurisdiction shall receive such care, guidance and control, preferably in his own home, as will be conducive to the juvenile’s welfare and the best interests of the Republic. In instances when such juvenile is removed from the custody of his parents, guardians or other custodians, the Court shall secure for him care as nearly as possible equivalent to that which should have been given to him by his parents. In furtherance of this end, in formal preliminary conferences and negotiations terminating in decrees entered upon consent, shall be a primary objective.

⁴ Section 10.2.

⁵ Section 11.11.

⁶ Section 11.21.

81. This section enjoins the Juvenile Court to have regard to the welfare of the children generally, of the child before it specifically, the community and the interest of the State. The standard established is very high, close enough to the Convention on the Rights of the Child. It is essential when construing the provisions of the Code to bear in mind Section 4.1 of the Penal Law, which provides that lack of maturity is an affirmative defense.
82. Chapter 10 of the Judiciary Law empowers the President to appoint a clerk, Chief Probation Officer and other probation officers to this Juvenile Court.⁷ Over and above this, the Juvenile Court is empowered to establish a probation service to be administered by the Chief Probation Officer.⁸ Such probation service may include volunteer probation officers when necessary. The probation officers are authorized to adjust cases and come up with settlements that the court may endorse as pre-judicial dispositions.⁹ Such dispositions should be made with due regard to the purpose of the special proceedings.

B. Appeals

83. Section 11.111 allows any interested party to file a motion of appeal. Since the appeal is by leave of the Appellate Court, which may be a Circuit Court, or provincial Monthly and Probate Court, the Court needs to examine the standing of the party seeking to appeal. This notwithstanding, this power allows members of the community or special interest groups to participate in disposal of juvenile cases in the interest of the community.
84. The final appeal lies with the Supreme Court of Appeal.

C. Administration

85. All administrative authority of the Judiciary is vested in the Chief Justice. The Chief Justice is assisted by his administrative assistant and other officers under him.¹⁰ This notwithstanding, each judge has administrative authority over his or her court, assisted by the court clerk.

D. Current Position

86. Review of the literature and consultations indicate that it is the policy of the Judiciary to maintain functional separation of powers between three arms of government. However, despite the setbacks, the office of the Chief Justice is working to streamline both judicial and administrative structures.

⁷ Sections 10.7 and 10.8.

⁸ Section 11.93.

⁹ Section 11.74, 11.93 and 11.94 of the Code.

¹⁰ Section 21.2.

87. However, there are serious impediments to change. The legal and judicial fraternity is not prepared to accept participation of paralegals in the legal sector. The automatic assumption of jurisdiction in juvenile case by the Magisterial Courts causes problems of accountability for the commissions or omissions of the courts. Finally, despite the establishment of the Juvenile Court in Monrovia, it appears that it is not fully constituted and because of that the Juvenile Court judge is not empowered to meet the requirements of the Juvenile Procedural Law.

E. Recommendations

88. While the Juvenile Justice Assessment Team endorses the policy of the Judiciary to maintain functional separation of powers between the arms of government, it is imperative to stress the need to respect and uphold the purpose of special juvenile proceedings and the Juvenile Court. The Court is enjoined to protect the welfare of juveniles generally. In its decisions it must empower juveniles generally, and the juvenile before it specifically must be held accountable for his/her acts or omissions so as to become a good and productive citizen. It must at the same time take into account the welfare of the community, by ensuring its safety and security. Over and above this, it has to bear in mind the interests of the State. The best interest of the State is to secure a safe, secure, good citizen who is productive. This entails a multidisciplinary approach. It is in this spirit that the Court retains jurisdiction over juveniles who have appeared before it until they are 21 years of age.¹¹ The responsibility of the Juvenile Court, therefore, does not end with the entry of a disposition order.

89. After evaluation, it has been realized that the most appropriate way to rebuild juvenile justice in Liberia is to begin with aligning court practice with procedure. The team suggests the following strategies: short-term projects (less than six (6) months to implement) and long-term projects (12 months to implement or more). It is believed that while the short-term strategies will have a quick impact, they must be seen in conjunction with the long-term strategies to improve juvenile justice.

Recommendation 15: *Ensuring the full implementation of the Juvenile Procedural Code.*

90. **Quick Impact:** The office of the Chief Justice should approach the President to appoint clerks, a Chief Probation officer and other probation officers to the Juvenile Court.

91. **Quick Impact:** Special mentoring, training and material support should be provided to the current Juvenile Court judge and her staff in Montserrado County. Training should comprise refresher courses on Juvenile Court procedures and children's rights, and instruction on trial procedures and case management practices.

¹¹ Section 11.22.

92. **Quick Impact:** A Continuing Legal Education Program should be provided to the sitting Juvenile Court judge so that she may become an expert in the ever-evolving best practices in the administration of juvenile courts across the world. International partners and advocates may sponsor an international visit for the judge to visit juvenile courts so that best practices may be observed first hand.
93. **Quick Impact:** The Juvenile Court should review of the status of all juveniles detained at Monrovia Central Prison.
94. **Quick Impact:** The Juvenile Court aides should develop a list of the few non-prison facilities that do currently exist for the care and protection of juveniles in order to identify alternatives to incarceration for the placement of juveniles in protective custody.
95. **Quick Impact:** The Ministry of Justice should provide specially colored T-shirts to juveniles in custody for easy identification.
96. **Quick Impact:** The Chief Justice should designate specific magistrates throughout the counties to assume juvenile court jurisdiction.
97. **Quick Impact:** The Juvenile Court should produce statistics on weekly and monthly dispositions of juvenile cases and status of juveniles in custody.
98. **Quick Impact:** The Juvenile Court should publish weekly calendar for hearings and review of juvenile cases to all stakeholders.
99. **Quick Impact:** The Juvenile Court orders in juvenile matters should always contain the date that the child is to return to court.
100. **Quick Impact:** The Juvenile Court should call a meeting of stakeholders and collaborating NGOs in juvenile justice to work out cooperation and coordination.
101. **Quick Impact:** The Minister of Justice should designate separate cells with separate access and yard for juveniles at Monrovia Central Prison. In the longer term, a specialized juvenile detention and rehabilitation centre should be established.
102. **Quick Impact:** A mechanism for the monitoring of Justices of the Peace should be put in place to ensure that the respect of they do not encroach upon the jurisdictional powers of other courts in juvenile cases. Justices of the Peace should not have any contact with juveniles but sometimes they do. Various stakeholders expressed concerns about alleged abuse of power by these Justices. Further investigation is required to ascertain the nature and extent of any abuses and to develop a comprehensive and effective response to the problem.

Recommendation 16: *Ensuring the full implementation of the Juvenile Procedural Code.*

103. The Juvenile Court at the Temple of Justice should be refurbished and re-equipped. The Juvenile Court judge must be given a fully functioning courtroom – not just office space. The Juvenile Court must be equipped with all of the material and substantive resources necessary for the full blown trial of contested juvenile court proceedings. Although relaxed formality and diversion is appropriate in many juvenile cases, due process standards should not be compromised by a lack of resources, especially in cases where the child will be institutionalized or imprisoned – regardless of whether he has a parent or guardian.
104. Juvenile court prosecutors and juvenile court defenders must be readily and immediately available for the Juvenile Court judge to appoint in juvenile cases. Under no circumstances should victims have to locate and pay for their own prosecutors. Under no circumstances should indigent children have to locate and pay for their own lawyers.
105. The Ministry of Justice and Chief Justice should redesign committal forms for juveniles to include date of birth or age as determined by the police or courts.
106. The judiciary should train and retrain the designated magistrates and their clerks in special juvenile court procedures and child rights. Training should focus on special Juvenile Court procedures and children’s rights as well as Liberian juvenile law, the penal code, trial and evidentiary procedures, and case management techniques.
107. The Magisterial Courts designated by the Chief Justice to assume juvenile court jurisdiction (see Paragraph 96 above) should file monthly reports of juvenile cases (including delinquency, neglect cases and those involving children in need of care and protection) to the Chief Justice.
108. The Chief Justice should enter into a Memorandum of Understanding (MOU) or Operational Agreement (OA) with relevant organizations (UNMIL and NGOs) on the monitoring of designated juvenile court activities and the collection of statistical data.
109. The Chief Justice and Ministry of Justice should jointly call a meeting of stakeholders to establish a Multi-Disciplinary Team on juvenile justice reform, possibly within the ambit of a reactivated Juvenile Justice Forum (see further Part V. Use of Multi-Disciplinary Teams in the Juvenile Justice System, Paragraphs 182-201).
110. The Multi-Disciplinary Team should identify and register NGOs, CBOs, FBOs and individuals in the juvenile justice sector who are willing to participate in the reform process (see further Part V. Use of Multi-Disciplinary Teams in the Juvenile Justice System, Paragraphs 182-201).

Recommendation 17: *Ensuring the full implementation of the Juvenile Procedural Code outside Monrovia.*

111. The Judiciary should establish new juvenile courts in two (2) counties, to be situated according to statistical data collected through the monitoring of juvenile cases (see Paragraph 108 above).
112. The Chief Justice should designate a specific administrative assistant to co-ordinate the activities and needs of the juvenile courts throughout the country.
113. A study tour of all juvenile courts should be conducted for the benefit of the juvenile court judges and the administrator.
114. The juvenile courts should be situated away from other court centers.
115. The Judiciary should develop probation services for the juvenile courts.
116. The Multi-Disciplinary Team should enter into MOU or OA with identified and registered NGO to provide support services at police, court and prisons in the counties.
117. The Multi-Disciplinary Team should develop a two-year work plan on reforms or adjustments in the juvenile justice sector, based on experiences gathered.
118. A Multi-Disciplinary Team should be replicated wherever a juvenile court is established.
119. The Juvenile Procedural Code should be reviewed periodically to ensure its conformity with the Convention on the Rights of the Child.

F. Concluding Observations

120. As the Juvenile Justice Assessment Team noted, there are several good initiatives which, although uncoordinated, would be a good foundation for most of the team's recommendations. It was noted that there may be elements of self-preservation of areas of influence among donors and their collaborating partners. This should be minimized by the Multi-Disciplinary Team approach. It is imperative that all quick impact projects be linked to long-term goals. What is important is that all players must remember that, for Liberia, investing in children today means saving on prisons tomorrow.

III. DIVERSION IN THE JUVENILE JUSTICE SYSTEM

A. Overview

121. Children need a protective environment to grow and develop. To achieve a protective environment, the family, community, and the State must work together. Children must be secure from violence, abuse, neglect, exploitation and discrimination.
122. Even if you have the cooperation of the State, it must be understood that growing up is not a science. It is an art which the environment in which children live. If a child is nurtured by family, society and the State, that child becomes a productive member of the nation.
123. Inevitably there will be children who will make mistakes. Such children, if over the age of seven, are answerable for their behavior. They may be arrested, taken to court and may be subject to court orders.
124. Diversion is an option available to the child so the child does not face a disposition in the case. In delinquency cases, an alternative disposal of the case is the goal particularly where the child is accused of a minor offense. For example, instead of the child being placed in an institution, the child would be returned to the community to engage in community service.
125. Diversion programs may be established under statute or Rules of the Court. Diversion programs must be flexible to allow expansion over time. In Liberia, the judiciary clearly has inherent jurisdiction to engage in diversion for juveniles. Even though Liberian law does not mention diversion specifically, diversion can be implemented under Section 11.3 and 11.73 of the Juvenile Procedural Law and the general powers of the police to issue warnings and caution.
126. Diversion must be implemented in a manner consistent with human rights and must take into account the welfare of the child. Diversion should be proportionate to the offense and the child must be given alternatives that are realistic considering the child's circumstances.
127. The requirements for implementation of diversion:
 - a. The evidence of the underlying offense must be sufficient to support a finding that the child committed the offense if the child were taken to court;
 - b. The offense must not be a serious one such as murder, rape, robbery because the safety of the community must be a consideration;
 - c. The juvenile must fully understand the right to remain silent which is a human rights issue;

- d. The child must voluntarily admit that he committed the offense after being advised by legal where possible;
 - e. The child must consent to the diversion; and
 - f. The child's parent or guardian must consent to the diversion
128. Diversion options must take into account cultural diversity, religion, education, domestic obligation and circumstances, age of the child, developmental needs of the child and circumstances of the offense. The diversion must be reasonably accessible to the child.
129. Diversion seeks to promote the following:
- a. the child's sense of self worth and dignity;
 - b. nurture responsibility;
 - c. the child's ability to positively contribute to the community; and
 - d. impart life skills.
130. However, diversion should not be:
- a. exploitative;
 - b. harmful or hazardous to the child; or
 - c. interfere with the child's education.
131. Institutions providing diversion programs must be registered with the state. It is recommended that the authority for approving managing diversion programs be placed with the Judiciary.

B. Recommendations

Recommendation 18: *Diversion should be mandatory in appropriate cases.*

132. **Quick impact:** The Chief Justice should mandate the juvenile court and the designated magistrates to develop a judicial strategy for the development and implementation of diversion program for children accused of offenses.
133. The juvenile court judge and designated magistrates along with court clerks, probation officers and other interested organizations should create and serve on a Multi-Disciplinary Team that will be responsible for the program's development and monitoring its implementation and effectiveness over time.

IV. DEVELOPMENT OF A FUNCTIONAL JUVENILE JUSTICE SYSTEM

A. Overview

134. A functional juvenile justice system requires the coordination and cooperation of the judiciary, the executive and the legislative arms of government. A truly functional juvenile justice system that serves the needs of children who are neglected, in need of care and protection or who are delinquent will not advance until the government develops a strategic plan for a child protection system that comports with Liberian law and international standards in the areas of neglect, delinquency and children in need of care and protection.

135. There are several initiatives underway to improve the safety, security and access to justice for adults and children. Yet there is no evidence of coordination of activities among donor agencies. Although this report does not portend to create an assessment of those efforts, a review of reports completed since 2004 along with interviews with principals from government ministries, the judiciary, and their international partners has provided a clear picture of the needs, the challenges and possible approaches to the next phase of juvenile justice reform.

136. One thing is clear: There must be an end to the placement of children in adult prisons.

137. A recent assessment completed by UNICEF indicates that despite the strengths of Liberia's Juvenile Procedural code and the steps taken to conform practice to international standards, much work is needed. Government officials who met with and candidly discussed the challenges as their reform efforts continue clearly recognize the challenges ahead and are clearly willing to continue the efforts toward reform. The government and the international partners recognize that under the current circumstances of the nation where there are few resources available and basic infrastructure is the nation's greatest priority, that transformation will be a lengthy process as reformation moves forward.

138. The following areas are presented as critical needs to achieve both short-term and long-term progress toward developing a functional juvenile justice system in Liberia.

B. The role of executive branch ministries and the Court in juvenile matters are not clear.

139. Among the agencies with responsibility for children and youth:

- a. The Ministry of Justice is responsible for the prosecution of offenses involving children, the prosecution of cases where a child has allegedly been neglected and cases of children in need of care and protection.

- b. The Liberian National Police (LNP) serves as the gateway for children in need of care whether they are neglected, abused or in need of care and protection. The LNP has the duty and responsibility to determine whether a matter that they have investigated should be petitioned. The LNP is reportedly working closely with the limited number of NGOs available to provide assistance with safety assessments, search for parents and relatives who may be able and willing to care for the children who are without parental care.
 - c. The Bureau of Child Welfare is responsible for the care of children who are found to be neglected or who are in need of care and protection. However, it is not clear what the Bureau's relationship to the Judiciary is in neglect cases. It is also unclear whether the Bureau is charged with tracking and following cases in which the children have been diverted from the court system by the police or NGOs working in the community.
 - d. The Minister of Gender and Development, a branch of the Executive, whose role in the child welfare arena is unclear and needs to be more clearly delineated.
 - e. The Ministry of Education, a branch of the Executive, whose involvement in the discussions related to juvenile justice is unclear and whose full involvement needs to be secured.
 - f. The Juvenile Court is responsible for monitoring the care of children who are under court jurisdiction. However, it is not clear how the Court anticipates accomplishing this responsibility for children who have been found to be in need of care and protection (wards of the court), children found to be delinquent and children who have been removed from the care of their parents or guardians for neglect as defined by statute.
 - g. It remains unclear whether there is a specific executive branch agency responsible for meeting the needs of physically, emotionally or mentally disabled youth or whether they have been involved in juvenile justice reform.
140. Based upon Liberian law, it is clear that the Juvenile Court stands as the entity that is ultimately responsible for children who are under Court supervision or protection.

C. Recommendations

Recommendation 19: *The roles of all government agencies, executive and judicial in the development of a functional child protection system need to be clarified as well as the role of the non-governmental and private sectors (NGOs and community-based organizations) (short-term projects).*

141. The Juvenile Justice Forum should immediately be reactivated with an adjustment in its purpose and its membership. The following high level government officials should participate: the Chief Justice, the Minister of Justice, the Minister of Gender and Development, the Minister of Education, the Minister of Social Welfare, the Minister of Health, and the highest financial officer of Liberia, along with any other ministers with responsibility for services to children and youth. The meeting should be mediated by a neutral non-governmental organization skilled in facilitating the strategic planning process so that candid discussions can be held and a strategic plan can be developed with specific time frames for the development of a long-term, viable child protection system that would also include some quick impact projects.
142. Liberia's international partners involved in justice reform, educational development, child welfare, and other youth related services should meet to share information regarding projects that they have undertaken, the effectiveness of programs to date and ways that Liberia's partners can work more effectively to maximize the resources available to assist in child protection programs across Liberia.

D. Data collection

143. Data is critical to building capacity for serving children in the juvenile justice system. In order to determine the costs of serving children, the government and the judiciary must know how many children have been found delinquent, neglected or in need of care and protection and the services being provided by the State. The data that must be collected is central to determining the services needed to meet the needs of children, and planning for development of future programs as the needs of the nation's children in the juvenile justice system change. In addition, the data is critical to realistic budget planning for all agencies – public and private – that are providing services to children and youth.
144. Since the LNP serve as the gateway for children who may be delinquent, neglected or in need of care and protection, the task of keeping and tracking data in the first instance falls upon them. However, certain data should be captured and provided to the executive agencies responsible for monitoring the care and wellbeing of children who are delinquent, neglected or in need of care and protection. Data should be collected by the Judiciary as well executive arm agencies. All data should be collected on timeframes agreed to by all data providers and the data to be collected should be agreed to by all stakeholders to ensure that the data needs of each agency are met through the process.

145. The system should be designed to track the status of the children as well as the needs of the children and the families that are involved with the court system, the needs of the families who come forward to provide care for children, the capacity of the local community to assist in the care of the children and, ultimately to provide data to assist in national financial resource development for the care of Liberia's most vulnerable citizens.
146. Finally, the data collected should be shared on a regular basis across the government and the Judiciary, as well as other organizations involved in child welfare and legal assistance, and used to create a picture of who is being served in the juvenile justice system, assist in determining the budgets needed by each entity to fulfill the responsibilities for the care and rehabilitation of youth, and assist in the evaluation of the effectiveness of services provided to children who are neglected, delinquent or in need of care and protection.

E. Recommendations

Recommendation 20: *Develop a data collection and tracking system for children and youth who have contact with the juvenile justice system.*

147. The Executive and the Judiciary should jointly develop a data collection system to begin tracking all children who are alleged to be neglected, delinquent or in need of care and protection across the republic as well as those children who have been adjudicated neglected, delinquent or in need of care and protection. The data needs to be made available to the government and the Judiciary, as well as other organizations involved in child welfare and legal assistance

F. Record Keeping

148. Just as consistent and ongoing data collection is essential to service children in the juvenile justice system, official court records are critical to ensuring the safety and wellbeing of children who come before the Juvenile Court and are under court supervision. Many in the Judiciary appear to believe that the juvenile proceedings (delinquency, neglect and child in need of care and supervision) are not proceedings of record. Though the review of the law indicates that Liberian law is open to interpretation on this issue, based upon the significant constitutional rights and human rights that are involved in juvenile justice there can be no question that any court proceeding must be recorded and an official court record maintained for all cases.
149. Court records provide an opportunity for the judiciary to ensure that statutory and procedural requirements for neglect, delinquency and children in need of protection proceedings are met on a regular basis. The court records provide a basis for determining whether court resources are being allocated appropriately in juvenile

matters. The court records also provide the only means to know whether the rights of children are being preserved in Liberia.

150. PAE has been tasked with the development of a uniform case management and case flow system and is working in close collaboration with the Judiciary. It is imperative that the juvenile justice system be included in the scope of work currently under way.

G. Recommendations

Recommendation 21: *Develop a case tracking and coding system for cases involving children who are neglected, delinquent, or in need of care and protection.*

151. The current case tracking and coding project underway under the direction of the Chief Justice should immediately be expanded to include court proceedings and case management involving matters under the Juvenile Procedural Code.

H. Care facilities for children who are neglected or in need of care and protection

152. When a child who is alleged to be neglected or in need of care and protection comes to the attention of a government agency or the police and the child is alleged to be neglected or in need of care and protection, an immediate issue arises: Where will the child be placed if he or she cannot remain with a parent or guardian or an appropriate caretaker in the community who is known to the child. Where the cases are petitioned to court, the children are often frequently placed in prison by a judge in an effort to “protect” the child. Detention under these circumstances violates the human and constitutional rights of the child. Detention in Liberian prisons further exacerbates the violation of the child’s human and constitutional rights.
153. It is clear that the responsibility for the care of neglected children and those in need of care and protection is the responsibility of the State. At this time there is no network of family-foster care homes available to provide placement options, and although a few NGOs provide placement and social services for non-delinquent children, the number of beds available cannot meet the current needs of the youth in Liberia.
154. It is imperative that discussions begin immediately to create a framework for the development of appropriate placements for neglected children and children in need of care and protection which would include the long-term financing requirements to sustain the care facilities once the State is able to assume full responsibility for the care of its wards.
155. The following initial approach is suggested:

- a. NGOs interested in negotiating for certification as placement providers for children should meet to determine which organizations are available to provide care and to what level, and to commit to working together collectively to make the process of government negotiations both productive and consistent;
- b. Negotiations between the government and the NGOs that are currently providing substitute care or have demonstrated a capacity to provide such services should begin immediately to determine what costs the government will bear in caring for the children. The government should ensure that all agencies responsible for the care of children should participate in the negotiations so that a plan can be developed that will be comprehensive and accountability for service delivery and monitoring NGO performance can be developed;
- c. The government should establish contracting requirements, those requirements applied consistently throughout Liberia;
- d. The government and the involved NGOs should agree upon a formula that will be used consistently and throughout Liberia to determine the cost per child per day for placement and services. For example: If it costs \$42,000 to care for 100 children for six (6) months, the costs per child should be broken down to show the costs for room and board, the costs for social work services, the costs for mental health services, the costs for education if provided by the facility, the cost for medical care, recreation, and clothing. Each contract with each NGO should include the number of children to be served over the term of the contract and any children that will not accepted by the NGO;
- e. The government must determine how much of the cost per child it will pay initially and provide timeframes for increasing the government's per child contribution over the life of the contract until the government is paying for all of the costs.

I. Recommendations

Recommendation 22: *The practice of placing children who are neglected or in need of care and protection in prisons – which is a violation of their human rights – must end immediately.*

156. **Quick Impact:** The Juvenile Court judge and the magistrate judges who hear the cases of neglected children and those in need of care and supervision should be provided with information about the programs that are available to provide placements for children in these categories. In addition, the space availability in each program should be provided to the appropriate government agency and the court daily so that placements can be facilitated as neglect cases and cases involving children in need of care and protection are brought to court.

J. Develop a long-term plan for the building and maintenance of care facilities for neglected children and children in need of care and protection.

157. The reactivated Juvenile Justice Forum should develop the approach that the executive branch and the Judiciary will take toward addressing the placement needs of neglected and abandoned children, the level of government support required for their care and the sources of financial resources over time.
158. The government should develop a process to contract with NGOs and other organizations whose mission is child protection to provide the facilities or options for board and care, education, health and overall welfare of neglected children or those in need of care and protection.
159. A long-range plan for the financial sustainability of programs must be designed to provide care for children who are neglected, delinquent or in need of care and protection and to ensure that these programs meet the specific health and safety needs of all children in care.

K. Recommendations

Recommendation 23: *A formula should be developed for determining the costs per child for all children in care based upon the type of services needed to meet the needs of the children who are neglected, delinquent and those in need of care and protection.*

160. **Quick Impact:** Since some NGOs are currently providing child welfare and other care services to children who are neglected and children who are in need of care and protection, that these organizations should meet and develop a formula that can be proposed to the reconstituted Juvenile Justice Forum to establish costs-per-child for out-of-home care of children who are neglected and in need of care and protection. For example, if it costs \$42,000 to care for 100 children for six months, the costs should be broken down to show the costs for room and board, the costs for social work services, the costs for mental health services, the costs for education if provided by the facility, the cost for medical care, recreation, and clothing.
161. **Quick impact:** The government should determine how much of the per child costs it will pay initially and provide timeframes for increasing those contribution over the life of each contract until the government is fully financially supporting all of the costs for the care of children who are neglected, delinquent or in need of care and protection.
162. The government of Liberia through the Office of the President should develop a long-term, multi-year strategic plan for financing all services required to provide care for children who are neglected, delinquent or in need of care and protection.

L. Detention facilities for delinquents and rehabilitation facilities for delinquents and children in need of care and supervision

163. Until a secure detention facility for juveniles who have committed serious offenses or are alleged to have committed serious offenses is established, Liberia will not be able to end the practice of placing youth who are accused of delinquent behavior or adjudicated delinquent in adult prisons which violates their constitutional and human rights. Furthermore, prison confinement provides no opportunities for these youth to receive the rehabilitative services and basic attention to their health, education and overall development.
164. Furthermore, less restrictive facilities for delinquents accused of minor offenses and for children who are in need care and protection who can not be placed in the community, the immediate development of a rehabilitation center to provide alternatives to detention pre- and post- adjudication.
165. Without proper facilities to provide services to these youth, any judicial reforms will be ineffective because the Rule of Law and the rights of child will continue to be violated. It is imperative that the current violations of the rights of youth who are accused of delinquency or are in need of care and protection, which requires aggressive and creative approaches to identifying the funding necessary to build the necessary facilities, particularly in Montserrado County.
166. A possible source of funds for what is considered a bricks and mortar project are international corporations who have a long and continuing history of exporting Liberian resources. Many such corporations maintain charitable foundations which provide support to the communities where they operate. In fact, some corporations with interests in Liberia provide various types of support to their workers in the communities where they operate. The fact that these corporations will rely on the youth of today to serve as the labor force in the future, there may be a basis for these corporate entities to assist in resolving the issue of appropriate detention facilities for youth in Montserrado County and other counties where the need is also great. The detention facilities can be built using a combination of donated funds and government funding. However, a creative approach should be used to garner funds including tapping the Liberian business community (farmers, miners, rubber plantation owners) to assist in the first stages of these endeavors.
167. The government, its community-based partners and the business community must develop a proposal for the costs of building and maintaining the centers for a period of time with a clear plan for the assumption of the costs of maintenance by the government. The plan must also address the costs of providing the social services, health care, education, recreation and other services necessary to the care and rehabilitation of youth with a clear indication of who will be responsible for those costs pending the assumption of all costs by the government in the future.

M. Recommendations

Recommendation 24: *Develop a proposal for the costs of building and maintaining of detention and rehabilitation facilities for children who are delinquent, neglected and those in need of care and protection.*

168. **Quick impact:** The government should develop a plan for the development of a detention center in Montserrado County in collaboration with NGOs that have expressed an interest and begin discussions with Liberian business interests including international corporations and their foundations arms to determine whether such interests would support the costs of building a facility, maintaining the physical facility once built or providing the financial support for services to promote the rehabilitation of youth who are detained.
169. **Quick impact:** The revitalized Juvenile Justice Forum should develop the approach that the executive branch and the judiciary will employ to address the needs of children who are accused and found to have committed serious juvenile offenses including placement options (secure detention, rehabilitation centers or training centers and vocational schools, treatment centers, etc.). A plan should be developed with timeframes, costs and levels of services to be provided to children that will promote their reentry into society.
170. **Quick impact:** The government should establish a multi-year development plan setting a specific date when the government would assume all responsibility for the maintenance and care of children committed to detention facilities.

N. NGO and government development of strong community-based organizations

171. The NGOs that have worked in Liberia for many years have been involved in capacity building on the community level. Service enhancement, identification of placements, assistance in tracing families and assistance with family rehabilitation can be enhanced with the assistance and participation of community based organizations including faith-based organizations and social clubs and organizations.

O. Recommendations

Recommendation 25: *Identify, develop and support strong community-based organizations to assist in serving children and families.*

172. **Quick impact:** Local community leaders and organizations should be identified and involved in the development of child protection practices that are culturally sound and that promote the Rule of Law as the national children's agenda is forged.
173. **Quick impact:** NGOs that have been involved in community capacity building in Liberia should come together to assess the post-war status of those organizations and

individuals who received training and demonstrated the capacity to provide community based services so that they can begin building a grass roots network of support within communities to provide support for children and families.

Recommendation 26: *Develop a protocol for the use of Family Group Conferencing and Family Team meetings in neglect, delinquency and cases involving children in need of care and protection that would maximize community-based organizations in supporting children and families.*

174. **Quick impact:** The current practice of family team meetings utilized by some NGOs should be extended to all cases involving children whether the cases are resolved prior to the filing of a petition in court or post petition.

P. Securing witnesses in serious cases of abuse of children and securing evidence

175. Another obstacle facing Liberia is the current lack of willingness of the populace to face the Court as witnesses when cases are brought to Court particularly matters of domestic violence against children (child abuse) or sexual assault of a child by a family member. It is not uncommon for witnesses, including the child victims, to “disappear in thin air.” This obstacle can be addressed systemically without cost by either implementing or enforcing current laws related to interference with prosecution in cases involving abuse of children. Overtime, the active prosecution of persons who interfere with the execution of the rule of law will send a signal to the community that the government and the court is acting to ensure that the ability to ensure respect for the Rule of Law begins to become part of the national fabric. In the meantime, consideration should be given to ensuring that there is no statute of limitations on obstruction of justice and that the police place a priority on beginning to track those charged with such offenses.
176. In addition, consideration should be given to neglect petitions where such informal resolution of cases involving serious violence against children is clearly not in the child’s best interest and, therefore, could support a finding of neglect as to the parent or legal guardian who accepts payment or other compensation to end the criminal prosecution of a person who has abused a child. Court involvement provides the opportunity for the State through court oversight of the health, safety and well being of the child to provide services necessary to address the needs of the child victim.
177. Finally, the ability of Liberia to fully implement the new rape law in Liberia is hampered by the inability in many instances to secure evidence. Parents bathe their children after there has been an assault and are unaware or unwilling to go to the hospital. There is a sense that the knowledge base should be higher. As with other areas of implementation of reform, community partners who are able to provide education for victims of sexual assault, particularly children, may be developed through community based organizations such as local churches, through victims who

have successfully received justice since the implementation of the law or parents whose children were assaulted and were comfortable with the outcome of the civil or criminal law process. Though it would take time to develop these resources, the ability to encourage victims or their families to assist in educating the public would begin to reap the results that government officials seek.

Q. Recommendations

Recommendation 27: *Develop a strategy to facilitate the prosecution of juvenile court cases and to provide support for victims and witnesses in serious cases of juvenile crime or abuse of children.*

178. **Quick impact:** Until victim support centers can be established throughout the country, the government and other participating agencies should assist community-based support organizations (such as NGOs, community groups, religious organizations, schools, etc.) to provide a safe place for youth to report abuse and to receive peer and professional support as they proceed through the court system whether juvenile court or criminal court.
179. **Quick impact:** The government should develop an education campaign focused on the penalties for interference with the prosecution of cases involving abuse of children or serious juvenile crime. The government should identify the specific past practices – such as payment to families where serious offenses are involved, informal restitution without court process or enrollment of the arrangements before the court to dispose of cases – and communicate to the public that these practices serve to erode the Rule of Law and the efforts to ensure safety for children.
180. Victim support centers should be developed throughout the country to provide a safe place for youth to report abuse and to receive peer as well as professional support as they proceed through the justice system.
181. A Children’s Advocacy Center should be developed to lessen the trauma experienced by children who have been abused and are often subjected to multiple interviews as all relevant parties attempt to investigate and prepare for the prosecution of the abuse.

V. USE OF MULTI-DISCIPLINARY TEAMS IN THE JUVENILE JUSTICE SYSTEM

A. Overview

182. A Multi-Disciplinary Team (MDT) is a group of professionals who work together in a coordinated and collaborative manner to ensure an effective response to reports of child neglect, delinquency or children in need of care and protection. Members of the team represent government agencies and private practitioners responsible for (1) investigating abuse or neglect of children and protecting children in a particular community, or (2) assessing and providing appropriate care or placement to juveniles in conflict with the law. An MDT may focus on investigation, policy issues, treatment of victims, their families or perpetrators or a combination of these functions.
183. Regardless of the way in which a child becomes known to the juvenile justice system, it is critical that consistent and coordinated needs assessments for the children and their families are completed soon after state intervention – even where there is no court involvement. Best practice in Europe, other African states and the United States have begun to focus on the use of multidisciplinary teams to complete the necessary assessments and develop a treatment plan for the children and the family. Among the possible members of the team are professionals from the following disciplines:
- a. Legal professionals;
 - b. Law enforcement officers;
 - c. Social workers;
 - d. Mental health specialists;
 - e. Health Care specialists;
 - f. Probation officers;
 - g. Corrections officers;
 - h. NGOs; and
 - i. Teachers and other education specialists.
184. Bringing a multi-disciplinary team together to provide services to the children in need of care and protection whether they are delinquent, neglected or wards of the court ensures that both the needs of the child, the best interests of the child and the interests of the community are served. The services of this team will be utilized both for pre-disposition assessment and post-disposition services for the child and, where

appropriate and necessary, for the family. In many instances the judge will use the services of the MDT to, in part, decide the disposition of the case. In many instances the MDT will effectuate and oversee the disposition of the case. The selection, goals, designation of duties, working relationships and evaluation of how the team is working and meeting the goals it has set for itself is at the center of creating and maintaining such a team. It has been the experience of other jurisdictions that have implemented such an approach (United States, Canada, United Kingdom, South Africa) that both the needs of the child and the interest of the local community are best served by providing for increased effectiveness of helping children at risk and providing for enhanced treatment and reintegration of children in conflict with the law.

B. Steps in Forming an MDT

185. The following approach is suggested in constituting an MDT:

- a. Identifying members;
- b. Developing a mission statement and protocol;
- c. Designation of duties;
- d. Establishing of working relationships; and
- e. Evaluating performance.

186. Identifying and forming the team is the first step. Currently in Liberia, there is a marked shortage of both prosecutors and defense counsel, certain immediate steps can be taken to begin capacity building to utilize the MDT process. Specialized training may be provided to existing members of the bar, allowing for best representation of children in the juvenile system. In addition, future prosecutors and public defenders are being assisted in their legal education through scholarships that require fixed terms of public service in exchange. A small number of those future lawyers could be earmarked for receiving specialized training in working in under the MDT process within their law school program or as they work in the planned clinic programs. The same approach can be used in developing expertise within the core of students in schools of education, social work, psychology, public health, health and other disciplines within the post-secondary education system in Liberia.

187. In addition to these core members, an immediate and existing addition to the team would be NGOs. Don Bosco Homes, for example, is an organization that is already prepared to accept and is accepting children in their facilities. Currently they accept short term placement of children who are abused and neglected or are in need of care and supervision. They are not currently set up to accept violent offenders, but could in future expand their services to provide separate facilities for these children.

188. Mental health, doctors/nurses/physicians aids, and education professionals must also be incorporated into the team. Only by addressing the child's psychological and developmental needs, their physical needs and their short and long term educational needs, can a holistic approach to the child's well being be achieved.
189. Probation services are an integral component to an MDT team, as it is often under the supervision of probation that a child is released back to the family member(s). Without proper training in the dynamics of abuse, neglect and offending, probation officers will not be adequately positioned to best effectuate their duties.
190. The Protocol is perhaps the most important step in the process. Most MDT protocols require specialized legal, law enforcement and social workers, at a minimum. In areas where specialization already exists, such as the Women and Children Protection Section (WCPS) within the Liberian National Police, this would be a logical starting place for the team's composition. Complementing the WCPS would be attachment of social workers to assist in initial assessment of the child's situation and follow up should the child be returned to the home. Currently WCPS has requested a social worker(s) be attached, but also requires items like a vehicle to make possible follow up investigation and assistance. Specialized lawyers, prosecutors and public defenders, would also be required. As there is already a juvenile court in place in Monrovia, this might be the logical place to begin the process of assembling a specialized MDT.
191. When creating the protocol, issues such as designation of duties and establishing of procedures will be examined. Not only is it important that the child's needs are assessed and addressed, but that there is co-ordination between team members and between disciplines. There will need to be mandatory referencing of cases of criminal abuse of children to the police for further investigation. Children should never be released to the custody of adults accused of committing criminal acts against them without a full investigation. It is necessary for all team members to meet on a regular basis to assess the progress of the case. Within the establishment of procedures, issues of confidentiality should also be addressed.
192. It must also be noted that while specialized training in juvenile justice will greatly accelerate the pace of bringing justice to the children in this system, there will be cases that involve special challenges. Children who have learning impediments, who are physically or mentally challenged, or who suffer from psychiatric disorders will come into the system. It is imperative that services be available to them and be uniquely tailored to meet their special needs.
193. It is crucial to the development of the MDT that evaluation of the team and its work occur regularly. By setting out realistic short and long term goals, e.g. immediate increased placement of children in appropriate, existing facilities and long term creation of additional services, the team will be able to assess its strengths and identify any gaps that still exist in its services to the child.

C. The role of the Juvenile Court and the MDT

194. While separation of powers does not allow for direct participation of the Juvenile Court judge in the MDT, the judge can use the assessment reports to assist in developing a disposition plan that will be in the best interest of the child and in determining an appropriate sentence in delinquency cases. By using the results of the multi-disciplinary team assessment, the judge can be more confident that the disposition may meet the specific needs of each child before the court.

D. The role of MDT in Juvenile Cases

Neglect Cases

195. The Juvenile Code provides for special proceedings concerning any juvenile who is alleged to be a neglected child and for whom the court is petitioned to regulate the home, or if necessary remove the child from the home, so that his/her needs are properly cared for. In cases of child neglect, it is crucial to immediately assess the safety of the child as the investigation of the allegations begins. When a child comes to the attention of the police, or any member of the MDT, as a possible victim of neglect, the initial investigation should be handled by a specially trained member of the police with the assistance of a specially trained and qualified social worker. Since the Liberian Juvenile Law requires consideration of whether the child can safely remain in the home as one of the options pending completion of the investigation, it is critical that the home environment be assessed, and if the child remains in the home, monitored pending resolution of the case. The services that may be available pending completion of the investigation: counseling and education regarding parenting, the issues related to excessive physical discipline, the requirements regarding meeting the educational needs of the child, etc. The MDT is best placed to provide recommendations for the specific services that may be needed by the family to ensure the safety of the child. The needs of the child and the adults charged with caring for the child must be addressed, hopefully eliminating the underlying cause(s) of neglect, and lessening or eliminating the possibility of neglect reoccurring.

Wards of the Court

196. The Juvenile Procedural Code provides for special proceedings for any juvenile alleged to be in need of care and protection necessary for his/her well-being. In many cases these children have committed so-called “status offenses.” Status offenses include such issues as truancy, incorrigibility, runaways, begging, drug usage and loitering. Children under this category may also have no parent or adult relative or other suitable adult to take custody of them as they have been abandoned or deserted. Here the MDT could assist in assessing the mental, physical and educational needs of the child and recommending specific services to meet those needs. Should the child

be placed on probation, officers from that discipline could assist in ensuring that the conditions are adequately fulfilled.

Juvenile Delinquency Cases

197. There are inherent differences between adults and the overwhelming majority of juvenile offenders. The purpose clause of the Liberia Juvenile Procedural Code makes it clear: the focus under the Code is rehabilitation and restoration rather than punishment. That rehabilitation and restoration is to involve the child, the parent and where appropriate without violating confidentiality, members of the community who are available to assist the child and the family in the restorative process. The Juvenile Court has broad discretion to frame a disposition in delinquency cases through sentences or dispositions that are designed to meet the specific rehabilitation that is needed for each child, while also considering the interests of the community. The entire picture of the child's life and history are factors in shaping the rehabilitation to be provided.

198. In delinquency cases, the MDT is to assess the child's emotional, mental health, social and educational needs and provide a prescription for intensive treatment for the child. The philosophical underpinning of the planning undertaken by program the team that includes social workers, mental health providers, physical health and public health services, probation, education and vocational service agencies and service providers, and community-based organizations serving the educational and social needs of youth, focus on providing comprehensive and coordinated services to youth based upon their specific needs. The services recommended by the team are encompassed in the treatment plan which is developed for each child with input from the child and the child's family members. The treatment plan incorporates not only the health and wellbeing of the child but also the needs of the family to ensure that the child will begin functioning in a more healthy family unit once the child is returned home. If the child is deemed in need of secure detention, the services recommended by the MDT must begin while the child is in rehabilitation or detention. If the child is released prior to trial or placed on probation at disposition, the focus will surely be upon fulfilling the conditions of probation. If at disposition, judgment is suspended with conditions, compliance with the order would be part of the treatment plan prepared by the MDT.

Cross-Designated Cases

199. Children may engage in minor offending or status offenses due to neglect. Children who commit serious crimes may have been offended against themselves, through either abuse or neglect. The cross-designation of many of the children within the system requires a high level of training and understanding of the complex needs of the child and the child's family, and a plan to best address the unique needs of the child and the family.

E. Recommendations

Recommendation 28: *Professionals who currently have the expertise to service children and youth who are neglected, delinquent or in need of care and protection should be identified and provided with training that focuses on the development of a Multi-Disciplinary Team approach to address the service needs in juvenile justice cases.*

200. The training can be incorporated into existing trainings provided by international donors, NGOs and the government. Short and long term multidisciplinary strategy implementation should be addressed in the development of any training curriculum as well as methods that can be used to being MDT processes where resources are scarce or limited.

Recommendation 29: *A pilot program should be established to implement Multi-Disciplinary Teams in assessment and service delivery should be developed to focus initially on Monrovia, extend out into the county and then develop a plan for expansion to the counties based upon needs assessments based upon data collection over a six month period.*

201. A pilot program which is focused on Monrovia could utilize the existing specialist police section, social workers and NGOs that are presently responding to juvenile justice issues. Additional members, such as mental health, education, probation and corrections representatives, should be included in the development of the pilot MDT program.

VII. ANALYSIS OF THE LIBERIAN JUVENILE JUSTICE LEGISLATION

A. Introduction and General Impressions

202. As the country continues to build its juvenile justice system in the post-war reconstruction, the Juvenile Court and Juvenile Court Procedural Codes (“the Juvenile Code”) may prove to be one of the system’s greatest assets. The existing Juvenile Code – drafted as part of the Judiciary Law before the war – provide a solid foundation and framework for the development of a comprehensive juvenile justice system in Liberia.
203. This report seeks to identify a few areas within the Juvenile Code that should be amended to enhance the rehabilitative objectives of the juvenile court and to secure the due process rights of the child and parents affected by the Juvenile Code. Unfortunately, it appears that some of the current legislation is being interpreted inconsistently among Magistrate Courts and the Juvenile Court. Where there appear to be issues of interpretation, this report proposes training, policy development and special Juvenile Court Rules in lieu of legislative amendments.
204. This report provides only a preliminary assessment of the Juvenile Code and does not purport to draft proposed language for any amendments. The Team envisions an on-going examination of the Juvenile Code.

B. Strongest Features of the Juvenile Code

205. There are many strong features in the existing Juvenile Code. Most significantly, the purpose clause provides a point of shared vision among all of the stakeholders interviewed by the Assessment Team. Specifically the purpose clause calls for a rehabilitative response to juveniles who come before the Juvenile Court.
206. The following provides a summary of the key goals of the Juvenile Court as contained in Section 11.3 (Purpose and Construction of Code):
- a. The Juvenile Code provides due process for just determination of all causes;
 - b. The Juvenile Code shall be liberally construed so that each juvenile shall receive care, guidance and control;
 - c. The Juvenile Code gives preference for home-based solutions to matters coming before the Juvenile Court;
 - d. The Juvenile Code requires that when child is removed from the home, the Court shall secure care as nearly equivalent to what he would receive from parents; and

- e. The Juvenile Code states preference for informal decrees and resolution of cases (see also Section 11.74).
207. Another strong feature of the Juvenile Code is the recognition that youth should be handled in Juvenile Court until their 18th birthday (Section 11.11). However, an important exception is contained Section 11.21(a) which carves out serious delinquency by youth 16 and older who commit offense punishable by life imprisonment or death if committed by an adult.
208. A third strong feature of the Juvenile Code is the implicit recognition that lines are often blurred as between neglect, status offense and delinquency cases. (E.g., a child who is brought before the Court for theft may actually be stealing for food because he has been abandoned by his parents. This child may thus be more appropriately identified as a neglected child rather than a delinquent child.) Section 11.33 of the Juvenile Code allows the Juvenile Judge to substitute a delinquency petition for a more appropriate neglect or ward petition. While this provision is a valuable aspect of the Juvenile Code, any substituted petition (e.g. replacing a delinquency petition with a neglect petition) must be accompanied by appropriate due process protections (e.g. notice, hearing, opportunity to be heard, etc.) for the parent accused of abuse or neglect and must be subject to the same evidentiary standards and due process requirements presently set forth in the statute.

C. Need for written rules of Juvenile Court to achieve consistency among the Juvenile Court and Magisterial Courts in Montserrado and all other counties.

209. Although the Juvenile Code has many good features – like any other code – it is subject to misinterpretation. Interviews conducted by the Assessment Team suggest that there are disparate interpretations of key provisions of the Juvenile Code, including key provisions related to jurisdiction. Disparate interpretations have and will continue to produce inconsistent practice and procedures, especially as between the formally established Juvenile Court and those Magisterial Courts that are presently operating as juvenile courts (see Section 10.1).
210. As a result, the Team proposes that ***Rules of Juvenile Court be written and promulgated*** specifically for juvenile courts (and all Magisterial Courts serving in that capacity) to ***supplement*** the existing Juvenile Code. Although the Juvenile Justice Assessment Team understands that general Rules of Court have been promulgated, there are no written Rules of Court specifically drafted for the Juvenile Court. Fortunately, the Juvenile Code already grants the Chief Justice authority to promulgate such Rules. The Juvenile Justice Assessment Team proposes that the Chief Justice ask the presiding Juvenile Court judge, with the assistance of international specialists, to develop a first draft of these Rules for review and approval by the Chief. The authority to draft written rules of court is set forth in Section 11.2 (Scope).

211. Section 11.2 provides in part that:

Where the method of procedure in any such special proceeding is not prescribed by this Code, the procedure shall be in accord with the rules of court promulgated for the juvenile courts by the Chief Justice of the Supreme Court and if none has been promulgated, with the provisions of the Civil Procedure Law to the extent they are suitable to the special proceeding involved.

212. Throughout the remainder of this report, the team attempts to identify statutory provisions that would especially benefit from the promulgation of court rules. This list is not exhaustive.

D. Suggested Additional Statutory Provisions

Rights of parents in Termination of Parental Rights proceedings

213. Although the statute provides many provisions for the protection of the due process rights of children in delinquency, neglect and care and protection proceedings, the statute is void of any discussion of the due process rights of parents or legal guardians who risk temporary loss of custody of children or permanent termination of parental rights or who are subject to the jurisdiction and conditions of the court, pursuant to Section 11.73, after a finding of neglect.

214. Likewise, while Section 11.91 (Right to Counsel) provides representation for youth appearing in the juvenile court; representation is not provided in neglect cases to the parent or person legally responsible for the care of the child and whose liberty interest in exercising parental responsibility is in jeopardy.

Procedures and timelines for the Termination of Parental Rights

215. The current Juvenile Code does not set forth any procedures or timelines for proceedings to terminate the parental rights of children who are adjudicated neglected. Termination of Parental Rights proceedings are formal proceedings requiring clear and convincing evidence to support a finding that termination of parental rights is in the best interest of a child under the age of 18.

216. The following elements are suggested best practice in developing a termination of parental rights statute:

- a. *Provision for voluntary relinquishment of parental rights.* A statutory provision which allows parent(s) to voluntarily relinquish their parental rights is recommended. The provision should include a specific number of days in which the parent can revoke the relinquishment. The relinquishment document should be certified under oath and once the revocation period has expired, the document should be filed with the court.

- b. *Termination of Parental Rights initiated by petition.* The statute should identify which persons have authority to file a termination petition. Generally such petitions are brought by the state, but may also be brought by the child's legal representative.
- c. *Notice and summons.* Parents must be provided with personal notice of the proceedings and appropriate service requirements must be developed to meet the due process requirements of Liberian law.
- d. *Appointment of counsel.* Parents should be provided counsel if they are unable to afford counsel to assist them in defending against a termination petition or in voluntarily relinquishing their parental rights. The team also recommends that counsel be appointed to serve as *Guardian ad Litem* or legal representative for the child in these proceedings.
- e. *Grounds for Termination of Parental Rights; Evidence in Adjudication of termination of parental rights and quantum of proof.* The statute should establish clear grounds for the termination of parental rights. A few examples of grounds that are frequently set forth in termination statutes include extreme parental disinterest in the child as evidenced by desertion or abandonment; parental failure to improve in spite of reasonable efforts made by the child welfare agency to help the parent improve his ability to care for the child; parental inability to care for the child as evidenced through substance abuse, extreme and untreated mental or emotional illness; prolonged imprisonment of the parent; extreme or repeated abuse of the child or circumstances where the special physical, emotional and mental health needs of the child make return home to the parent harmful to the child. The statute should require proof by clear and convincing evidence and set forth the same evidentiary standards as apply in other juvenile court proceedings.
- f. *Post Termination of Parental Rights.* It is recommended that the statute clearly set forth the responsibility of the Court and of the child welfare agency once parental rights have been terminated. Once an order terminating parental rights has been entered, the child should automatically be reclassified as a ward of the court as defined under Liberian law. The statute should also define the placement options available after termination and establish time frames for finding a permanent home and completing the adoption of the child or determining that the child will receive services through the Department of Child Welfare until the child reaches the age of 21.

In addition, the statute must define the timeframes for regular review of the health, safety, welfare and progress toward a permanent home for the minor child. For children whose parental rights have been terminated, six month reviews are recommended.

- g. *Written Findings.* Best practice requires that the Court enter written findings of fact and conclusions of law. The Court through its Rules or the legislation should establish a deadline for completion of the findings and order that trigger the parent(s)' appellate rights including the ability of the parent to appeal if and when the judge enters detailed oral findings of fact and conclusions of law.

Provisions that prohibit the co-mingling of serious juvenile offenders with wards of the Court (neglected children or children in need of care and protection)

217. The co-mingling of children in need of care and protection and abused or neglected children with serious delinquent offenders and adult criminals is an egregious and disturbing practice. Prisons should not be used under any circumstances to house or detain these children even if it is for their own protection. This issue is further discussed below regarding the commentary to Section 11.42.

Requirements for post-disposition reviews for imprisoned youth and for youth deemed wards of the court

218. Although the statute provides for the institutionalization and extended probation and supervision for youth adjudicated delinquent, neglected or in need of care and protection, there are no statutory requirements that youth be returned to the court for periodic reviews to evaluate the welfare and progress. Suggested amendments are offered throughout this report (see further discussion of Section 11.53).

Statutory protection for the privilege against self incrimination and protection against unreasonable search and seizures

219. Assuming the privilege against self-incrimination and the protection against unreasonable searches and seizures by the police and other state actors is firmly rooted and followed in the Liberian Constitution, then such statutory protections may not be necessary. However, it is worth noting that there is passing (but incomplete) reference to the privilege against self-incrimination in the current Juvenile Code. For example, Section 11.91 indicates that juveniles who do not appear with counsel shall be advised of the right to remain silent and be represented by counsel. It is recommended that the juvenile be advised of the right to remain silent in all cases, even if he is already represented by counsel. A more comprehensive statute may be drafted to protect the rights against self-incrimination.

Need for Rules of Court to govern the timelines and procedures for filing motions and other pleadings of the Court, for the development of standardized Court forms, etc.

220. The statute does not provide for timelines and procedures for filing motions and other pleadings of the Court. The proposed Rules of Juvenile Court, which would

supplement the existing Juvenile Code, should provide for the timelines and procedures for filing motions and other pleadings of the Court and for the development of standardized Court forms.

E. Code Provisions in Need of Minor Amendments, Adoption of Rules of Court and Need for More Consistency in Interpretation

Juvenile Court Jurisdiction

221. *Section 10.1 Establishment of Juvenile Court; provisional assignment of magisterial courts:* This jurisdictional provision appears to be the source of considerable confusion and inconsistency among Magisterial Judges and other juvenile justice stakeholders. The Minister of Justice and the Juvenile Court Judge understand this provision to mean that the Juvenile Court in Monrovia City now has exclusive jurisdiction over all juvenile matters. Thus any Magisterial Courts sitting within Montserrado County are granted only preliminary (or directional) jurisdiction over juveniles who appear before them. Magisterial judges – at least in Monrovia – should immediately direct juveniles to appear before the juvenile court. However, it also *appears* that the Juvenile Court Judge may have no objection to the Magisterial Courts disposing of minor, non-serious juvenile matters that do not require any additional formal court intervention. This is unclear.
222. *Statutory Amendment or Rules of Court:* Amendments or Rules of Court are needed to clarify the role of Magisterial Courts in cities where there is already an established juvenile court. The amendments need to specifically delineate the extent and limitations of authority for Magistrate Courts sitting within Montserrado County, for example. Is it appropriate for Magistrate Judges in Montserrado to hear preliminary pretrial matters before directing the child to the established juvenile court? Is it appropriate for Magistrate Judges in Montserrado to “divert” and/or “informally resolve” certain minor juvenile matters (including delinquency, abuse, neglect, status offenses, etc.) without directing the case to the established juvenile court? (Note: The statute appears clear that Magistrate Judges in Bomi and other counties where there is no established juvenile court may handle and resolve juvenile cases.)
223. *Written Rules of Court:* Rules are also needed to set forth time limits for the transfer of the child from Magisterial Court to the established Juvenile Court. Under the current Code, the juvenile must be brought before the Juvenile Court within 48 hours, however, there is no discussion about what time frames must be followed when a child is first brought mistakenly before a Magisterial Court.
224. *Section 10.3 Appeals to Circuit Court or Provisional Probate Court; procedure:* This appears to be an underused, if not entirely un-used, provision of the Code. Team interviews with UNMIL, Don Bosco Homes, children in the Monrovia Central Prison and many other juvenile justice stakeholders indicate that juveniles (in all types of juvenile court proceedings) are being detained in prisons for extended periods of time

in violation of the law. It should be noted, however, that extended detention appears to result from lack of rehabilitative facilities and alternatives.

225. Interviews also revealed that there is a dire lack of lawyers and advocates available to represent the interests of the child. As a result, there appear to be few, if any, appeals of juvenile adjudications or dispositions. As a cadre of lawyers are identified and trained to advocate for children, this provision will be important.
226. *Section 10.7 Clerk of court; appointment, duties:* Based on interviews, the team has reason to believe that this provision is not being adequately followed in all courts and that it is applied inconsistently across Magisterial Courts and the Juvenile Court. Section 10.7 requires that the clerk of court to keep a docket, issue and record writs, take minutes, devise and print forms for social and legal records and provide for the safe keeping and furnishing of all records when necessary.
227. *Section 10.7 – Material Needs:* Section 10.7 is not and cannot be fulfilled until adequate materials are provided to the Juvenile Court. The many material needs include: a comprehensive and reliable transcript system to record all juvenile court proceedings, a comprehensive and safe system for storing and retrieving all court-related documents, a calendar management system that would allow the court to more easily track time gaps between related court hearings and length of days in detention, a uniform series of Court Forms that can be easily replicated and distributed to Juvenile and Magisterial Courts throughout Liberia.
228. *Need for Written Rules of Court and Standardized Forms:* Rules are needed to develop a consistent method of case monitoring and case docketing across juvenile and magisterial courts. Standardized and uniform Forms need to be developed so that each court uses the same form for the petitioning of a juvenile court matter, committal of a child to detention, and return of the child to court among many other forms. It is unclear whether such forms already exist.

Juvenile Procedural Code

229. *Section 11.2 Scope:* As indicated above, this provision allows the Chief Justice to promulgate written Rules of Court. The team proposes that such rules be promulgated specifically for Juvenile Court.
230. In addition, this provision makes clear that where the Juvenile Code is silent as to some aspect of the juvenile court procedures, the Court should look to the Civil Procedure Law not the Criminal Procedure Law. There seems to be some confusion around this issue. All stakeholders and judges should understand that juvenile proceedings (even delinquency proceedings) are civil and not criminal in nature.
231. *Section 11.11(g) “peace officer”:* This provision lists all persons and professionals who shall be recognized as peace officers. This provision should be cross referenced to the appropriate Code and Title that defines peace officer. It seems

that all of the parties listed in Section 11.11(g) should not be given the same responsibility and authority; however, without reviewing the appropriate definition of peace officer, the team is not able to comment further.

232. *Section 11.21 Special proceedings involving juveniles; exclusive jurisdiction of the court - (a) Juvenile Delinquency – Amendments:* In keeping with the recognition that youth under the age of 18 should be handled in Juvenile Court, the Juvenile Code should not grant original jurisdiction to Criminal Courts for 16 year olds accused of crimes punishable by death or life imprisonment. By granting such jurisdiction, the Juvenile Code seems to effectively authorize the death penalty for minors under the age of 18, which is strongly denounced in the international community. Although the death penalty is presently abolished in Liberia, the use of age 16 confuses the demarcation of childhood. This provision should therefore be amended to provide for exclusive jurisdiction of the Juvenile Court in all cases involving juveniles.
233. *Section 11.21(a) – Training and Legal Advocacy:* Notwithstanding the grant of original jurisdiction to the Criminal Court for 16 years olds charged with one of the above-listed crimes, the Juvenile Code in Section 11.21(a) does allow the Circuit Court discretion to remand the child to Juvenile Court if it is in the best interest of the public and the juvenile. Again based on our interviews, there is a dire lack of legal representation and legal assistance for youth who appear in any court proceeding. As a result, there are few or no legal advocates available to petition the Court for the return of 16 year olds back to juvenile court pursuant to this provision. As the cadre of lawyers and legal assistants are identified and trained to represent youth, special training will be necessary to prepare lawyers to advocate for the transfer of youth to Juvenile Court jurisdiction.
234. *Section 11.21(d) Powers incident to jurisdiction (for delinquency, wards, and neglect):* This provision indicates that “juvenile courts shall have power in these special proceedings to determine the custody or the guardianship of the person of any juvenile coming within the jurisdiction of the court and to transfer temporarily or to terminate parental or other custodial rights in connection with such proceedings.
235. *Section 11.21 – Need for Amendments and Rules of Court to Safeguard Parents’ Due Process Rights:* As the Juvenile Code is presently written, there appears to be no provision for the due process rights of parents who appear before the court and are subject to loss of parental rights. Significant statutory amendments and written Rules of Court are needed to provide for and clearly delineate the due process rights of parents who may be subject to the temporary or permanent termination of parental or other custodial rights in connection with *neglect and abuse proceedings*. (Due process rights accrue to the child in delinquency and in care and protection proceedings.) Due process rights for parents and guardians must also include specific timelines and procedures for various court hearings.
236. *Section 11.32 Persons who may originate proceedings – Amendments:* This provision allows “any person” having probable cause to believe that a child should

fall within the jurisdiction of the Court to file a petition with the Court. This provision allows direct petitioning by civilians as well as peace officers and thus allows origination of formal court proceedings without the checks and balances of a state lawyer or state agent, such as a prosecutor. This provision may also blur the lines between the Executive and Judicial responsibility. It is recommended that some consideration be given to amending this provision to ensure that the petitioning process is within the purview of the Executive branch (for neglected children, the Bureau of Child Welfare; for children in need of care and protection, the Ministry of Justice; for all children, the national police).

237. The proposed change would ensure that the Judiciary remains the trier-of-fact and does not appear as aiding in the initiation of juvenile matters. The proposed change also lessens the opportunity for the misuse of the petitioning process by the public. Finally, the proposed change would ensure that a central location is available for the petitioning of all cases and to ensure the confidentiality of child protection complainants, which will, over time, encourage such reporting from the community as Liberia progresses in developing a functional and responsive child welfare system.
238. Two layers of amendments may be needed. This provision might be amended to allow “any person” to request that a prosecutor file a petition. The prosecutor would then evaluate the case and determine in the first instance whether there is probable cause to believe the child falls within the jurisdiction of the court and whether a petition is appropriate. Although juvenile court proceedings are civil, they are also quasi-criminal in that they may result in a severe deprivation of liberty (e.g. loss of physical freedom or termination of parental rights).
239. A second layer of amendments might be drafted to provide for a probable cause determination by the judicial officer before a child may be held beyond the first 48 hours and before the child may be temporarily removed from the home in pending the resolution of a neglect case. The probable cause determination would only be necessary if the court intends to detain the child or remove the child from the home in the time between the initial court hearing and the subsequent adjudicatory hearing.
240. *Section 11.33 Substitution of Petition by Court:* As noted above, this provision is valuable because it allows the judge to re-categorize a delinquent child as a neglected child or a child in need of care and protection. Although this provision is a valuable aspect of the code, any substituted petition (e.g. replacing a delinquency petition with a neglect petition) must be accompanied by appropriate due process protections (e.g. notice, hearing, opportunity to be heard, preliminary investigation, determination by the court that there is probable cause to believe that a neglect or ward petition should be lodged, etc.) for the parent accused of abuse or neglect and must be subject to the same evidentiary standards, due process requirements, and timelines presently set forth in the statute.
241. *Section 11.34 Summons; issuance and contents – Amendments:* This section provides that the court must issue a summons unless the parties appear voluntarily.

The provision does not differentiate between delinquency cases and cases involving children needing care and protection or neglected children. The summons is to be “directed to the juvenile involved and may require the appearance of any other person whose presence, in the opinion of the court is necessary.” However, in cases of neglect, a provision is needed to direct the summons to the parent of the alleged neglected child.

242. *Section 11.35 Summons may require immediate custody of juvenile; Section 11.39 Issuance of warrant in lieu of summons; Section 11.41 Procedures for the taking of a juvenile into custody:* These are provisions that clearly apply in delinquency cases. It is not clear from these provisions or from other provisions of the statute how the removal of neglected children is handled prior to the filing of the petition where removal of the child has occurred. It is recommended that where the law refers to detention in relation to children who are alleged to be neglected that the term “removal” be used instead of “taken into custody” to differentiate between the treatment of neglected children and wards versus juveniles arrested as delinquents.
243. Furthermore, as noted repeatedly in this assessment the law does not address the due process rights of parents where there are allegations of abuse, neglect or abandonment.
244. *Section 11.35 Summons may require immediate custody of juvenile – Amendments:* The language of this provision should be amended to require (1) that the peace officer or other person filing (or requesting) a petition swear under oath that the allegations stated therein are true, and (2) that the judge make a determination upon review of the petition that there is probable cause to believe that the court has jurisdiction over the child and that detention is the only way to secure the child’s presence and/or safety.
245. *Sections 11.41(a) and (b) Procedures upon the taking of a juvenile into custody – Amendments:* The language governing timelines is too loose. The language should require that the peace officer notify the parent or guardian “as soon as possible, and not less than 24 hours, unless the parent cannot be located after every reasonable effort.” It is further recommended that Rules of Courts or amendments be made to set forth clear standards that must be met before the court may find that is “impracticable” to give notice to the parent.
246. Section 11.41 needs to differentiate between neglect proceedings and delinquency proceedings. First, in the case of neglected children, the statutory provision regarding release of the child to the parent should be amended to state that “the parent shall promise to appear” him or herself rather than to simply produce the child since neglect proceedings involve allegations that the parent has harmed the child and the parents have a right to defend against the allegations.
247. In addition, children who meet the statutory definitions for neglect or in need of care and protection should not be taken to prisons or detention facilities when

removed from their homes under the following circumstances: (a) neglect or abandonment, (b) inability to locate a parent or guardian, or (c) parental relinquishment of the child to the care of the state. An amendment should be drafted to prohibit the commingling of abused and neglected children with serious delinquents.

248. *Section 11.41(c) Procedures for taking juvenile into custody – Amendments and Court Rules:* This provision is quite confusing and has very significant implications for the detention of children who are arrested, taken into custody, or brought before the juvenile court either as neglected children, delinquent children or children in need of care and protection. First, the provision appears to implicate two timelines (i.e. the required time constraints for police and the required time constraints for the court). Second, the language also makes it unclear whether two types of hearings (preliminary hearings and adjudicatory hearings) or one type of hearing (preliminary hearings only) are being discussed throughout the paragraph. Amendments would be useful to clarify this confusion. In the meantime, written Rules of Court are essential to provide for uniform practice and procedure across juvenile and magisterial courts serving as juvenile courts.

249. With regard to the timelines, the provision requires that the police take juveniles “without unnecessary delay” either directly to the court have jurisdiction over the matter or to the detention facility. The provision then says that the police shall “as soon as possible thereafter” notify the judge that the child has been taken into custody. The provision further indicates that the judge must hold a hearing no later than “the next day the court is in session” to make a preliminary determination of whether the court appears to have jurisdiction. This entire procedure appears to be limited by a 2 day (or 48 hour) time allotment. That is, the statute says that “no juvenile shall be held in such detention without a hearing on the charges for a period longer than 2 days.”

250. There are two points that may lead to confusion. Firstly, it is unclear whether the language “hearing on the charges” refer back to the “preliminary hearing” or whether it refers to the “adjudicatory hearing”? Either way, the language should be clarified to reflect the appropriate hearing. Secondly, The 48-hour requirement appears to mean that both the police and the judge combined have 48-hours combined total in which to bring the child before the court for the hearing (preliminary hearing). Based on our interviews, it appears that the practice is to give the police 48 hours themselves to bring the child to the judge’s attention. This requires additional clarification. Moreover, it is not clear whether Juvenile Court is held every week day and whether “the next day the court is in session” provides adequate protection for the child.

251. The statutory language is further confused by the last sentence which reads “that in no case shall the juvenile be held in detention longer than two weeks without such a hearing.” Again, it is not clear whether “such a hearing” refers to an adjudicatory or preliminary hearing. If it refers to the preliminary hearing (i.e. if it allows for the detention of youth for two weeks before a preliminary hearing) then the statute

clearly violates the Liberian constitution, requiring preliminary examination within 48 hours.

252. *Section 11.41(c) – Amendments and Written Rules of Court:* Of equal concern in the statute is the complete absence of any factors that would guide the judge in the exercise of her discretion as to whether detention pending further action is warranted or not warranted. Basic factors could be provided in statutory amendments and more comprehensive guidelines should be provided in written Rules of Juvenile Court. Written rules and statutory amendments would bring greater uniformity across Juvenile and Magisterial Courts across the country. For example, basic factors that affect detention may include safety of the child and safety of the community. More comprehensive factors provided in Rules of Court may include: evidence of prior property offenses, prior offenses against a person, presence and ability of parents to care for child, likelihood of flight, etc.
253. Finally, Section 11.41(c) does not clearly delineate differences between children who have been taken into custody for delinquency and children who have been removed from parents or guardians or who have no parent or guardian. Rather the statute refers to a determination on the underlying offense(s) that brought the child before the Court. It is recommended that this provision be amended to specifically set forth the required time frames for the initial hearing for parents of children who are taken into custody because of allegations of neglect.
254. *Section 11.42 Detention – Amendments or Rules of Court:* In keeping with the recognition that youth below the age of 18 should be treated as juveniles, this provision of the statute should be amended to provide a strict standard of proof before allowing the juvenile court judge to detain a youth under the age of 18 in prisons, jails, lockups or police stations where adults are housed. Any exception to the general statute prohibiting such detention should be preceded by a due process hearing and a finding by clear and convincing evidence that the child (16 years of age or older) is a menace to or likely to endanger the conduct of juveniles in a juvenile facility and no other safe and suitable place can be secured.
255. *Section 11.42 – Material Needs:* The single most significant shortcoming in the Liberian Juvenile Justice System is the lack of rehabilitative centers and safe and suitable placements that may serve as alternatives to the imprisonment of juveniles. The Juvenile Justice Assessment Team reiterates its recommendation for the government to ensure that a rehabilitation centre is constructed before the end of the year 2007.
256. *Section 11.42 – Amendments or Rules of Court related to Neglected or Abandoned Children:* Section 11.42 sets forth the limitations on the type of facilities that may be used for the detention of juveniles who are charged with delinquent acts and are detained prior to adjudication and disposition. However, the provision does not set forth any limitations on the facilities that may be used for those children who are removed from their parents or guardians, and placed in substitute care. It is

recommended that this statutory provision be amended and that the following issues be addressed:

- a. Types of placements and facilities in which children who are neglected or in need of care and protection can be placed (for example, group homes, foster homes, treatment centers); and
- b. Children who are alleged to be neglected or in need of care and protection shall not be placed with children who are alleged to be delinquent or have been adjudicated delinquent unless otherwise deemed in the best interest of the child based upon an assessment and investigation by the probation officer. However, a child is determined to be both neglected and delinquent may be placed with other neglected juveniles.

257. *Section 11.51 Copy of petition to be furnished prior to hearing:* Section 11.51 requires that the petition be furnished to the child or the parent or other person legally responsible for the child. It is not clear whether the use of the term “furnished” under Liberian law is equal to formal “service of process.” If “furnished” is the language used in Liberian law to identify formal service of process, there is no issue. However, if “furnished” simply means provide a copy without certification of the method and person who provided the copy, it is recommended that the law be amended to set forth the equivalent of formal service as defined in Liberian law and, if not defined, that such definition be provided in the juvenile code.

258. *Section 11.53 Types of hearings; adjudicatory and dispositional – Amendments:* Notwithstanding the plain language of this short paragraph, there appears to be three types of hearings in practice – not two types as listed in this provision. Although this appears to be a minor point, clarification of this provision would go a long way in clarifying the statutory provisions that relate to detention. See e.g. Section 11.41(c) above. The three types of hearings appear to include the (1) preliminary hearing, (2) the adjudicatory hearing and (3) the dispositional hearing.

259. Moreover, it is further recommended that a fourth type of hearing – the post-disposition review hearing – be developed to provide the Court with the ability to periodically review the cases of those children who are under the court’s jurisdiction as wards of the court, adjudicated delinquents or children adjudicated as neglected and remain under court monitoring through the probation officer. The focus of the periodic hearings should be the child’s health status, educational status, safety, the plan for permanent placement or return home and the status of the rehabilitation of the birth parent where return home is the plan. The court should specifically determine whether each child’s health, education, safety and wellbeing are being addressed and whether continued court jurisdiction is in the child’s best interest. If continued court jurisdiction is required, the court should determine what additional services and interventions are needed for the family to ensure a timely return home to parents or other family members available to assume care as well as progress toward adoption or independence for older youth. In anticipation of these post-disposition

review hearings, the probation department should be required to produce written reports.

260. *Section 11.53 Conduct of Adjudicatory Hearings* This provision needs to be carefully re-written to account for the differences in procedures and standards that would apply in delinquency, care and protection, and neglect proceedings.
261. *Section 11.53 – Neglect Proceedings:* As but one example, in neglect proceedings, parents should be afforded due process rights and protections in neglect and abuse proceedings. The parent should have the right to a lawyer and be allowed to cross examine witnesses when there is a risk that the parent’s rights may be terminated.
262. *Section 11.53 – Material Needs:* The statute indicates that “wherever possible, stenographic or other transcript of such hearings shall be required.” As indicated above, a comprehensive system for recording court proceedings needs to be developed so that ALL proceedings can be recorded. This statute should be amended to require transcription in all cases.
263. *Section 11.53 Evidence in adjudicatory hearing – Amendments:* The statute provides no guidance regarding the evidentiary standard and quantum of proof for termination of parental rights. Recognizing the significant deprivation of interests involved in the loss of parental rights, the team proposes that the standard require clear and convincing evidence for termination of parental rights. The standard of proof for a finding that a child is in need of care and protection of the court should also be substantiated by proof beyond a reasonable doubt.
264. *Section 11.53 – Legal Training and Assistance:* As indicated repeatedly in this report, there is a serious lack of legal representation for youth (and for parents accused of abuse or neglect) in Liberia. A cadre of lawyers needs to be identified to protect the legal rights of all persons who appear before the Juvenile Court. For example, lawyers are necessary to help laypersons prepare for cross examination of opposing witnesses, introduce evidence, ensure that the appropriate quantum of proof has been provided and to ensure that confessions by juveniles are both lawfully obtained and not the sole basis for a delinquency adjudication or finding of neglect by a parent.
265. *Section 11.57 Sequence of hearings – Material and Resource Needs:* The Juvenile Court and the Ministry of Health and Social Welfare need resources and personnel that would allow them to engage in a comprehensive investigation of the child’s surroundings, conditions, and capacities and to prepare written reports for the judge 1) in anticipation of disposition, 2) to aid in determination of detention, and 3) for periodic reviews of the status and safety of juveniles before the Court in delinquency, ward, and neglect proceedings.

266. *Section 11.57 – Legal Representation and Assistance:* Lawyers are needed to ensure that juveniles are not being held in detention longer than 10 days pending dispositional hearings (absent good cause found by the judge). Of course, the country needs to develop a comprehensive base of alternatives to incarceration for youth.
267. *Section 11.57 – Amendments:* Section 11.57 (Sequence of hearings) sets a time frame for the disposition hearing in delinquency matters but does not set a time frame for the disposition hearing in neglect or child in need of care and protection cases. It is recommended that a time frame be established by statute for disposition in these matters and that the time frame should not exceed 15 days since the disposition hearing is designed to determine the interventions necessary for the child and the family to ameliorate the circumstances that lead to court involvement and to determine the plan and timeline for a permanent placement of the child.
268. *Section 11.57 Evidence in disposition hearings; quantum of proof – Rules of Court:* This statutory provision does not identify factors that should be considered in deciding what disposition is appropriate in any given case. Rules of court should specify what evidence should be collected and presented to the court and what evidence the court may consider in reaching his/her determination. These Rules of Court would be helpful not only for the Juvenile Court and Magisterial Judges, but would also provide guidance to the probation department assigned to investigate and write a pre-disposition report for the judge.
269. *Section 11.57 Probation Reports to be used only in dispositional hearings – Amendments:* This statutory provision is troubling because it provides that the court “in its discretion may withhold [the probation report prepared for disposition] from or disclose in whole or in part to the law guardian or counsel for the juvenile, other party in interest or other appropriate persons.” The child’s lawyer (or the lawyer for the parents in neglect cases) cannot effectively advocate for the child without access to the reports. Any disposition must be substantiated by evidence that meets the standard of preponderance of the evidence. The parties cannot challenge the evidence without access and opportunity to review the report. As a result, this statutory provision should be amended to require disclosure of the probation report to the child’s lawyer in delinquency and ward cases and to the parent or lawyer of the parent in neglect cases. Until termination of parental rights occurs, the parents have a liberty interest in being integrally involved in the determination of the care and well being of their children.
270. It is further recommended that Section 11.59 clarify and differentiate between disposition reports prepared for delinquency, wards of the court and neglect cases.
271. *Section 11.71 Disposition of Juvenile Delinquents – Amendments:* Provisions (c) and (e) of this section indicate that suspended judgments (with or without conditions) and probation shall be for a maximum term of 1 year and 2 years, respectively. However, in both instances, the court is allowed to extend jurisdiction for an additional year under exceptional circumstances. Due process protections (including

notice, hearing and opportunity to be heard) should be guaranteed to the child before any extension of probation can be ordered.

272. It is further recommended that Subpart (f) be reviewed to determine whether the statute should be amended to extend the possible age of commitment at the Vocational Institute to age 21.
273. *Sections 11.71, 11.72 and 11.73 Dispositions – Amendments, Rules of Court and Ministerial Regulations:* In each of these dispositional provisions there is reference to various facilities, training institutes, youth organizations, residence halls, foster homes, etc. for the placement of youth who appear before the juvenile court. There needs to be a comprehensive system of governmental oversight for the monitoring of the quality and caliber of these facilities as a whole as well as a system for the monitoring of individual youth placed in these facilities. The probation department should provide periodic written reports to the judge and the appropriate Ministry should prepare periodic written reports on the caliber of the facility.
274. To this end, the Court may draft Rules of Juvenile Court requiring periodic judicial review hearings during which the probation officer may report on the progress and welfare of the child.
275. *Section 11.71 Disposition of Wards of the Court (for care and protection):* The definitional provision (Section 11.11(c)) which defines a juvenile in need of care and protection includes juveniles who are loiterers, beggars, runaways, and habitual truants among others. Every effort should be made not to treat these children as serious delinquents. To that end, juveniles in need of care and protection (i.e. for loitering or begging, etc.) should never be detained in prisons or incarcerated with serious juvenile offenders.
276. *Section 11.71 Disposition of Wards of the Court (neglect):* The provision sets out the possible dispositional alternatives available to the court when juveniles are adjudicated to be a neglected child. The dispositional conditions (e.g. suspended judgment with conditions, probation, removal of the child from the home) all clearly apply to and/or affect the parent or guardian of the neglected child; however, there are no due process protections (notice, hearing, opportunity to be heard, legal representation, etc.) provided for the parents of children alleged to be neglected. It is recommended that the entire code be amended to provide for the due process rights of parents who are accused of abuse, neglect or abandonment.
277. In the cases of neglected children and children in need of care and protection, the disposition hearing should address the timeframes for the return of the child to his or her home, for the termination of parental rights, and for services to be provided to the child and the parents if family reunification is anticipated.
278. Subpart (b) allows for the release of the neglected child to the parent or person with legal responsibility for the child with monitoring by the probation officer while

subpart (c) does not provide for monitoring of the child when placed with a relative or in the care of the Director General of the Public Welfare Agency. It is recommended that this provision be reviewed to specifically include language requiring the “aid and advice of the Bureau of Child Welfare” as found in Section 11.93 (b), which describes the duties of the probation officer in these matters.

279. *Section 11.73 Consent decrees: Pre-judicial disposition:* This provision provides a method for resolution of the juvenile matter without an evidentiary hearing. It is recommended that this provision be amended or Rules of Court be developed to require that the consent decree be sworn to in open court by the party entering into the consent decree and that the court be required to ensure that the decree has been entered into freely, voluntarily and without threats or promises. This provision should apply to delinquency, neglect and children in need of care and protection cases equally.
280. *Section 11.91 Right to Counsel:* The existing Juvenile Code provides a good framework for the right to counsel for children who risk institutional confinement. Section 11.91 of the Juvenile Code very clearly declares the right of juveniles to be represented by counsel in any Juvenile Court proceeding which may result in the institutional confinement of the juvenile. Assuming that “institutional confinement” is read broadly to include the “Youth Camp,” a youth opportunity center, a child welfare center supervised by the Bureau of Child Welfare, and institutions suitable for the placement of neglected children, the right to counsel extends to children in delinquency, neglect and care and protection proceedings. The provision defines “law guardian,” indicates that juveniles should be advised of their right to counsel, and provides for the immediate consultation of counsel when requested. The declaration is explicitly “based on a finding that counsel is often indispensable to a practical realization of the process of law and may be helpful in making reasoned determinations of fact and proper orders of disposition.”
281. *Section 11.91 – Amendments:* It is recommended that two concerns be addressed in the statute regarding the representation of children. Firstly, the term “institutional confinement” needs to be defined and defined broadly and inclusively to cover alternatives to incarceration. Secondly, the law appears to put the onus on the child to request counsel. As the cadre of qualified lawyers grows, the system should provide lawyers to the child automatically, without requiring the child’s request. Children (and their parents) rarely understand the need for and importance of legal representation.
282. As an important additional concern, the existing Juvenile Code offers no provision of the right to counsel for parents who are accused of abuse and neglect and risk the temporary or permanent loss of parental rights. As discussed throughout this assessment, the rights of parents have not been addressed in the Juvenile Code.
283. *Section 11.92 Court May Require Medical and Psychiatric Examinations – Amendments and Rules of Court:* This provision allows the Juvenile Court to order

either medical and/or psychiatric examinations either on an in-patient or out-patient bases. When the evaluation is performed on an in-patient basis, the child may be remanded to a hospital or psychiatric institution. This provision must be amended to provide for comprehensive due process protections (e.g. notice, hearing, opportunity to be heard, written findings by certified psychiatrist, psychologist or medical doctor that evaluation cannot be conducted on an out-patient basis, etc.) Rules of Court should be drafted to supplement and explain the appropriate procedures for an in- (or out-patient) evaluation ordered by the juvenile court.

284. The statute should also be amended to indicate that statements made by juveniles or others evaluated at the direction of the court may not be used against the child in an adjudicatory proceeding where there is a risk that he/she may be confined outside of his/her home

285. *Section 11.93 Probation Services, Investigation – Need for Further Investigation:* The Juvenile Justice Assessment Team did not meet with any representatives from the probation office and did not get an adequate view of the current capacity of the probation department. Statutory provision Section 11.93 requires the probation officer to report regularly to the court concerning the welfare and progress of the child. Based on interviews conducted, this does not appear to be happening. Written Rules of the Court are needed to delineate the frequency and content for the interim reports by the probation officer to the court. As noted above, the team recommends that Court Rules or Statutory amendments be drafted to require post-disposition review hearings in which the probation officer provides a written and oral report for the court's review. In delinquency, neglect and care and protection cases, the child and the child's legal representative shall be present at these hearings and be given an opportunity to be heard. In neglect cases, the parent and his or her legal representative should be present and given an opportunity to be heard in addition to the child.

286. The Juvenile Code also requires the probation officer to find proper residence and employment for youth released from the Youth Vocational Training Institution. The Training Institution does not presently exist, but it is not clear what involvement probation does or will have in the placement of youth released from any juvenile facility.

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