

# **Report on Child Justice in Zambia with reference to UNICEF supported projects**

**by**

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## Executive summary

This study was commissioned by UNICEF as a follow-up to the Situational Analysis of Child Justice in Zambia undertaken by the same researcher in 2000. The terms of reference required two broad areas of delivery. The first is a context description of Zambian child justice in 2005 reflecting upon the 2000 Situational Analysis. Secondly, in response to the 2000 Situational Analysis, three pilot projects were designed and supported by UNICEF and the donor community. The task was to evaluate these three pilot projects.

The fieldwork for the study was conducted over a two week period in May 2005 and involved site visits, inspections, interviews and focus group discussions with a substantial number of stakeholders, including children in the criminal justice system. The absence of accessible and accurate documented data placed a substantial limitation on the study.

On a general level it can be concluded that an increased awareness and sensitivity towards children's rights in the criminal justice system were observed in nearly all the sites visited during the fieldwork. This has, however, not translated into a general improvement in service delivery (especially outside of Lusaka) and children are still subjected to nearly all of the ills, misuses and delays that were observed in 2000. The problems experienced by Zambian society make it increasingly difficult to advance the rights of a relatively small group (child offenders) when the poverty and suffering is so vast and pervasive.

Since the Situational Analysis was completed in 2000, the UNICEF Child Protection Unit has played an instrumental and stabilising role in the child justice reform process in Zambia through providing strategic in-puts, technical advice, capacity building and financial support. Seen together, these culminated in three pilot projects that are evaluated in this report.

The three pilot projects are as follows:

- Arrest Reception and Referral Service for arrested children (ARRS)
- Child Friendly Court (CFC)
- Diversion Programme operated by an NGO.

The ARRS aimed to centralise all arrested children in three (later two) police stations in order to ensure that resources are available and concentrated at the correct point in the criminal justice process. The centralisation of arrest also enables more accurate monitoring and prevents children from being “forgotten” in an outlying police station. The ARRS further enabled that children may be detained separate from adults, if it is indeed necessary to detain the child. There have been

substantial inputs from UNICEF, the donor community and government to establish the ARRS. On a general level it can be concluded that the ARRS fostered inter-sectoral cooperation and increased awareness and knowledge on children's rights in Lusaka. The support from the police's Victim Support Unit is significant in this regard. The ARRS still faces substantial challenges that primarily relate to case management and the development of key performance indicators to ensure that service delivery is improved.

The CFC was first based at the Chikwa Court and later moved to the Boma Court . All cases involving children were heard in one court that was staffed with trained officials including social workers. This was the practice until the end of 2004 when, for reasons that are not entirely clear, the centralisation of cases was suspended and cases are now heard in any of the courts in the city. The CFC was also adversely affected by staff turnover, a prevalent problem in the Zambian context. Until the end of 2004 the CFC apparently functioned well and those officials that had been trained, were applying these skills. The CFC does, however, need to formalise its operating procedures and come to a closer understanding of "child friendliness". The CFC also needs to fulfil a stronger oversight and monitoring role.

The diversion programme operated by an NGO, RYOCHIN (Rural Youth and Children in Need), was borrowed from a South African NGO. The programme fills a desperate need in the Zambian criminal justice system but it is facing a number of challenges. Low referrals, low outputs, organisational and skills-related challenges are some of the most pertinent issues requiring attention.

In addition to the pilot projects, an assessment was done of the Child Justice Forums (CJF) and the crime prevention programme that were supported by UNICEF and the donor community through RYOCHIN. RYOCHIN trained role players in children's rights in five towns so that they could establish child justice forums that would work towards the improvement of children's well-being in the criminal justice system in that particular area. The CJF would have representation from key government officials and interested NGOs. The forums are regarded as a key ingredient for a transformation process of the child justice system. The training that the forums received focused on children's rights and whilst this was useful and contributed to general knowledge and awareness of children's rights, it did not enable the forums to be effective at inter-sectoral cooperation, accurate monitoring and accountability. Additional support and training would be required here.

The crime prevention programme that RYOCHIN implemented in 2001/2, is difficult to evaluate since there is no baseline data and detailed intervention reports. An assessment was therefore done based on available data and extant literature. The programme was found to have serious design difficulties and sustained impact is therefore unlikely.

Assessing the overall impact of the pilot projects on child justice reform in Zambia, it is concluded that the pilot projects has enabled the development of the central building blocks by introducing and

ensuring acceptance of the key strategies for improving the well-being of children in the criminal justice system. These are arrest and referral management, diversion and a child-friendly court. The challenge now lies in translating the lessons learned and policies developed into improved service delivery on a general scale.

The report concludes with a number of overall recommendations, the most pertinent of which are:

- *Law reform*: The current legislation is antiquated and is increasingly an impediment to transformation and improved service delivery. It is therefore recommended that law reform be embarked upon as a matter of priority. The scope of law reform should be determined from the outset and if a comprehensive reform process is not possible, then certain key concepts and standards need to be reviewed. In this regard, special attention should be given to the definitions of child, age of criminal capacity, custodial sentencing, remand period, diversion and certain offences.
- *UNICEF*: UNICEF needs to support initiatives conforming to three requirements of equal importance. Firstly, good governance principles need to be complied with, with specific reference to management skills, ability to deliver and quality control. Secondly, initiatives need to be in support of democracy and children's rights by ensuring access to justice aimed at holding the rights of children as paramount. Thirdly, crisis points need to be addressed as priority areas, and specific reference is made to children deprived of their liberty.
- *Orphans and vulnerable children (OVC)*: The OVC recommendations framework, as espoused in the summary report<sup>1</sup>, provides a useful guideline to the general donor community on areas to focus on in the criminal justice framework. It is especially Recommendations 2 and 6 that are relevant in the criminal justice context:
  - *Provide adequate legal and regulatory protection for OVC*
  - *Introduce comprehensive programmes to address the needs of children without parents or adult caregivers.*

The key result areas identified in the recommendations overlap to a large extent with more detailed recommendations made throughout this report. These recommendations should be interpreted for their application to children in vulnerable situations (i.e. in the criminal justice system) as oppose to their orphan status.

- *A ten point plan*: It has been close to five years since the Situational Analysis was conducted and whilst improvements have occurred (primarily in Lusaka) it cannot be concluded that there has been a general improvement in service delivery. It is therefore recommended that in order to kick-start a reform process that is explicitly aimed at improved service delivery, that an action plan with not more than ten key deliverables is widely consulted upon and that this be communicated thoroughly to all levels of government and civil society.

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<sup>1</sup> Ministry of Youth, Sport and Child Development (2004) Orphans and Vulnerable Children in Zambia: 2004 situational Analysis (Summary report), pp 2-4.



- *Strengthen diversion:* Diversion has been shown to be effective in avoiding prosecution and conviction and, even under the current legislative framework, it is possible to implement. In view of this it is recommended that diversion programmes be expanded by:
  - Training the appropriate role players
  - Supporting service providers
  - Developing guidelines for diversion
  - Implementing standards for diversion programmes.
- *Set key indicators of performance:* Following from the above, it is essential that officials and NGOs working with children in the criminal justice system are clear on what the key performance indicators for service delivery are, and that these are monitored on a continuous basis. Performance indicators should be simple and clear, but more importantly, they should make sense in terms of the relevant human rights standards and relate to performance measurement.
- *Create stability through the insertion of staff at coordinating functions:* The high turnover of staff in the Zambian civil service has an adverse effect on the overall process of child justice administration as training is lost or key relationships ended. In view of this, it may be incumbent on the donor community to insert staff into key coordinating positions for a minimum of three years to ensure that systems and procedures are established and maintained through the development of institutional knowledge. It is proposed that provincial coordinators be inserted at the appropriate rank.
- *Urgently address information systems:* Accurate recording and monitoring is central to delivering on a reform process. The current information systems fall far short in providing management with an accurate picture. Investments in information management will be wise.
- *Develop a programme of oversight:* It will be strategically sound if an internal but independent mechanism of oversight and inspection was established to provide reporting to Parliament on a regular basis (eg. twice a year) on the state of children in the criminal justice system. Such reports need not provide a comprehensive review every six months, but may deal with particular focus areas depending on what are regarded as the priorities. It is recommended that this inspection mechanism takes the form of a Judicial Inspectorate that reports to Parliament.
- *Agree with government on financial support framework:* Whilst government is under pressure in terms of spending, it should not preclude discussions at this stage already exploring models of (government's) financial support for child justice reform. It is regarded as an important development to explore future support models as government needs to demonstrate that it accepts its responsibility towards children in the criminal justice system, as it is assumed in the signing and ratification of the CRC.
- *Give more publicity to child justice:* Whilst there is a growing awareness of children's rights, there remains substantial ignorance in relation to children in conflict with the law. Two immediate initiatives are therefore recommended:

- Host a regional conference aimed at developing solutions for Zambia that involves the SADC region
  - Commence with a media campaign that publicises the fate of children in the criminal justice system but that also profiles success stories, for example, diversion or the new child friendly court.
- *Develop a more comprehensive training programme for CJFs:* The CJFs will be a key ingredient in the transformation process and they therefore need to understand their role clearly and have the ability to perform their key functions effectively.
- *Parliamentary information programme:* Parliament has had limited exposure to child justice and one submission has been made [by UNICEF (Head of Child Protection Section), Child Justice Forum, Ministry of Youth, Sport and Child Development]. The Parliamentary committees form an important component of good governance and advocating for child justice reform, for the executive need to account to parliament on its performance. It is therefore recommended that civil society creates a parliamentary information programme regarding child justice. This information programme need not focus on one committee only and may need to address the information needs of more than one committee that has a responsibility towards children and social services.
- *Research and documentation programme:* For Zambia to embark on a process of child justice transformation it is vital to build up a body of local knowledge and recorded experience. A research and documentation programme will therefore greatly enhance the quality and speed of the transformation process by ensuring that the process is knowledge-based.

## SECTION A INTRODUCTION, BACKGROUND AND METHODOLOGY

### 1. Introduction<sup>2</sup>

In 2000, a study on Child Justice was commissioned by the Ministry of Home Affairs in collaboration with UNICEF, Danish and Swedish Embassies, and Department for International Development (DFID). The overall purpose of the study was to describe the current situation relating to Child Justice in Zambia and analyse how children experienced the system when they come into conflict with the law. Findings of the study included:

- Many children are arrested for petty offences that could have been dealt with outside the criminal justice system
- Few children appear with legal representation and little effort is made to obtain such
- Pre-trial detentions are common, with the average period being three months
- Children who come into conflict with the law are still being detained in prisons and not in places of safety
- The supervision of probation orders was beset by practical and theoretical problems.
- Law enforcement officers did not receive any training to equip them to deal with children who come into conflict with the law.
- Children, when detained, were still not being separated from adults and were kept in an environment that exposed them to a high risk of contracting HIV/AIDS, sexually transmitted diseases (STDs), and tuberculosis (TB), and other transmittable diseases.

The recommendations of the study included, among others:

- The detention of children in police cells should be avoided and, as far as possible, be used truly as a measure of last resort.
- The police should, without fail, and as soon as possible inform the parents/guardians of a child of his/her arrest.
- The police should, without fail, inform the nearest social welfare officer when a child has been arrested.
- Alternative community-based options for remanding child offenders should be established as a matter of urgency.

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<sup>2</sup> I would like to express my sincere appreciation to Gaby Fernandez and Moses Kiiza from UNICEF (Child Protection) who made this research possible. My gratitude is also extended to the large number of government officials and NGO representatives who were interviewed and allowed me into their institutions. A word of appreciation to Charles Mukoko, the UNICEF driver, who ensured our safety on the road. Lastly, I am indebted to the children who were interviewed and gave me their honest opinions on their experiences.

- Diversion options need to be established as a matter of urgency.
- Efforts should be made to develop child friendly courts.
- All key role players such as magistrates, social welfare, police and prisons officers, should be trained on the administration of child justice.

To implement the recommendations of the study, the following undertakings were made:

- A Child Justice Forum (CJF) was initiated by UNICEF and established in 2001 in Lusaka and operates as an open-ended group of role players and stakeholders. Its aim is to provide guidance on the transformation of the child justice system by ensuring adherence to the standards set out in the CRC and other international instruments such as the UN Standard Minimum Rules for the Administration of Juvenile Justice (commonly referred to as the Beijing Rules); the UN Guidelines for the Prevention of Juvenile Delinquency (commonly referred to as the Riyadh Guidelines); and the UN Rules for the Protection of Juveniles Deprived of their Liberty (referred to as the JDLs).
- Three police stations (Central, Kabwata and Matero) were designated to operate as Arrest, Reception and Referral Services (ARRS).
- A Child-friendly Court was established at Chikwa and later moved to the Boma Magistrates Court next to the Central Police Station in Lusaka.
- A Diversion programme is being run by RYOCHIN at Kalingalinga Youth Resource Centre linked to the Boma Court.

From 2000/1 to date, the UNICEF Child Protection Unit has played an instrumental role in the child justice reform process through strategic in-puts, technical advice and financial support. More specifically, this has been achieved through the supply of required materials and equipment; capacity building through supporting orientation and training of role players; and technical assistance. Appendix 3 provides a historical overview of child justice reform initiatives (primarily supported by UNICEF) in Zambia since 2000. Appendix 6 provides a map of Zambia.

## **2. Objectives and timing of the study**

The objective of the evaluation is to assess to what extent the recommendations of the 2000 study were implemented, and, more specifically to assess the impact of the Child Justice Programme. Particularly, an assessment will be undertaken of the three pilot projects (ARRS, the Child Friendly Court and the Diversion Programme), and within that context, to assess the strengths and weaknesses of the administration of child justice in Zambia.

Specific evaluation activities included:

- Discussion with role players through interviews and focus group discussions in the three pilot projects: Child Friendly Court; Arrest Reception and Referral Services (ARRS) centres; and

the Diversion Programme;

- Discussions with key government officials relevant to the successful roll-out of Child Justice;
- Visits and discussions with child offenders and authorities at reformatories and probation hostels, including the issue of girls who come into conflict with the law; and
- Finally, to make recommendations to improve and expand the administration of child justice nationally.

Geographically the following areas were visited: Lusaka, Kabwe, Choma, Mazabuka, Livingstone, Ndola, and Kitwe. In these areas the following stakeholders were engaged: magistrates, police personnel, social welfare officers Katombora Reformatory School, Insakwe Probation Hostel and Nakambala Approved School.

Key role players engaged in Lusaka were:

- the Permanent Secretary of the Ministry of Home Affairs ;
- the Chief Justice;
- the Chief Administrator;
- role players running the three pilot projects;
- Child Justice Forum Members;
- Acting High Court Registrar
- UNICEF and other donors.

The timing of the study (May 2005) is significant for a number of reasons. First, it has been nearly five years since the original study in 2000 and therefore has allowed for a sufficient time lapse to assess progress made. Secondly, Zambia submitted its state party report to the Committee on the Rights of the Child in November 2001 and the committee reviewed it in May 2003. The Committee, in para 72, made ten recommendations that overlapped to a large extent with the recommendations made in the Situational Analysis on 2000<sup>3</sup>. Thirdly, UNICEF needs to make strategic decisions with regard to its support programmes and the evaluation will therefore inform these decisions as it pertains to child justice.

### **3. Human rights issues**

This study is undertaken to investigate the situation of child rights as observed in the criminal justice system in Zambia. The standards being used are derived from the Convention on the Rights of the Child (CRC) and the international instruments derived from that. The recommendations that were developed in 2000 focused on a number of areas considered to be critical to children's rights but not resource-intensive to improve.

UNICEF has developed a set of basic indicators for the monitoring of children's well-being in the criminal justice system and these are<sup>4</sup>:

- Children in Detention
  - Total number of children in detention
  - Proportion of children in detention in the pre-trial stage, over the total number of children in detention
- Duration of Detention
- The number of children sentenced to detention for
  - less than one year
  - one to five years
  - five to ten years
  - more than ten years
  - life imprisonment
- The average length of pre-sentence detention
- Children coming into contact with the juvenile justice system
  - Number of children
    - arrested
    - referred to pre-trial diversion measures
    - tried
      - \* *dismissed*
      - \* *acquitted*
      - \* *convicted and*
    - sentenced to custodial measures
    - sentenced to non-custodial measures
- Existence of a juvenile justice system
  - Existence of specialised courts and/or procedures and/or dispositions or measures applicable to children
  - Ratio per 1 000 arrested children of trained specialised professionals among:
    - judges
    - lawyers
    - prosecutors
    - police
    - social workers/probation officers
- Separation from adults

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<sup>3</sup> Committee on the Rights of the Child (33<sup>rd</sup> Session 19/5/2003 to 6/6/2003) Considerations of report submitted by states parties under Article 44 of the Convention - Concluding observations – Zambia, CRC/C/15/Add.206, pp.15.

<sup>4</sup> ARTICLE 40, Volume 5, No. 4, December 2003, [http://www.communitylawcentre.org.za/children/2003art40/vol5\\_no4\\_unicef.php#unicef](http://www.communitylawcentre.org.za/children/2003art40/vol5_no4_unicef.php#unicef)

- Proportion of children in detention who are not separated from adults:
  - in police cells
  - in detention facilities/prisons
- Conditions for control of quality of services for children in detention
  - Existence of a system guaranteeing mandatory visits by magistrates/judges
  - Existence of a system guaranteeing regular visits by external, independent persons and bodies
  - Proportion of children not being visited by parents or relatives over the last six months
- Protection from torture, violence, abuse and exploitation
  - Existence of legal provisions prohibiting torture, inhuman and degrading treatment or punishment
  - Existence of safe, accessible and child-sensitive complaint mechanisms for children
  - The number of reported cases of violations
  - Proportion of reported cases followed by penal or administrative sanctions
- Prevention
  - Existence of a national programme for the prevention of juvenile offending that has at least 3/5 of the following components:
    - Family support services
    - Community-based programmes for vulnerable groups
    - Programmes for prevention of drugs, alcohol abuse
    - Educational support programmes
    - Involvement of mass media in prevention
- After-care
  - Proportion of children in detention benefiting from an after-care programme lasting at least six months following release.

The intention here is not to provide a detailed report in terms of the nine indicators outlined above but rather to highlight some of the critical aspects that the indicators allude to, such as detention conditions and torture. Given the particular Zambian context of a highly indebted poor country, the interpretation of “standards” was done with the appropriate sensitivity and recognition of the challenges faced by the Zambian government. The Committee on the Rights of the Child in its response<sup>5</sup> to the Zambia State Party Report<sup>6</sup> on the implementation of the Convention on the Rights of the Child was quite direct in its recommendations on improving child justice. These are regarded as the minimum requirements that should be aspired to and sets the standard for the interpretation of children’s well-being in the criminal justice system in this report. For the benefit of the reader some pertinent recommendations made by the committee are presented below:

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<sup>5</sup> Committee on the Rights of the Child (2003) Consideration of reports submitted under Article 44 of the Convention, 33<sup>rd</sup> Session, 19 May – 6 June 2003, CRC/C/15/Add.206.

<sup>6</sup> Government of the Republic of Zambia (2002) Initial and first periodic Report on the Implementation of the UN Convention on the Rights of the Child, Lusaka.

- . . . the State party take all appropriate measures to implement a juvenile justice system in conformity with the Convention, in particular articles 37, 39 and 40 [and other international instruments]
- raise the age of criminal responsibility
- establish an adequate number of juvenile courts across the country and appoint trained juvenile judges
- ensure that the right to legal representation or other appropriate assistance is guaranteed
- ensure that detention, including pre-trial detention, is used only as a measure of last resort . . . and that greater efforts be made to provide alternatives to detention
- guarantee separation from adults in prison and in pre-trial detention places all over the country
- strengthen rehabilitation and reintegration programmes<sup>7</sup>.

## **4. Methodology**

### **a. Overview**

The Zambian context is all important in terms of understanding the challenges faced at ground level by officials, NGOs and ultimately children. In view of this, and to build on the Situational Analysis, this study was divided into two broad areas. The first is a description of children in the criminal justice system in general, as it was observed in the Copper Belt, Lusaka and Southern Provinces during the fieldwork undertaken in May 2005. This attempts to provide an update on the 2000 Situational Analysis and also to sketch the context of children's rights in the criminal justice system in Zambia. Secondly, a specific evaluation is provided of the three pilot projects and the child justice forums that were supported by UNICEF. They are naturally situated within the overall context of Zambian child justice.

The fieldwork is also supported by a literature review of the relevant documentation as supplied by UNICEF, in addition to extant literature on the topic. See Appendix 4 for a list of the project specific documents that were consulted in the research process.

### **b. Interviews, focus groups and ethics**

The following table provides the schedule for interviews, meetings and focus group discussions that were undertaken as part of this study. Appendix 2 lists the themes that were explored with the various individuals and groups. Depending on the discussion and the particular context, some

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<sup>7</sup> Committee on the Rights of the Child (2003) Consideration of reports submitted under Article 44 of the Convention, 33<sup>rd</sup> Session, 19 May – 6 June 2003, CRC/C/15/Add.206. p 14-15.



discussions were held in a more structured format, whilst others were done in a more informal conversational manner. It also occurred on more than one occasion that an appointment was made with a particular official, for example the OIC of a police station, but that other interested individuals would also arrive for the meeting. In one instance this group exceeded ten officials. In these circumstances it became difficult to continue with a semi-structured interview as conversations ensue between individuals and so forth. The interview then took on rather the form of a focus group discussion.

**Table 1 List of persons interviewed**

<b>DATE &amp; TIME</b>	<b>NAME</b>	<b>POSITION</b>	<b>COMMENT</b>
<i>3/5/2005</i>			
0830	Mr GF Makambwe	Director: Dept of Social Welfare	
1000	Mr Peter Kanunka	Coordinator: Victim Support Unit	
1215	Dr S Goings	UNICEF Representative	
1400	Child Justice Forum	See minutes	
<i>4/5/2005</i>			
0800	Capt Nanguzyambo	Director: Legal Aid Directorate	
1000	Mr P. Mumba	Permanent Secretary: Ministry of Home Affairs	
1300	Mr Nawa	Deputy Commissioner of Prisons (Kabwe)	Visit to Mukobeko Prison not possible due to delayed paper work.
<i>5/5/2005</i>			
0800	Mrs Makubale	Magistrate (Ndola)	
0830	Asst Suprt Mbewe (and other staff)	2IC Ndola Central Police Station	
	OIC	Masala Police Station	
	2IC	Kansenshi Police Station	
1430	Mr Nkonde	Director: Ndola Remand Prison	
1500	Five boys	Ndola Remand Prison	
1530	Mr Lungu, Mr Kaluba	Insakwe Probation Hostel	
<i>6/5/2005</i>			
0830	Mr P. Mumba	District Social Welfare Officer, Kitwe	
0900	Mr Lungu	Social Welfare Officer, Kitwe	
1010	Mr J. Lungu	OIC, Wusakile Police Station, Kitwe	
11:05	Mr Mayinga	2IC, Central Police Station, Kitwe	

<b>DATE &amp; TIME</b>	<b>NAME</b>	<b>POSITION</b>	<b>COMMENT</b>
1230	Mr Membe	OIC, Kanfinsa Remand Prison	
1330	Five boys	Kanfinsa Remand Prison	
1500	Mr Chimwe	2IC, Mindolo Police Station	
1650	Staff	Salem's Children's village	
<i>7/5/2005</i>			
1100	Mr Kalota Mr Katota	From Commissioner of Prisons Office OIC Mukubeko Medium Prison	
1130	Five boys	Mukubeko Medium Prison	
1200	17 year old male prisoner	Mukubeko Maximum Prison	
<i>9/5/2005</i>			
1130	Mr DS Matakala	Dir: Nakambala Approved School	
1300	Mr Kunga	Social Welfare Officer: Choma	
1315	Mr Kafinda	Magistrate, Choma	
1600	Mr Chilambe	OIC Choma Prison	
1700	Constable Phiri	Choma Police (VSU)	
<i>10/5/2005</i>			
1030	Mr Walumba	Livingstone Provincial Social Welfare Officer	
1120	Mr Limbani	Magistrate Livingstone	
1155	Mr Makanga	OIC Livingstone Police Station	
1240	Mr Shaloba Mr Kawisha	OIC and 2IC of Livingstone Prison	
1500	Mr Chyota	Superintendent Katombora Reformatory	
1645	Five boys	Katombora Reformatory	
<i>11/5/2005</i>			
1600	Dr S Goings	UNICEF Representative	
<i>12/5/2005</i>			
0830	Mr Siavwapa	Acting Registrar of the High Court	
0915	Ms LLB Kamukoshi	OIC Lusaka Central Police Station	
1045	Ms Sandra Ndlovu Ms Viola Nkhata	Social Welfare Officers, Lusaka	
1145	Const Chipili Const Simpleti	VSU, Kabwata Police Station	
1330	Ms I Kaluluma Mr Changubabi	VSU Matero Police Station 2IC Matero Police Station	
1400	Mr A Mofya	RYOCHIN Staff and Director	

DATE & TIME	NAME	POSITION	COMMENT
	Mr J Mwamba Mr C Kaluba Mr P Chileshe		
13/5/2005			
0830	Ms L Holmqvist	Child Justice Forum Secretariat	
1045	Mr Mutati	Kamwala Remand Prison	
1130	Five boys	Kamwala Remand Prison	
1400	Ms G Chawatama	Former registrar, Lusaka	Telephonic interview
16/5/2005			
1750	Ms Ngosa Kaloto	Child Justice Forum Secretariat	
24/5/2005			
1400	Group of 4 boys and one girl who have participated in diversion programme	RYOCHIN	Interview done by M. Kiiza

A total of 39 interviews involving 54 respondents were conducted during the fieldwork. One interview had to be conducted telephonically as the respondent was not available in Ndola when the research team was in the area.

It will be noted from the schedule that discussion groups were held with children who have been exposed to or are currently in the criminal justice system. If the children were in custody at the time, permission was sought from the head of the institution prior to the interviews. Prior to the commencement of the interviews it was explained to the children that their participation was voluntary and anonymous. Please see Appendix 1 for the full statement that was given to the children prior to the commencement of the interviews or discussion groups. In the case of children who were not in detention, permission was sought from their parent/guardian prior to the interview and an adapted version of the statement referred to above was read to the children prior to the commencement of the interview or discussion group.

### **c. Stakeholder participation**

The above section provides the details of the stakeholders engaged in the fieldwork. These can be categorised accordingly:

#### *Government departments*

- Ministry of Home Affairs
  - Department of Prisons
  - Zambian Police
- Ministry of Community Development and Social Services

- Department of Social Services
- Ministry of Youth, Sport and Child Development
  - Department of Child Development

*Non governmental organisations (local)*

- Rural Youth and Children in Need (RYOCHIN)
- Salem Children's Village

*Non-governmental organisations (foreign)*

- SIDA

*UN Agencies*

- UNICEF

*Foreign governments*

- Government of Sweden

*Coordinating structures*

- Child Justice Forum in Lusaka
- Child Justice Forum in Ndola
- Child Justice Forum in Kitwe
- Child Justice Forum in Livingstone
- Child Justice Forum in Choma

*Children*

- Children detained in Ndola Remand Prison
- Children detained in Mukobeko Medium Security Prison
- Children detained in Kanfinsa Remand Prison
- Children detained in Katombora Reformatory School
- Children detained in Lusaka Central Remand Prison
- Children who have participated in diversion programmes
- Children in various police stations

Whilst the study is being funded by UNICEF, the Lusaka Child Justice Forum was given an opportunity to provide input on the terms of reference as well as the final design of the study at a meeting on 2 May 2005 prior to the commencement of the fieldwork.

**(d) Limitations to the study**

Despite the excellent support that was received from UNICEF and the relevant government departments, a study of this nature will have some limitations that need to be acknowledged.

There is limited research available on child justice in Zambia and to the knowledge of the author there have not been any significant works published since 2000. Earlier sources are dealt with in the 2000 Situational Analysis.

Record-keeping in government departments as well as the NGOs involved in child justice is not of the desired standard, and the quantitative data presented in this report was generated during the field work with the cooperation of the relevant department or NGO. There is no existing electronic or other data base on which information is recorded on a continuous basis that can be verified against a paper trail.

Progress reports from the UNICEF grant recipient are not complete and lack verifiable data.

The fieldwork was undertaken over a 15 day period and the schedule could be described as demanding. If more time were available, undoubtedly more first hand information would have been obtained. The time limitations and the availability of certain individuals precluded face-to-face interviews and in one instance, a telephonic interview was resorted to. A small number of individuals, who were regarded as potentially valuable sources of information, were unfortunately not available for an interview during the fieldwork phase of the project.

The larger portion of fieldwork time was spent outside of Lusaka looking at the state of child justice in other areas. This was regarded as an important part of the process as the terms of reference required this with good reason. This does however not mean that the pilot projects are of lesser significance; the two components of the work should be seen together, with the pilot projects being of particular significance.

## SECTION B SITUATIONAL AND CONTEXT DESCRIPTION

The 2000 Situational Analysis provides a detailed description of the state of child justice in Zambia as observed then. The purpose here is not to provide a full update of that report but rather to highlight pertinent points and their impact on the well-being of children in the criminal justice system. The reader will therefore be able to glean a better understanding of the current state of affairs by first reading the 2000 report and then this update.

Child justice in Zambia is essentially influenced by five key constraints<sup>8</sup>:

- Severe resource constraints on all levels of the system
- Antiquated legislation regulating juvenile offenders (Juvenile Act, 1956) based on an approach to juvenile offending prevalent in Britain in the 1930s
- Justice officials who are not trained to deal with children in conflict with the law and a lack of expressed recognition of children's rights in the criminal justice system.
- High turnover and constant transfers of police officers, prosecutor, magistrates and probation officers who receive training in juvenile justice, thus undermining investment in training.
- No budgetary allocation expressly for juvenile justice administration.

It should also be said from the outset that the attention that has been given to child justice since 2000 has been almost exclusively donor driven. Despite the training and research that have been undertaken as well as some significant, albeit small, advances that have been made, this has not prompted the government to take up the initiative. This position was confirmed by the Permanent Secretary for Home Affairs when he explained that there is no specific budget line allocation for child justice nor has government identified it as a priority area.

### 1. Arrest, reception and referral

The following is used as standard policy statement with regard to the handling of children during and immediately after arrest:

*The arrest of children should be avoided but when this is necessitated by the crime and circumstances, the actions of the police need to be closely monitored against well-defined standards and procedures. Arrest should as soon as possible be followed by an assessment of the child by a suitably qualified person (such as a probation officer) who needs to gather information with regard to the personal, social and familial circumstances of the child in order to inform the relevant criminal justice officials(s) accordingly with the purpose to reach a*

*decision(s) in the best interests of the child. This decision should be guided by following the least restrictive measures, minimising exposure to the hardships of the criminal justice system and due process<sup>9</sup>.*

Zambian law sets the following basic requirements, as described in S 58 to 60 of the Juveniles Act, with regard to the arrest and detention of a child or young person:

- detention should be avoided
- if detention cannot be avoided, children must be kept from adults, and girls must be placed under the care of a female officer
- the child should as far as possible be kept in a place of safety
- the officer in charge of the police station must show to the court why detention is required (S 60) and why the child could not have been released on own recognizance or police bond.

The following police stations were visited as part of the fieldwork and inspections were conducted of the cell facilities:

Lusaka: Lusaka Central, Kabwata, Matero  
Ndola: Ndola Central, Masala and Kanshenshi  
Kitwe: Kitwe Central, Mindola, and Wusakile  
Choma: Choma  
Livingstone: Central

Based on the visits and inspections of the above listed police stations the following general observations are made:

- With the exception of Matero, Lusaka Central and Ndola Central, children were not separated from adults whilst detained at police stations prior to court appearances. Whilst all police personnel were aware of the fact that children should be detained separately from adults, the cell space available at the police stations did not allow for this.
- Girls are detained together with adult women, however, no girls were found in the sample observed.
- Detained children do not have access to running water on a continuous basis.
- Toilet facilities in all the police stations are of such a nature that they pose a health risk and stations often do not have access to running water. It was reported that there was a cholera outbreak at the Choma cells in 2004 and that they were shut down. They were, however, back in operation at the time of the visit and there has been no repair work done to the broken sewage system.

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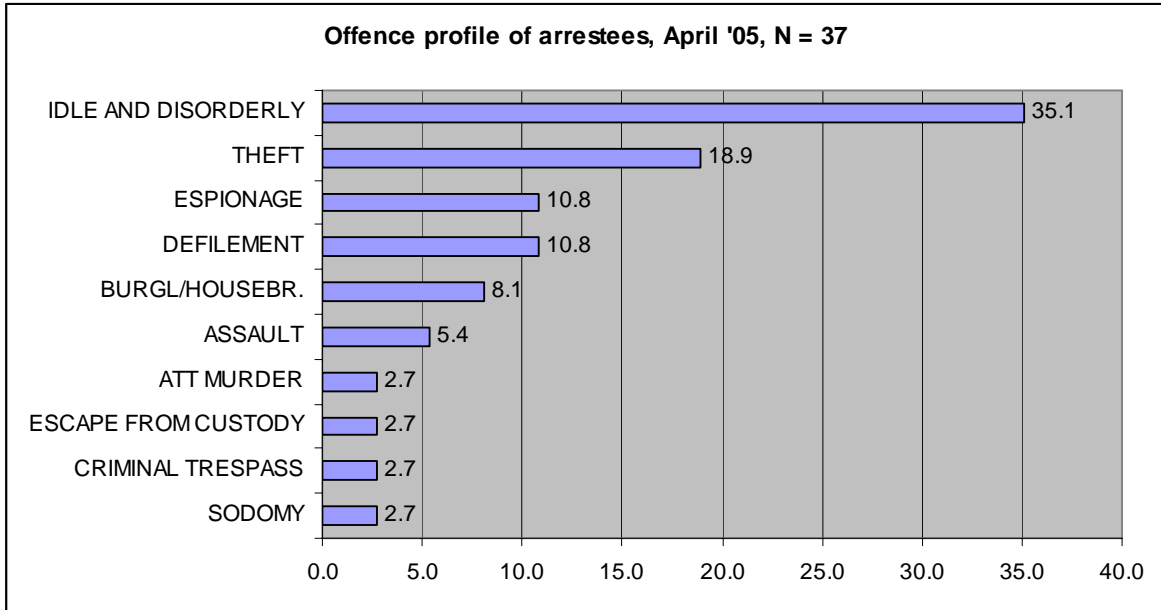
<sup>8</sup> Secretariat of the Child Justice Forum (2004) Memorandum on the Child Justice System in Zambia to the Parliament Committee on Sport, youth and Child Affairs, 7 July 2004, p 5.

<sup>9</sup> Muntingh L (forthcoming) Indicators for monitoring the well-being of children in the criminal justice system, HSRC, Cape Town.

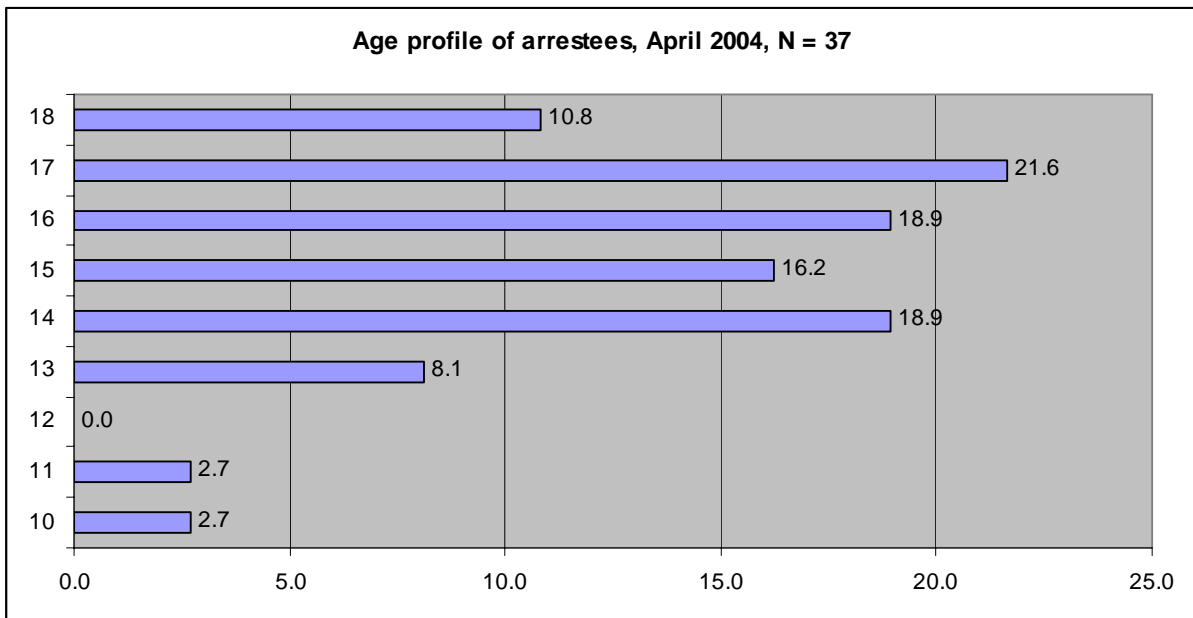
- With the exception of Ndola Central, Lusaka Central and Matero Police Stations, children were sleeping on the bare floors of police station cells. Mattresses and blankets were observed at these stations.
- Children remain in police custody for an average of 13 days based on figures supplied by the police (from Mindola, Lusaka Central, Kabwata, Matero, Ndola Central, Masala).
- Food is not supplied by the police to detainees and children are dependent on family or friends for food. In Ndola it was reported that an NGO supplies food to arrested children held at the Central Police Station.
- With the exception of Lusaka Central and Matero, the arrests of children are recorded in a general Occurrence Book. Children are not readily identifiable from records unless they are indicated as “J/F” or “J/M” indicating juvenile female or juvenile male.
- Where officers were trained in child justice, there was generally a greater sensitivity towards children’s rights at police station level although this does not mean that problems did not exist.
- Training was in most cases focused at the ground level staff who deals with children’s cases. All station commanders did, however, not receive the training and this created problems in case flow management and the allocation of cases. The need for training is widespread. The Permanent Secretary for Home Affairs reported that on his provincial visits in 2004, he had come across police officials who had not received any training for the past 23 years.
- The involvement of the Victim Support Unit (VSU) staff of the police is regarded as a positive development and these staff members exhibited a general interest in children’s cases.
- Whilst transport is acknowledged as a general shortcoming, it is also used as a convenient scapegoat in relation to all case-flow management problems.
- Police continue to round up street children, a practice that can only be described as arbitrary detention
- Social welfare officers criticise the police for not informing them when a child has been arrested, and, in return, the police criticises welfare services for not responding when they have informed them that a child has been arrested.
- It does not appear as if social welfare officers interview or assess children immediately after arrest but rather that they do this at a later stage when the court requests this information. The practice seems to be that the police inform the social welfare officer if they cannot find the parents or the child is in need of care. This particular sequence of events, by and large, negate attempts to make the criminal justice system more child-friendly.
- Posters on child justice that were printed by UNICEF and distributed are on display in roughly half of the police stations visited but none of the pamphlets were seen.
- Statistics collected from the police stations visited indicated the following trends:
  - Average length of custody in police cells is 12.7 days



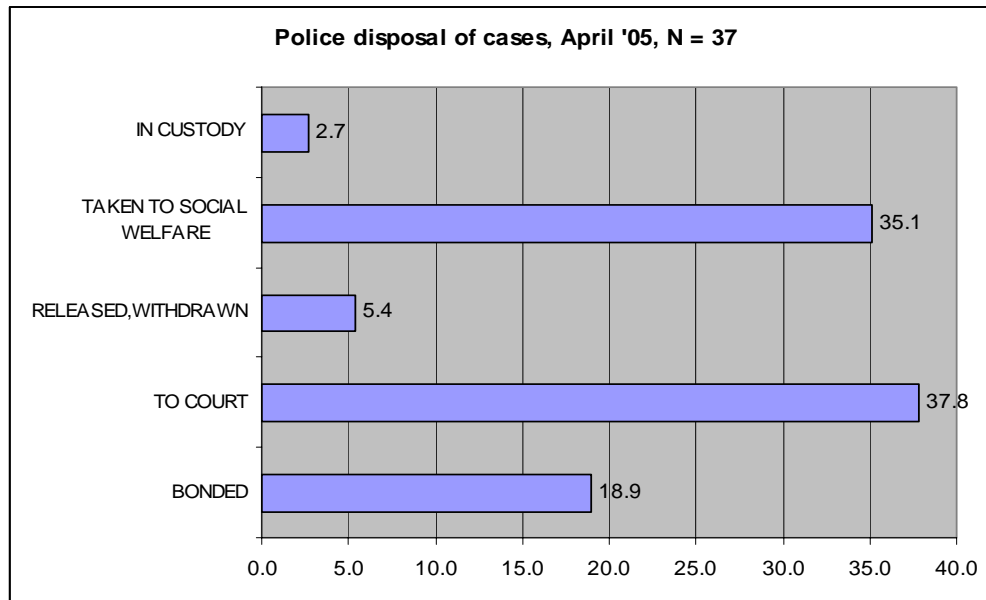
- The total number of arrests at the selected stations for the month of April 2005 was 37
- No girls were recorded as having been arrested
- The offence profile of the children is shown below



- The age profile of arrested children is shown below:



- Approximately 60% of children interviewed whilst awaiting trial at various remand prisons, reported that they were assaulted by the police during arrests and questioning. This included explicit torture for the extraction of information, using handcuffs, pieces of hosepipe to flog the child with and a whip<sup>10</sup>.
- The police dealt with cases in the following manner:



Compared with the observations made in 2000 there does not appear to have been a general improvement in children’s experience of the criminal justice system during the arrest phase. There may admittedly be a greater awareness of children’s rights in the criminal justice system but this has as yet not translated into a general improvement in service delivery. As will be commented upon later on in more detail, the allocation of children’s cases to the VSU at police stations is regarded in a positive light as it should facilitate improved case management. The challenge is, however, to achieve this by developing and adhering to a set standard for case management that is both desirable and feasible.

Whilst certain conditions cannot be changed overnight, such as current cell capacity, there are a number of measures that can be undertaken, in line with the 2000 Situational Analysis, as well as the current observations:

- The arrest of children should be avoided and this can be facilitated through the development of guidelines to assist police officers at street level. Of particular concern is the arrest of children for being “idle and disorderly”, “loitering” and similar offences. Apart from the fact that the constitutionality of these offences are highly contestable, they date back to colonial

<sup>10</sup> Zambia ratified the UN Convention Against Torture on 7 October 1998. It was not possible to establish if the

times and were used then to control the indigenous population and effectively keep the unemployed and poor away from the property and businesses of the colonial “masters”. It is regrettable that these laws have remained in effect and are now being used against children who have in many cases been left destitute and orphaned as a result of circumstances beyond their control.

- Children are arrested for “consensual crimes” such as smoking dagga and inhaling solvents. The criminalisation of substance abuse by children, triggering a criminal justice response to a child care problem, is inappropriate. It is therefore recommended that police officers receive training in dealing with these matters. It will be more appropriate for the police to refer these matters to the Drug Enforcement Commission than to arrest the children.
- The detention of children by the police should be avoided as far as possible, especially where they cannot be separated from adults. It is recommended that community-based alternatives be investigated where children may be placed overnight until their parents/guardians have been located and are able to appear at court or the police station for bond.
- Stemming from the above, it is recommended that family finders be used on a sessional basis to locate the parents/guardians of arrested children.
- Magistrates should visit the police cells on a regular basis (at least once a week) to establish if there are children in custody. They should then take the appropriate measures to secure their release to a parent/guardian or community-based facility.
- Bail and bond conditions should be interpreted in a manner that facilitates the release of children and not become a contributing factor to the detention of children. In this regard three factors should determine bail/bond: flight risk, risk of tampering with evidence, and risk of intimidating witnesses.
- When a child is transferred from one police station to another, the parents/guardian of the child should be informed without delay.
- Allegations of assault and torture must be investigated. It is recommended that a monitoring and investigative mechanism be set up in this regard. It is more than possible that such investigations may be undertaken by a general investigative function that not only focuses on children’s cases but on broader issues of police accountability. Training for police officers in dealing with children is also part of the solution.

## **2. Remand of arrested children**

The general policy statement on children awaiting trial in custody can be described as follows:

*Detention poses a tremendous risk for the rights of children, particularly in the awaiting trial or un-sentenced phase, and should therefore be avoided as far as possible. The undefined and*

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country has complied with its reporting obligations.

*transient status of being awaiting trial in custody makes it difficult to allocate and sustain services to such detainees. Practical and logistical problems such as high turnover complicate matters resulting in effectively no services being rendered to awaiting trial children. Where such detention is used as a measure of last resort, this needs to be closely monitored to ensure that the child's rights are protected. Article 37 of the CRC sets the following requirements for the treatment of any child deprived of his or her liberty to be protected from:*

- *torture;*
- *other cruel, inhuman or degrading treatment or punishment;*
- *capital punishment;*
- *unlawful or arbitrary deprivation of liberty.*

*The article sets out conditions for any arrest, detention or imprisonment of the child, which shall be*

- *in conformity with the law*
- *used only as a measure of last resort; and*
- *for the shortest possible time.*

*And the article sets out further conditions for the treatment of any child deprived of liberty:*

- *to be treated with humanity and respect for the inherent dignity of the human person;*
- *in a manner which takes into account the needs of persons of his or her age;*
- *to be separated from adults unless it is considered in the child's best interest not to do so;*
- *to maintain contact with his or her family, through correspondence and visits, save in exceptional circumstances;*
- *to have the right to prompt access to legal and other appropriate assistance;*
- *to have the right to challenge the legality of the deprivation of liberty before a court or other competent, independent and impartial authority;*
- *to have the right to a prompt decision on such action*<sup>11</sup>.

Zambian law sets the following basic requirements for the remand of juveniles [S 60, 61 and 64]

- they may be remanded to a place of safety but may under certain conditions (unruliness or impracticability) be remanded to a remand prison
- they may also be remanded to any other type of dwelling identified by the Commissioner
- juveniles must appear before the court that gave the order for remand every 21 days

Whilst the law is somewhat scanty in terms of managing the range of risks associated with awaiting trial prisoners, it nonetheless has the basic intention to ensure that remand to a prison should be avoided, and further that the court should review on a regular basis the status of the child and, hopefully, the progress that has been made in the investigation.

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<sup>11</sup> Muntingh L (forthcoming) Indicators for monitoring the well-being of children in the criminal justice system, HSRC, Cape Town.

In terms of physical conditions at remand prisons, all institutions with the exception of Mukobeko Medium Security prison were found to be sorely wanting. The following makes the juvenile section at Mukobeko stand out:

- juveniles are detained in a clearly fenced-off area that separates them from the rest of the prison population
- the cells are clean, well aired and the prisoners sleep on beds with mattresses and blankets; albeit two to a bed
- access to medical care is maintained
- water supply is constant albeit rationed
- at the time of the visit there were 32 juvenile prisoners held in two cells that were clean, with functioning showers and toilets.

Whilst Section 66(4)(a) of the Juveniles Act [CAP217] requires that a juvenile appears at least every 21 days before the court to extend the warrant of his/her detention, this is clearly not the case. In Mukobeko, a 17 year old boy (charged with burglary and theft) was found that had been in custody for 21 months but has appeared in court only twice. At the same prison another boy aged 16 years and charged with assault, had appeared in court once since his arrest seven months ago. At Ndola Remand prison another boy (aged 13 years) was found who had been charged with “espionage”<sup>12</sup>. He had been in custody since January 2001. In short, at all the remand prisons visited children were found to have been held for excessively long periods and in violation of the provisions of 66(4)(a) of the Juveniles Act, rendering their detention illegal. The charges against the children also require further scrutiny.

Access to families appears to be strongly associated with the locality of the prison. At Ndola Remand prison the five boys interviewed reported that all except one had received regular visits from family members. At Kanfinsa the boys reported less frequent visits. At Mukobeko four of the five boys interviewed reported that their families were not aware of the fact that they were in prison. Access to families appears to be strongly linked to access to social welfare services and very few boys reported having had any contact with a social worker from the Dept of Social Services. At both Ndola Remand Prison and Mukobeko Medium Prison, a local church renders services on a regular basis to the children. These services entail religious services as well as the distribution of literature.

As was noted in the 2000 report, a number of boys find themselves in remand prisons waiting to be transferred to the reformatory or approved school, often for long periods. The reasons given for the delay in transfer is that the Department of Prisons do not have transport, and this is not disputed. For example, Mukobeko Medium Prison has not had a vehicle for the last 15 years according to the OIC<sup>13</sup>. As if to add insult to injury, the time served in the remand prison does not count as time served in terms of the sentence imposed, even though it was after the order was made. The five

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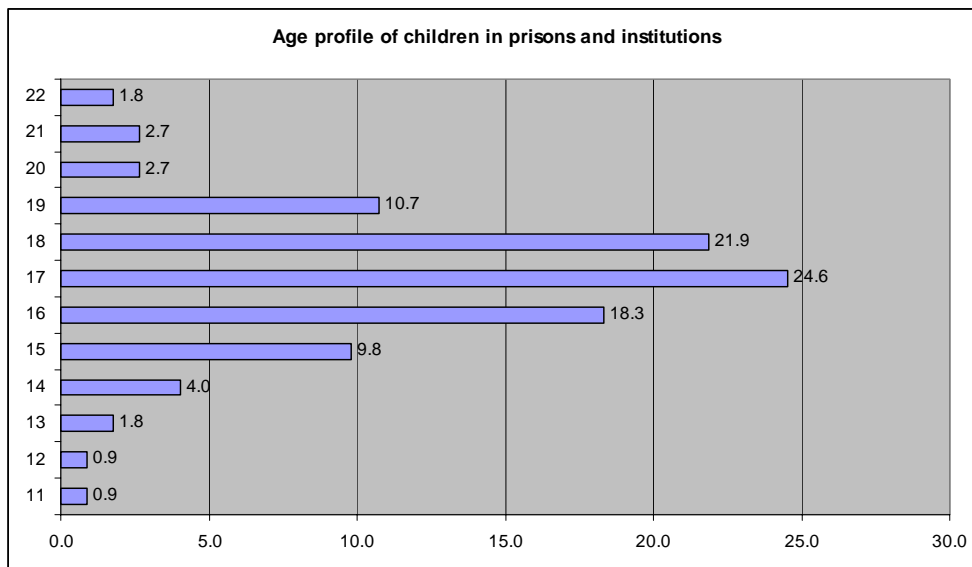
<sup>12</sup> The charge of espionage related to the theft of telephone cabling in order to get the copper. The charge should probably be “sabotage” and not “espionage”, as the offence relate to theft of telephone cables.

boys interviewed at Katombora spent between 7 and 18 months in various remand prisons before arriving at the reformatory to which they have been ordered.

Access to legal representation appears to be a luxury for a very fortunate few, especially in the lower court whilst on remand. There would therefore be little opportunity to challenge the legality of the warrant of detention as outlined above.

A survey of children being held at selected remand prisons as on 30 April 2005 revealed the following:

- at the time of the survey, the boys on remand have been in custody for 175 days or close to six months
- the longest that a boy has been on remand is 888 days or 2.5 years (he is 16 years old, charged with assault and being held at Mukobeko Medium Prison)
- The age profile below shows that a large proportion of young adults are detained with children in these institutions



- A total of 114 boys were being held in the three remand prisons listed below. Of the group, 24 (21%) were awaiting transfer to another institution.

**Table 2 Profile of children in three remand prisons**

Prison	Remand	Await Nakambala	Await Katombora	Await ZNS	Await Mazabuka	Total
Kamwala	39	5	8	1		53
Ndola	27	1	1			29
Mukobeko	24		4		4	32

<sup>13</sup> Interview with OIC on 7/5/2005 at Mukobeko Medium Prison.

<b>TOTAL</b>	<b>90</b>	<b>6</b>	<b>13</b>	<b>1</b>	<b>4</b>	<b>114</b>
Percent	78.9	5.3	11.4	0.9	3.5	

The offence profile of the children on remand is presented below:

**Table 3 Offence profile of children in remand prisons**

<b>Offence</b>	<b>Kamwala</b>	<b>Ndola</b>	<b>Mukobeko</b>	<b>Total</b>	<b>Percent</b>
Assault	3	2	4	9	10.0
Burglary/Housebreaking	13	7	9	29	32.2
Theft of Motor vehicle	2	0	1	3	3.3
Dealing in Drugs	1	0	3	4	4.4
Theft from Motor vehicle	0	0	1	1	1.1
Theft	12	7	5	24	26.7
Defilement	5	2	0	7	7.8
Unlawful Wounding	0	1	1	2	2.2
Murder	0	3	0	3	3.3
Criminal Trespass	1	1	0	2	2.2
Espionage	0	4	0	4	4.4
Rape	1	0	0	1	1.1
Malicious Damage to Property	1	0	0	1	1.1
<b>Total</b>	<b>39</b>	<b>27</b>	<b>24</b>	<b>90</b>	<b>100.0</b>

The above table summarised in terms of three categories present the following profile:



Data is unfortunately not available on the number or proportion of non-custodial measures used to ensure the appearance of children at court.

The diet provided to children in remand prisons is one meal a day consisting of *nshima* with beans, vegetables or *kapenta*; the latter being served less frequent. Children interviewed complained of small portions, uncooked food, unsalted food, and resulting diarrhoea. The timing of the meal varies between prisons from 13:00 to 20:00. As is the practice elsewhere, the expectation is that the meal, although served all at once, should be consumed over two to three meal sessions.

Access to health care is problematic at all the prisons, although the children interviewed at Mukobeko Medium did not have any unusual complaints. At Kanfinsa prison all the children had contracted scabies, whilst this was not the case Ndola, Kamwala or Mukobeko prisons. At Kanfinsa Prison a boy with a severely swollen abdomen was noticed and upon inquiry he stated that he has not received any medical attention. The case was brought to the attention of the OIC.

At Kanfinsa Prison, it was also reported by the boys that at the time of the visit, the facility had been without water for four days and that they were drinking untreated water from a stream that was flowing through the prison grounds.

A social worker reported that even if transport were arranged by her department to take children from remand prisons to the various institutions, the prison officials who must accompany them insist on receiving payment. It is not clear if this is payment for services requested or if this was an allowance



of some sort. Either way, it is not the Ministry of Community Development of Social Services who should pay for this but the Ministry of Home Affairs.

At Kamwala Prison in Lusaka, a total 53 boys are crammed into two cells at lock-up, each not bigger than three metres by two and a half metres. It is not possible for them to lie down and sleep and they sit through the night. It is common practice that adult cell captains are assigned to monitor the juveniles. This practice does, however, present a number of problems that were noted:

- Cell captains sleep in the same cells as the children at night, regardless of the overcrowded conditions prevailing in some prisons
- Cell captains are tasked with disciplining the children and allegations of assault and inhumane treatment were made by children. Two forms of punishment were reported at one prison. The first is being forced to lie on the ground in the courtyard for the whole day, this could be from 08:00 to 16:00. The second is several “karate-like chops” delivered to the back of the neck of the child by the cell captain for a transgression.
- Monitoring of the children is “sub-contracted” to adult prisoners who are not employees of the Department of Prisons and have thus not received even the most basic training in dealing with prisoners, let alone children.

Contact with families is also a major concern for those boys in remand prisons and roughly half of the boys interviewed in these prisons reported that their families were not aware of the fact that they were in prison.

Despite overcrowded conditions in many prisons, all prisons visited made an attempt to separate children from adults.

In summary the following recommendations are made:

- A concerted effort needs to be made to prevent the detention of children in remand prisons. Conditions in these prisons are wholly unsuitable for children and expose them to multiple risks. Community-based options, expedited trials, and an appropriate interpretation of bail conditions should all contribute to the prevention of detention.
- In order to address the current situation of a substantial number of children who are on remand, it is recommended that a task team(s) be established consisting of a judge, magistrate, prosecutor, defence attorney, investigating officer, social worker(s) with the mandate to deal in the most expeditious manner possible with the cases of children currently being held on remand. The task team will have a short term mandate to deal with cases that are stuck in the system.
- Seeing that a number of children are awaiting transfer to various institutions such as Katombora and Nakambala, it is recommended that a vehicle be sent from the Copperbelt Province to the Southern Province collecting at each of the prisons those children who need to be transferred and dropping them off at the appropriate institutions. For the future it is

recommended that the rail service be used to transport children from the north to the south where most of the institutions are.

- In order to monitor the length of detention of children on remand, it is recommended that all cases of children who have been on remand for longer than 30 days be reported to a central point in Lusaka. The task team referred to above may be the appropriate central point for this. The reporting itself can be done on a prescribed form utilising the ordinary mail service.

### 3. Trial

Information on what happens to children during trial is scant and no statistical data, in addition to that what was collected in 2000, were found. Inferring from other sources of information the following observations are made:

- Very few children appear with legal representation and the under-funding of the Legal Aid Directorate makes it virtually impossible for children to appear in court with legal representation.
- Case allocation appears to be a problem in most jurisdictions visited as children's cases are not allocated to one magistrate.
- Adherence to the legal requirements of children's cases being heard *in camera* is not strict.
- A limited number of children (less than 20%) have the benefit of social welfare officer's input before, during or after the trial. It was reported that sometimes the family of the accused has to provide transport to the social welfare officer in order to ensure that the welfare report is completed on time for the court case.
- It was also reported that the format for the social welfare officer's report to court is in need of revision.
- Whilst social workers receive general training for social work, many are not trained to deal specifically with children in conflict with the law. This will undoubtedly have an impact on the report submitted to the court.
- The social welfare officer is still regarded as "representative" of the child's interest; a role somewhere between lawyer and parent.
- Children appear repeatedly before their cases are finalised; some boys interviewed in remand prisons could not remember how many times they have appeared. One boy at Kamwala Remand Prison stated that he has been in custody for one year and seven months and had appeared more than 30 times on a theft charge involving goods to the value of K800 000 (\$170.00)
- Language does not appear to be a problem and interpreters are usually available. The overall opinion of children did not indicate that they feel themselves victimised by the magistracy.
- A social worker described the treatment of children by prosecutors as "harsh and not child friendly"

- Holding cells at court buildings do not provide for the separate detention of children and they are detained together with adults at the court, often for the whole day in extremely crowded conditions. The Boma Court in Lusaka and the Livingstone Court stand out in this regard.
- There is a general shortage of magistrates and Ndola is supposed to have nine magistrates but there are only two.
- The turnover in the magistrates and the recent industrial action by disgruntled magistrates had a further negative impact on the expeditious handling of children's cases.

#### **A case study**

*The case of S v C (unreported) needs special mention here as it perhaps reflect the most extreme vulnerabilities of children in the criminal justice system. The child was convicted on 6 June 2004 at the age of 15 years for defilement and received a sentence of 21 years. He knew the victim, who was a neighbour and roughly the same age as himself. Both his parents have passed away, his father when he was aged 10 and his mother a year later. After that he stayed with an aunt until he was arrested. He is illiterate and attended school until Grade 4. At the trial in the subordinate court he pleaded guilty but was never assessed or interviewed by a social welfare officer and a report on his personal circumstances were apparently not submitted. The magistrate felt that the subordinate court did not have sufficient jurisdiction for sentence and referred the case to the High Court for sentence. The boy explained that he was sitting in prison when he was informed that he had received a sentence of 21 years imprisonment.*

In summary the following recommendations are made:

- Diversion options need to be expanded in order to prevent that children's cases proceed to trial.
- Children must be afforded legal representation especially when the child is eligible for a custodial sentencing option.
- Magistrates need to receive further training on dealing with children in court and it is preferable that specialised occurs where this is possible.
- Magistrates should be encouraged to manage court rolls in such a manner that repeated appearances of children without the finalisation of cases are avoided.
- The format for the social worker's reports to the court needs to be revised.

## **4. Sentencing**

The following provides a summary policy statement on the sentencing of juvenile offenders<sup>14</sup>:

*When children are convicted by a criminal court, the sanction imposed should be proportionate to the offence, taking into account the age, abilities and maturity of the child. The sanction itself should place the emphasis on the reintegration of the child and the number of children sentenced to imprisonment is therefore of critical importance as well as the length of custodial sentences (Article 37). When custodial sentences are imposed, these should be for the shortest possible period. Article 37 further bars the death penalty, life imprisonment without the option of parole and any cruel, inhuman or degrading treatment and or punishment. In Article 40.4 the CRC urges state parties to have available in the legislation "a variety of dispositions such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence".*

*The Beijing Rules provide further guidance with regard to the adjudication of cases in Rule 17:*

*17.1 The disposition of the competent authority shall be guided by the following principles:*

*( a ) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;*

*( b ) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;*

*( c ) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;*

*( d ) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.*

*17.2 Capital punishment shall not be imposed for any crime committed by juveniles.*

*17.3 Juveniles shall not be subject to corporal punishment.*

*17.4 The competent authority shall have the power to discontinue the proceedings at any time.*

Sections 72 and 73 of the Juveniles Act set out the sentencing options for juvenile offenders as well as the conditions attached thereto:

- No child shall be sentenced to imprisonment
- No young person shall be sentenced to imprisonment unless he can be dealt with otherwise
- No child shall be sent to a reformatory unless it is absolutely necessary

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<sup>14</sup> Muntingh L (forthcoming) Indicators for monitoring the well-being of children in the criminal justice system, HSRC, Cape Town.

- The court may decide on the following
  - To dismiss the charges
  - Making a probation order
  - Ordering to an approved school
  - Ordering to a reformatory
  - Impose a fine, pay damages or costs
  - Ordering a parent or guardian to give security for good behaviour
  - Imprisonment
  - Ordering any other action or means

In the absence of statistical data, it is not possible to make an assessment different from that made in 2000 on the sentencing of children. A number of general observations can be made:

- A recent development is that the Insakwe Probation Hostel in Ndola will be renovated and converted to a facility for girls. A visit to the facility revealed that the actual construction work had not as yet commenced. At the time there were six children in need of care being held there under sub-standard conditions. They were referred there from Lusaka.
- The staff at Katombora have not been trained to work with children in institutions and the same applies to staff at other prisons.
- The centralisation of procurement in the Department of Prisons had a negative impact on the provisioning of food at prisons outside of the Lusaka area.
- The allocation and distribution of funds to Katombora and Nakambala have improved significantly in amount and regularity and this has increased stability at these two institutions.
- The cookers that were given to Nakambala Approved School had not been installed and uninstalled cookers were also noted at Kanfinsa Prison.
- The buildings housing the children at Nakambala Approved School are in urgent need of renovation, especially in terms of plumbing. This has already been brought to the attention of the Director: Child Development in a meeting on 28 September 2004 between said Director and members of the Lusaka Child Justice Forum<sup>15</sup>, even though the Nakambala Approved School falls under the Department of Social Welfare.
- Despite resource constraints, the education and training programmes are continuing at Nakambala Approved School and Katombora Reformatory.
- Contact between families and children are difficult at these institutions due to the distances involved.
- A positive development is that the training programmes at Nakambala Approved School were accredited by TEVETA.
- At Katombora Reformatory children can be sent to prison as punishment through an administrative decision. This practice requires urgent revision.

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<sup>15</sup> Minutes of Child Justice Forum meeting held on 27 October 2004 in the RYOCHIN Conference Room at Kalaningalinga Youth Centre, p 5.

- Boys wait excessively long periods after being ordered to Katombora Reformatory to actually arriving there as noted above.
- Solitary confinement remains in use as a punishment at Katombora Reformatory although boys are not kept overnight or handcuffed in the separate cell, as was reported in 2000.
- At Katombora, the boys interviewed reported that they were afraid to request medical attention as they may need to go to the hospital in Livingstone, in which case they will be kept at the prison before and after going to the hospital.

In view of the above, the following recommendations are made:

- The staff at institutions where children are ordered to, need to be trained to manage children in institutions
- The use of imprisonment and solitary confinement as a punishment at Katombora through an administrative decision needs to be reviewed as matter of urgency.
- The use of current sentencing options for children needs urgent revision and this should be supported by training of magistrates.
- An information system needs to be established to keep accessible records of children that have been sentenced.

## **SECTION C DESCRIPTION AND EVALUATION OF THE PILOT PROJECTS**

### **1. Arrest reception and referral service in Lusaka**

#### **(a) Background and motivation**

The establishment of an Arrest, Reception and Referral Service (ARRS) was recommended as part of the 2000 Situational Analysis of child justice in Zambia and was based on the One-Stop Centre model that was adopted in South Africa. The One-Stop model was in fact preceded by a simplified form that would ensure that all arrested children in a city are brought to one central police station from other police stations. This essentially ensured more accurate monitoring and enabled the concentration of resources, such as a probation officer and family finders at one locality instead of spreading these over several police stations. This approach is suitable for urban areas where distances are not excessive and there is a sufficient case load to justify the concentration of resources in order to create efficiency and effectiveness.

#### **(b) Purpose**

The following is defined as the purpose of the ARRS:

To limit children's exposure to the criminal justice by efficient inter-sectoral case management at the arrest and reception phase and correct channelling. This is achieved by the centralisation of arrests and the treatment of children in line with the relevant standards to ensure the expeditious handling of cases with the deliberate objective to avoid detention in police cells.

#### **(c) Objectives**

The objectives of the ARRS are described as follows:

- To limit delays through the concentration of resources at points in the criminal justice system where they are needed
- To prevent children from being "stuck" at a particular stage (for example in detention in police holding cells)
- To ensure rapid location of parents/caregivers so that the child can be released into their care
- To prevent detention as far as possible
- To facilitate accurate recordkeeping

- To detain children under acceptable conditions, if required.

#### (d) Stakeholders and their contributions

##### i. Financial direct

UNICEF contributed significantly in terms of direct financial support to the development and establishment of the ARRS. The following table lists the UNICEF contribution in US dollars.

**Table 4 UNICEF contribution to the ARRS<sup>16</sup>**

Year	Item	Training	Equipment	Consumables	Totals
2001	ARRS orientation Workshop	442			
	Blankets for juvenile offenders in detention (20)		544		
	Mattresses for juvenile offenders in detention (30)		422		
	JJ course fees at NICRO	3000			
	Tickets for Police Officers to SA for J.J training	2600			
	Police Occurrence books for ARRS			340	
	Police APPB books for ARRS			194	
	DSA for NGO/GRZ officers to attend J.J training in SA	6300			
	Juvenile Justice T-Shirts for RYOCHIN			1600	
	<b>Sub-total</b>	<b>12342</b>	<b>966</b>	<b>2134</b>	
2002	Juvenile Justice course fees in UK for GRZ officers	12754			
	DSA/tickets for GRZ officers attending J.J course in UK	12999			
	Juvenile Justice Posters	322			
	<b>Sub-total</b>	<b>26075</b>	<b>0</b>	<b>0</b>	
2003	Mattresses for the Child Justice Forum (80)		1500		
	Blankets for the Child Justice Forum (150)		650		

<sup>16</sup> Information supplied by UNICEF



Year	Item	Training	Equipment	Consumables	Totals
	Juvenile Justice Posters	2700			
	Juvenile Justice leaflets	1530			
	<b>Sub-total</b>	<b>4230</b>	<b>2150</b>	<b>0</b>	
	<b>Total</b>	<b>42647</b>	<b>3116</b>	<b>2134</b>	<b>47897</b>
	<b>Percentage</b>	<b>89.0</b>	<b>6.5</b>	<b>4.5</b>	
	<b>Percentage of total support</b>				<b>39.0</b>

From 2001 UNICEF spent a total of \$47 987 on direct financial support to the ARRS, of which a substantial part (89%) was on support for the training of officials and role players outside of Zambia, such as South Africa and the United Kingdom. Direct financial support to the ARRS constitutes 39% of UNICEF's total support to the improvement of children's well-being in the criminal justice system.

It should also be noted that UNICEF supported the purchase of a vehicle for the Child Friendly Court and that this vehicle is now shared between the court, the ARRS and the Secretariat for the CJF, when the latter wishes to undertake visits to the other CJFs.

The Agreement between SIDA and the Judiciary makes provision for an estimated \$20 000 to be used for the ARRS. This is specifically earmarked for structural improvements at the police station cells.

## ii. Financial indirect

The following are noted from a proposal submitted to the government of Sweden as indirect financial support from the government of Zambia to the project<sup>17</sup>:

- The Government has renovated all detention cells for Juveniles at the three Police Stations piloting the three ARRS<sup>18</sup>.
- The Inspector-General of Police has identified and assigned Police Officers or Prosecutors to handle juvenile cases.
- The Permanent Secretary of the Ministry of Community Development and Social Services (MCDSS) has seconded one probation officer to each of the three pilot ARRS Centres. The Inspector General of Police has allowed the probation officers to share offices with his staff.

<sup>17</sup> Project Proposal - Juvenile Justice Administration in Zambia (2003) *Presented to the Government Of Sweden by the Child Justice Forum, 3<sup>rd</sup> of April 2000*, Prepared for the Child Justice Forum by Arthur Mofya (RYOCHIN), Assisted by Hilke Schapp and Emmy Sampa, p 9.

<sup>18</sup> Observations at the three cells during the field work in 2005 does not support this claim.

### **iii. Capex items donated**

The items listed above as equipment were the only items that can be described as capital expenditure.

In 2004, the Swedish Embassy donated funds for a water tank to be installed at the Matero police station. The Secretariat made the purchase and arranged for it to be delivered to the police station<sup>19</sup>.

### **iv. Expendables and consumables donated**

UNICEF donated T-Shirts, posters and pamphlets as well as stationery to be used for record-keeping. These are reflected in the financial contributions listed above.

### **v. Training provided**

Training was provided abroad (South Africa and the United Kingdom); first to a group of ten (Oct 2001) and later a smaller group of three officials (January 2002). This was aimed at coming to a better understanding of child justice. Initial broad-based training on child justice was also given in May 2001 in Lusaka, preceding the launch of the CJF. Since 2001, UNICEF has sponsored several training workshops on child justice that were held in Lusaka (see the next section for an example of two such workshops). These were not strictly focus on the ARRS but should have contributed to a general and improved understanding of child justice issues.

### **vi. Expert and specialist knowledge provided**

Although not specific to the ARRS, UNICEF sponsored a workshop on data collection that was held on 20-21 September 2004 at Long Acres Lodge, to assist with the standardisation of data collection and reporting forms to be used by the ARRS, Child Friendly Court and Diversion Programme<sup>20</sup>. The cost of the workshop was \$ 5487.00

A further workshop on the Juvenile Justice Manual (adopted from Namibia) was supported by UNICEF. The workshops was held on 29 October 2004 in Lusaka and the cost \$514.68<sup>21</sup>.

## **e) Findings**

### **i. Inputs**

Training was provided to role players on a fairly wide and intensive basis with the assumption that they would implement the training in the pilot projects, of which the ARRS was one.

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<sup>19</sup> CJF Secretariat (2004) Report on the Administration project run by the CJF, Third Quarterly Report Oct – Dec 2004, SIDA Ref: U11/ZMB 11.3.2, p 11.

<sup>20</sup> Report on Workshop on Juvenile Justice Data Collection held on 20-21/9/2004 at Long Acres Lodge, Lusaka.

<sup>21</sup> CJF Secretariat (2004) Report on the Administration project run by the CJF, Third Quarterly Report Oct – Dec 2004, SIDA Ref: U11/ZMB 11.3.2, p 9.

- A study tour to Stepping Stones Centre in Port Elizabeth (South Africa) was undertaken by 10 representatives from the various sectors involved in child justice.
- A Child Justice Forum was initiated by UNICEF and established in 2001, and formed the core inter-sectoral grouping for child justice in Zambia.
- Separate cells were designated at Central and Matero police stations. Originally it was intended that Kabwata will also be a designated police station but the architecture could not accommodate the separate detention of children. A CJF meeting on 13 July 2004 agreed that an alternative need to be found and an inspection was done on 28 July 2004 and it was recommended that Kafue Police Station be used as the third station. At the time of the fieldwork in May 2005, this decision had not yet been implemented.
- Mattresses and blankets were provided to the designated police stations to ensure that those children, who need to be detained, would at least not have to sleep on the bare concrete floor.
- A vehicle was provided to the CFC and is shared between the CRFC, ARRS and the social welfare officers.
- A water tank was donated by the Embassy of Sweden to the Matero police station
- The Inspector General of Police issued orders in July 2001 that designated staff members to the handling of children's cases and also designated the three police stations as ARRS.

## ii. Outputs

- Arrested children are centralised in two police stations, although there are delays to get them there.
- Arrested children are recorded separately in police Occurrence Books (OB) at designated police stations.
- An estimated minimum of 100 arrests were made since 1 January 2005 to 30 April 2005 of which 30% were seen by social welfare officers based on record supplied by Social Welfare Services.
- Children can be detained separate from adults at Lusaka Central and Matero police stations. At Lusaka Central, girls can be detained separate from adult women, which is not possible at Matero.
- At the two designated police stations children are using the mattresses and blankets that were donated.
- Children's cases are allocated to Juvenile Justice Officers (JJOs) who are responsible for case management together with the Criminal Investigations Department (CID). The JJO's are attached to the police's Victim Support Unit (VSU).
- JJOs reportedly attempt to settle cases at community level where possible and are able to achieve this reportedly in roughly five out of ten cases.

### **iii. Outcomes**

- It is difficult to assess actual outcomes in the absence of baseline data and statistical reports on the out-puts of role players.
- For a period all children's cases were channelled to one court which made it easier for the police to ensure timely court appearance of children. According to officials interviewed this process expedited the handling of cases until December 2004.
- There is support from police management for children's rights issues in the police. JJOs reported that they receive sufficient support and acknowledgement from their managers to enable them to do their jobs.
- Cases take a minimum of two days before progressing to court, but it can take up to 18 days
- Closer interaction between police and social welfare officers to avoid the detention of children was reported by both parties and it is assumed to be true.
- Cases are investigated from the two stations, unlike other localities where the children are centralised but the cases remain with the arresting station (see Ndola). It should also be noted that there is some confusion about this particular issues as some members of the police described the process in a different manner as is noted above.

### **iv. Impact**

- Children's safety whilst detained by the police was improved through separation from adults at the designated two police stations.
- Conditions in the holding cells at the two police stations improved through the provision of mattresses and blankets to children who are detained there.
- There is increased knowledge of and sensitivity towards children's rights issues in the police and social welfare services through inclusive training, promotion and sensitisation towards children's rights.
- The overall streamlining of case management cannot be confirmed but individual improvements are noted. In essence, it is observed that whilst there are individual improvements when all the conditions are right, the system has not improved to such an extent that there has been a general improvement in service delivery and the expeditious handling of cases.
- The police is reportedly more child-friendly through the direct involvement of the social welfare officers when it occurs.
- The police inform social welfare officer when parents cannot be located and/or child is in need of care.

### **v. Unintended consequences**

- Children are arrested for being in need of care and then taken to social welfare officers.

**(f) Difficulties experienced in terms of:**

**i. Governance**

- There is no central management function to oversee the operations and functioning of the ARRS and it does not appear as if the CJF is currently fulfilling this role. A very close monitoring and management function is required in order to ensure that cases move as quickly as possible through the system.
- Role players do not submit their monthly statistical reports to the CJF with the result that holding each other accountable is difficult. It also is not apparent that failure to submit statistics holds any consequences. Effective monitoring must be supported by an accountability mechanism otherwise it is without purpose<sup>22</sup>.

**ii. Human resources**

- The transfer of staff at police station level as well as in the judiciary create problems in terms of case management. UNICEF raised this issue in a CJF meeting in 2004, lamenting “that of 15 people trained abroad, only a few have remained”<sup>23</sup>.
- Not all police staff required to work with children have been trained to do so. This is a direct consequence of staff turn-over and transfers.
- There is a general shortage of staff.

**iii. Service delivery**

- Whilst some children benefit from the system it is also clear that a significant number of children do not. For example, the number of children on remand at Kamwala as well as children found in the cells at Kabwata (39 boys on remand have been at Kamwala for a median of 149 days as on 30 April 2005)<sup>24</sup> are testimony that the system is not functioning as it should. Even though statistics are reported to the CJF from time to time, it does not appear as if a decision is made and an action plan developed to address the problems. The minutes of the CJF meeting on 2/2/2005 do reflect a more accurate quantitative description of what is happening and some recommendations were made as to how the problems may be addressed. These should, however, go a step further and assign responsibility with due dates.
- Not more than 40% of arrested cases were assessed by a social welfare officer<sup>25</sup>. This was ascribed to transport problems.

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<sup>22</sup> Saporiti, A (1996) Evaluating the Process of monitoring children's rights in E Verhellen (ed) *Monitoring Children's Rights*, Marthinus Nijhoff Publishers, The Hague

<sup>23</sup> See CJF meeting minutes of 13/7/2004, p2.

<sup>24</sup> CJF Minutes of 22/9/2004 reports that on 2/9/2004 the Central Remand Prisons had 41 children in custody and Kamwala Remand Prison 31 children. Recent data collected from Kamwala supports the lengthy remand period statement.

<sup>25</sup> See CJF meeting minutes of 13/7/2004, p3.

- Whilst the police stations have designated cells for children, the same is not available at the Boma Court with the result that they are detained there under deplorable conditions in the same cell as adults when they come to appear at the Child Friendly Court.
- Although not confirmed, it does not appear as if police stations (there are 26 stations and many more posts in Lusaka) are designated to feed children to either Central or Matero, making it difficult to manage case flow.
- An assessment immediately after arrest by a social welfare officer is essential to protect the child's rights in the criminal justice system. This does not happen. This assessment is different in content and purpose than the pre-order assessment report requested by the court.
- The cells at both Central and Matero do not appear to have been renovated.
- The overall hygiene conditions in the cells make the maintenance of the blankets and mattresses difficult. For example, an outbreak of bed bugs was reported at Central Police Station in 2004<sup>26</sup>.
- It is reported that over peak periods, cell capacity is not sufficient and children and adults are mixed in the cells.
- Although the intention is that children and their dockets should be transferred from outlying stations to the designated centralised stations this does not always happen. One social worker interviewed reported that it can take from 6 to 8 days for a docket to be cleared and the case to proceed to court<sup>27</sup>. A member of the police explained that even though the children can be centralised, the dockets have to remain with and be investigated by the arresting officer. He explained further that it would require an instruction from the Inspector General to facilitate the centralisation of the dockets and the arrested children<sup>28</sup>.
- The provisioning of food to children in custody at police cells was discussed at numerous CJF meetings without being resolved<sup>29</sup>. One CJF member commented that it is the responsibility of the parents to bring food to the children in detention<sup>30</sup>. This view would hold water if the parents were promptly informed that the child was in detention and they had the means and ability to bring him/her food. The ARRS is attempting to deal with the problems created by the fact that there are often no parents or they are not easily contactable. In such cases, it is the state's responsibility to provide adequate care to the child as it is the state that is detaining the child.

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<sup>26</sup> Minutes of Child Justice Forum, 13/7/2004.

<sup>27</sup> Interview with social worker based in Lusaka on 3/5/2005

<sup>28</sup> Interview with VSU member on 3/5/2005.

<sup>29</sup> See Minutes of Child Justice Forum, 27/10/2004

<sup>30</sup> See Minutes of Child Justice Forum, 2/3/2005, p 6.

**iv. Financial and resource management, and administration**

- On the administrative level, the record-keeping and access to records is highly problematic. It was only in late 2004 that an attempt was made to improve the data collection forms but the data flow is still not at the desired level.
- The water tank at Matero has not been fitted and the cells remain without a proper water supply.
- It was reported by a social worker that she had found adults using the blankets and mattresses at Central Police Station and it is possible that adult detainees are bribing police officials to use the mattresses and blankets.
- Transport is a general problem in the Zambian civil service and is regarded as a scarce resource at all levels. Whilst this is acknowledged, it is reportedly also conveniently used as an excuse for non-performance.

**v. Income and fundraising**

- The ARRS does not directly involve an NGO and it is essentially two government departments that provide the service. Neither of these two departments has initiated any fundraising activities. Financial support has been secured through donor initiatives. In the absence of dedicated government support, this service is placed at risk.

**vi. Inter-sectoral cooperation**

- The CJF can be used more effectively to improve inter-sectoral management of services. This is exacerbated by the lack of accurate accessible quantitative information that would facilitate monitoring and accountability.
- There are no clear and fixed procedures for case management with attached time lines and designated responsibilities.
- Information flow between the police and the social welfare officers is not consistent.
- Monitoring and implementation-level accountability requires attention.
- Civil society input is limited at this stage.

**(h) Conclusions in terms of:**

**i. Relevance**

- The service is regarded as highly relevant as the management of children's cases into and during the criminal justice process requires urgent attention.
- An ARRS is essentially intended to apply resources where they are needed through inter-sectoral cooperation. As such the service is aimed at protecting children's rights at the initial stage of the criminal justice process and limiting their exposure to the criminal justice system. This is in line with the objectives of the international instruments on child justice.

**ii. Efficiency**

- It cannot, based on the available evidence, be concluded that efficiency has been improved in terms of case management, and lengthy delays were still observed. It is noted that cases that are “stuck” in the system are not addressed with the urgency they require. At the same time, it is acknowledged that there are instances of good cooperation between role players, such as the police and the welfare services.
- The absence of a strong central management function or alternatively an effective inter-sectoral coordinating structure has a negative impact on improved efficiency.

**iii. Effectiveness**

- Children, once transferred to the designated police stations, are held separate from adults.
- The absence of a strong central management function or alternatively an effective inter-sectoral coordinating structure had a negative impact on improved effectiveness.
- The ARRS functioned reasonably well in terms of case-to-court allocation until it was decided to distribute cases again since the beginning of 2005.
- There appears to be confusion and inconsistency as to the processing of cases and dockets from police stations to the two designated central stations, and that even the police themselves are not fully aware of the instructions that were indeed given by the Inspector General in July 2001. For example, the OIC of the Central Police Station and the Coordinator of the Victim Support Unit in Lusaka had conflicting opinions as to the manner in which dockets and suspects are managed and centralised or not. The orders were issued by the Inspector General of Police so that children and dockets could be centralised, but it appears that this is not fully adhered to.
- The provisioning of mattresses and blankets resulted in an improvement at the police station cells, even though there is a suspicion that adults may also be using them.
- Access to food and water remains a challenge and it is indeed regrettable that this has not been resolved.
- Whilst there is increased knowledge and awareness amongst police officers about children's rights, it cannot be concluded that this has, on a consistent basis, translated into better service delivery. Children interviewed in Lusaka continue to report assaults during arrest and questioning, and lengthy periods in remand were recorded.
- Cell capacity place a limit on the extent to which children and adults are separated and this is often exceeded over peak periods, such as the Festive Season.

**iv. Impact**

- The separation of adults and children had a positive impact on the safety of children where this has been possible. Cell capacity and need over peak periods (Festive Season) does, however, result in the mixing of adults and children in police cells.



- The centralisation of arrests and children's cases had a positive impact on case management where and when the conditions were right to facilitate effective case management.
- The allocation of children's cases to specific police officers at the two police stations had a positive impact and makes it easier to track cases. The fact that there are designated officers at these two police stations to deal with children's cases also makes it easier to finalise dockets and refer the cases to court.
- There does not appear to have been any change in the arrest patterns of the police and children are still entering the criminal justice system having been arrested for petty offences such as "loitering" or being "idle and disorderly". The ARRS apparently has not made an attempt to address this problem, as it was identified in the 2000 Situational Analysis.
- It cannot be concluded that cases are now progressing more quickly through the system than in the past. Even though statistics are at times submitted to the CJF where all role players are represented, it does not appear as if this information is used to inform decision-making and reduce the amount of time that children spent awaiting trial at Central and Kamwala Remand Prison in Lusaka.

**v. Sustainability**

- The sustainability of the ARRS at the two stations is dependent on the institutionalisation of children's case management procedures and is therefore not highly dependent on resource inputs.
- The success with which case management procedures for children are embedded into institutional knowledge will be highly dependent on the stability of human resources and the amount of training that is conducted.
- There is no reason to expect that cell capacity, as it currently exists, should change in the near future.
- The efficiency and effectiveness of the ARRS will be determined by the ability of the Lusaka CJF to facilitate inter-sectoral cooperation and instil a sense of accountability for delivery amongst stakeholders.

**vi. Lessons learned**

- For a project of this nature that is essentially aimed at improving efficiency and effectiveness, clear measurable targets need to be formulated in advance and supported by appropriate procedures to attain them. It is not sufficient to expose the functionaries in the system to information and examples. It is required that the model be "indigenised", with its own set of local performance procedures and indicators.
- Inter-sectoral cooperation is difficult and stakeholders need to agree on a common purpose and implementation plan. Inter-sectoral forums need to enjoy a certain level of political clout, even if this is located only in the chairperson.

- Stakeholders in the CJF need to remain focused on outcomes and not inputs. This will be facilitated through clear and commonly agreed-upon performance indicators.

## **(h) Recommendations**

- The challenges facing the ARRS are primarily case management issues and the solution therefore lies in the establishment of a clear management (and coordination) function in this regard.
- Clear non-negotiable time lines for the management of children's cases need to be established. This will function as the standard against which effectiveness and efficiency should be measured.
- All arrests of children must be reported to the social welfare office immediately and this can be done with SMS, noting date, time, age, gender and case number. This will be kept as a central register and recorded cases can be managed from this point.
- A quantitative monitoring system producing at least monthly reports must be established as a matter of urgency.
- Full monthly quantitative reports must be submitted to and reviewed at the Lusaka CJF meetings
- Problem cases must be identified, investigated and progress reported to the CJF who should develop solutions, assign responsibility and a report-back date.
- Outlying police stations must be designated a central police station to which their cases must be referred to and to no other police station. This should preferably be one police station per metro and not two as is the case in Lusaka.
- Children need to be assessed by a social welfare officer immediately after arrest in order to establish personal circumstances, locality of parents and suitability of release into care of guardian/parent. If a parent is available (and this should preferably be the case) the suitability of diversion should be investigated and a recommendation formulated in this regard, which will be submitted to the prosecutor prior to first appearance.
- The number of children in detention at the Kamwala and Central Remand Prisons<sup>31</sup> needs to be monitored on a continuous basis and reduced.
- Children should only be detained at either Central or Matero police stations, and at no other station under any conditions.
- All children's cases should be heard at the Boma Court and children appearing there should rather be kept at the Central Police Station cells than at the court holding cells, which are across the road.

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<sup>31</sup> During the fieldwork it was not possible to visit the Central Remand Prison due to the full schedule. The researcher was also informed that no children are being detained there but this statement is however not supported by recent minutes of the Lusaka CJF (February 2005) which reported that there were 43 children on remand there.

- All relevant staff members from the social welfare services, police and prisons service must attend the CJF meetings in order to address case flow issues.
- The use of family finders (volunteers or sessional workers) needs to be investigated as this will lighten the load of the police and social welfare officers and increase efficiency.
- Conditions and practices at the Kamwala Remand Prison require investigation with specific reference to the use of adults as cell captains, overcrowding and access to health care.
- Gaps in the service delivery process need to be resolved, for example that children are detained at other police stations or that children appear in court without being seen by a social welfare officer.
- The police should receive guidance on the types of offences they can arrest children for and it is proposed that the Inspector General issues orders with regard to offences such as loitering and being idle and disorderly.
- Proactive measures need to be implemented to prevent that children are assaulted by the police. Similarly, an effective reactive measure needs to be set up to investigate and punish, if found guilty, police officers who assault child suspects. It is proposed that magistrates at designated child courts take up this issue and investigate where necessary.

## **(2) Child Friendly Court in Lusaka**

### **(a) Background and motivation**

The establishment of a Child Friendly Court (CFC) was recommended as part of the 2000 Situational Analysis. Historically, criminal courts are not child-friendly and the Zambian Courts are no exception. Access to legal representation, out-dated legislation and a generally punitive approach are some of the major challenges that children face in the court system. Criminal justice systems also tend to look only at the crime that was committed and pay little or no attention to the child and his/her circumstances, nor are children treated substantially different from adults. The Situational Analysis also noted the absence of diversion as a principle from the Zambian legal process and thus recommended the establishment of such programmes.

### **(b) Purpose**

To provide a court system that assesses the child holistically in a non-threatening and participative manner and makes decisions based on the best interests of the child balanced with the interests of justice.

### (c) Objectives

The objectives of the CFC are:

- To create an environment that encourages the participation of children and their families
- To impose sanctions (if necessary) that are the least restrictive and for the shortest possible time span
- To oversee the treatment of children in the criminal justice system
- To divert cases from the criminal justice process.

### (d) Stakeholders and their contributions

#### i. Financial direct

The table below details UNICEF's direct financial support to the Child Friendly Court in Lusaka for the period 2001 to 2004. It will be noted that some of the items (such as training) were also listed under support for the ARRS in the previous section. The training was of an integrated nature and it would not be possible to allocate it under only one of the pilot projects as the service was intended to form an integrated continuum. This report is also not a financial audit and the intention is rather to show in broad terms what different stakeholders contributed to the services being evaluated.

**Table 5 UNICEF direct financial support to the Child Friendly Court in Lusaka in US \$**

<b>2001</b>				
<b>Description</b>	<b>Training</b>	<b>Equipment</b>	<b>Consumables</b>	<b>Total</b>
Tickets for Police Officers to South Africa for child justice training	2600			
<b>Sub-total</b>	<b>2600</b>	<b>0</b>	<b>0</b>	<b>2600</b>
<b>2002</b>				
Vehicle for Child Friendly Court		15500		
Juvenile Justice course fees in UK for GRZ officers	12754			
DSA/tickets for officers attending J.J course in UK	12999			
Consultant to adapt Namibian J.J manual to Zambia	1128.96			
<b>Sub-total</b>	<b>26881.96</b>	<b>15500</b>	<b>0</b>	<b>42382</b>
<b>2003</b>				
Printer, Computer, fax and Photocopier		4966		
<b>Sub-total</b>	<b>0</b>	<b>4966</b>	<b>0</b>	<b>4966</b>

<b>2004</b>				
<b>Sub-total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Training of magistrate and Social worker (UK)	8040			
<b>GRAND TOTAL 2001-2004</b>	<b>37422</b>	<b>20466</b>	<b>0</b>	<b>57 888</b>

As can be seen from the above, UNICEF contributed just below \$60 000 to the CFC during the period under review of which the bulk (84%) was spent in 2002. Of the total amount, 59% was used to support training of officials to support and function within the criminal justice system. A further 41% was spent on equipment (vehicle and office equipment).

The other major contributor of direct financial support was the Embassy of Sweden and agreement number ZMB 44/03 in 2003 detailed a support plan for the establishment of a secretariat for the Lusaka CJF and support for the CFC. A further decision was taken in February 2004 to support some under-funded items (decision nr 37/04). In response to a proposal submitted by the CJF to the Embassy of Sweden in April 2003, it was agreed that SEK 400 000 (\$51 216<sup>32</sup>) will be made available for "the advocacy and sensitising programme, and the running of the three pilot projects"<sup>33</sup> In total, \$103 000.00 is made available to child justice reform in terms of this agreement. The following table sets out the rough budget for the agreement<sup>34</sup>.

**Table 6 Approximate budget of the SIDA - Judiciary support agreement**

<b>Item</b>	<b>Amount in US \$</b>
Secretariat	50 000
Child Friendly Court	5 000
ARRS	20 000
Diversion	22 000
Advocacy and sensitisation	6 000
<b>Total</b>	<b>103 000</b>

<sup>32</sup> The exchange rate was calculated at SEK 7.81 to US\$1.00.

<sup>33</sup> Report on juvenile Justice Administration project run by the child Justice Forum up to 31/3/2004, Signed by M Chanda and L Holmqvist, Dated April 2004, p 3.

<sup>34</sup> Reference is made here to a "rough budget" as these are not final figures because some expenditure still need to occur and the exchange rate has had a significant impact on the dollar value of the actual tranches.

The support to the CFC is aimed at fuel and maintenance of the vehicle that was donated by UNICEF.

**ii. Financial indirect**

There was no other indirect support noted from the donor community.

The Department of Justice made available a courtroom as well as a magistrate that would deal with children's cases. The court is further staffed by a public prosecutor and social workers who have been trained to deal with children and contribute to a child-friendly environment. This was the situation and Chikwa Court as described in the referenced report<sup>35</sup>, it could however not be confirmed that a specialised prosecutor was still being utilised at the Boma Court.

A new Magistrates Court Complex has been completed in Lusaka and will soon be occupied and provide a more child-friendly work environment. A second complex that would make specific provision for a child friendly court is also being planned. Confirmation was not received from the CJF Secretariat as to when the new premises will become available.

**iii. Capex items donated**

The CFC was provided with a vehicle by UNICEF as noted above, as well as a computer, printer, fax machine and photocopier.

**iv. Expendables and consumables donated**

The Embassy of Sweden donated in terms of the current agreement the fuel to the vehicle and the Judiciary was supporting the fuel and lubrication of the second vehicle.

**v. Training provided**

It will not be possible to separate the different training sessions out as they had been presented in an integrated manner in order to provide a continuum of services to children in the criminal justice system. Training that was therefore noted in the ARRS discussion is noted here again as they contributed to both pilot projects.

The first training that was provided indirectly to the CFC was done in May of 2001 and coincided with the launch of the CJF.

In October 2001, ten Zambian delegates attended a 10-day training and orientation programme in South Africa with a specific focus on the One-Stop Child Justice Centre in Port Elizabeth. From 21 January to 1 February 2002 three Zambian delegates (probation officers, prosecutor and

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<sup>35</sup> Report on Juvenile Justice Administration project run by the child Justice Forum up to 31/3/2004, Signed by M Chanda and L Holmqvist, Dated April 2004, p 4.

magistrate attended a training programme in the United Kingdom facilitated by RIPA International.

The magistrate of the CFC and a social worker attended training on children, gender and the Courts in Jersey, UK (20-23 September 2004). The cost was covered by UNICEF.

**vi. Expert and specialist knowledge provided**

The Situational Analysis conducted in 2000 and supported by UNICEF provided the criminal justice system with an overview of the situation at that stage. There was a clear identification of the main challenges and bottle necks, and how these affected children negatively in the criminal justice system. The report also remarked upon the fact that children are essentially treated as “small adults” in the criminal justice system<sup>36</sup>. In October 2000 a strategic framework was circulated to all role players.

The site visits and training in South Africa provided further specialist input on child justice and the Zambian delegates had the opportunity to learn from their South African counterparts.

The training and observations in the UK afforded the opportunity to a smaller group of delegates to learn from a well resourced and technically advanced criminal justice system. The training dealt with the following<sup>37</sup>:

- New procedures in the youth centres
- Fast tracking prosecutions
- Persistent young offenders
- Inter-agency responses to youth offending
- Restorative justice
- Sentencing framework
- Special protection measures for child witnesses
- Child witness preparation.

**(e) Findings**

**i. Inputs**

- Training was provided to designated magistrates, probation officers, prosecutors in South Africa at the One Stop Centre in Port Elizabeth. The centre is equipped with all services required to deal with children’s cases ie, police, prosecution, diversion, holding facility, probation officers and magistrates court. The purpose was to observe the workings of this

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<sup>36</sup> For a detailed description of court processes see Muntingh L (2000) Report on Situational Analysis of Juvenile Justice in Zambia, UNICEF Lusaka, Unpublished report, pp 48 -58.

centre and take lessons back to Zambia and replicate what was feasible and practicable. The training in the UK provided further skills and knowledge input. It can be concluded that the training combined with the Situational Analysis provided a sufficient base of knowledge to enable the establishment of a child-friendly court.

- A court room was designated to be used exclusively for children's cases. This was initially located at Chikwa Court but later moved to Boma Court in Lusaka.
- Vehicles and fuel were made available to the CFC staff and support staff to assist with the tracking of parents and children.
- Staff were made available by the Ministry of Home Affairs and the Judiciary to enable the functioning of the CFC.
- A consultant was contracted to revise the child justice manual that was originally developed for Namibia and make it suitable for the Zambian context.

## ii. Outputs

- The training done in January 2002 at RIPA in the UK produced a number of useful recommendations to make the court more child friendly<sup>37</sup>. For example that a limit of two months be placed on the finalisation of cases and that this be monitored by a "juvenile justice board". It was further recommended that a witness-friendly service be introduced and that children be taken to visit the court room prior to the commencement of the trial in order to be familiarised with the physical surroundings. This would also be supported by a court information service.
- The report on the training in South Africa makes a number of insightful observations and recommendations, for example:
  - there must be special rules for a child justice court,
  - the range of sentencing options for children need to be expanded
  - children must be given legal representation, and
  - there must be an appeal and review procedure<sup>38</sup>.
- Assessments by social welfare officers did not attain the numbers that would be expected. For the period 1/1/2005 to 30/4/2005 there were only 31 cases on record. This may be function of poor record-keeping which would indicate a different set of problems in terms of monitoring and accountability.
- Following from the above, an undated report from the Social Welfare Services notes that in the period September to October 2004, a total of 38 cases were dealt with, 6 female and 32 males<sup>40</sup>. 23 of these cases were dealt with in the following manner:

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<sup>37</sup> The Report on the Children in the Criminal Justice System training held at RIPA International in London, UK, 21 January to 1 February 2002 by M Chanda, VK Kachingwe and M Mulima, p 2 – 3.

<sup>38</sup> The Report on the Children in the Criminal Justice System training held at RIPA International in London, UK, 21 January to 1 February 2002 by M Chanda, VK Kachingwe and M Mulima, p 20-21

<sup>39</sup> Report of the Juvenile Justice training at the Stepping Stones One Stop Youth Justice Centre, Port Elizabeth, South Africa, 13 -17 August 2001, pp 12 – 13.



**Table 7 Adjudication of cases as recorded by Social Welfare Services for the period October to November 2004 in Lusaka.**

<b>Adjudication</b>	<b>Frequency</b>	<b>Percentage</b>
Diverted	4	17
Nakambala Approved School	1	4
Katombora Reformatory	3	13
Settled with family conference	2	10
Probation supervision	12	52
Discharged	1	4
Total	23	100

Two issues are immediately apparent; the first is that the totals do not correspond, 38 and 23, which is indicative of the state of quantitative monitoring. Secondly, that more than 50% of the cases were placed on probation supervision whilst there is a shortage of social workers and an under-utilised diversion programme.

- Partially confirmed records from RYOCHIN reflect that over a 34 month period, 158 cases were referred by the court in Lusaka for diversion to the organisation. A conservative estimate places the court's caseload during this period at 680 cases and the number of diverted cases would then reflect a diversion figure of 23%.
- A separate court for children with trained officials functioned as the only court that deals with children's cases from November 2001 to December 2004.
- Due to lack of records no further outputs can be noted.

### **iii. Outcomes**

- Diversion from the criminal justice system was introduced and accepted in Lusaka by all role players. This is regarded as a significant development as it is not unheard of for diversion programmes to receive a less-than-enthusiastic welcome from the prosecution service.
- Children's cases are heard in a separate court by a trained magistrate since November 2001 and firmly expresses the principle that children are to be treated differently in the criminal justice system and that they are not merely "small adults"
- Children who were interviewed did not report a "child-unfriendly" experience at Boma Court hearings and had positive reports about the court processes, under the circumstances.
- There is an increased interest and exposure of magistrates to child justice.

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<sup>40</sup> Social Welfare Report on Juvenile Justice for the Period of September to October 2004, Author Unknown.

#### **iv. Impact**

- An estimated 158 children over a 34 month period were diverted and avoided the imposition of an order, although only 80% complied with the diversion conditions<sup>41</sup>. Records on what happened with the non-compliance cases are not available.
- Children's cases were adjudicated in a manner that took more issues in addition to the offence into consideration. This was made possible by the more extensive use of social workers' reports when the magistrate made decisions with regard to diversion and orders.
- Social welfare officers provided input to the courts on appropriate sanctions.
- A body of knowledge and common understanding between magistrate and social welfare officers developed over time regarding appropriate sanctions. This was particularly the case where the role players concerned participated in the same training.

#### **v. Unintended consequences**

- The centralisation of children's cases placed additional pressure on the already limited holding facilities at the court.
- As a result of the shortage of social workers, the additional workload allocated to the existing social workers may have resulted in further delays in case adjudication.

### **(f) Difficulties experienced in terms of:**

#### **i. Governance**

- The frequent changes in magistrates created problems in consistency and cases are now distributed across all the city courts and no longer centralised at the Boma Court.
- A clear procedures manual as to what constitutes a child friendly court and what would be the specific rules for such a court was not developed. This created problems in adhering to this ideal, especially when staff turn-over began to have an impact on the project. The retention of institutional knowledge is regarded as a governance problem in this context.

#### **ii. Human resources**

- Staff constraints and turnover continue to limit the ability and consistency of a child-friendly court.
- The Magistrate who started with the project was transferred to Ndola in December 2004 and she handed over to another magistrate who was transferred less than two months later to Livingstone. This rapid turnover did not contribute to stability in the project.
- Of the original group of 13 people who participated in the training in the UK and South Africa, only two are still involved in child justice. This scale of turnover ultimately has an

impact on the ability of a project to deliver on its mandate and is consequently not only a human resource problem but also a governance concern as noted above.

### iii. Service delivery

- Terminology remains an issue as “juvenile” and “juvenile offender” remain in use despite the CRC reference to a “child” and an international trend to avoid the term juvenile. The data collection forms that were developed at a workshop in 2004 even refers to “juvenile offender” when the child has not even gone to trial and been found guilty.
- The available records from Social Welfare Services as with regard to their assessments done and recommendations to the court are for two periods namely October to November 2004 (23 cases) and for the period January to March 2005 (31 cases). Of the 31 cases on record, 9 have been finalised and the order made at the time of the fieldwork in mid-May 2005. Two issues emerge, it takes the court very long to finalise cases and the output rate of the social welfare services is relatively low.
- The physical structure of the court room is not different from any other court room at Boma and the court room has windows on both sides through which the public can see and also listen in on proceedings<sup>42</sup>.
- There is only one holding cell at the court building and children interviewed at Kamwala report that they are kept there when appearing in court. They also reported that they are assaulted by adult prisoners when detained there. The cell itself is approximately 15 m<sup>2</sup> and sometimes has to hold up to 100 prisoners. It has one dysfunctional toilet and no running water. Any notion of “child-friendliness” is undone by that experience.
- Clear criteria and guidelines for the diversion of cases did not appear to exist.
- Children are transported together with adults from the remand prisons to the court and are reportedly assaulted and even sodomised<sup>43</sup>.

### iv. Financial management, resource management and administration

- It was reported that the vehicle assigned to the CFC is allegedly unavailable to the social welfare officers from 12:00 – 14:00 everyday as senior official(s) use it to go on lunch with during that time<sup>44</sup>.
- Records on children who have appeared at the court since its inception could not be found. The CJF minutes of 2 February 2005, 22 December 2004 and 27 October 2004 reflect that no records were submitted to the forum but that records were apparently kept by the Judiciary Registry. In an interview with the Acting Registrar, enquiry was made as to records and he stated that none were available.

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<sup>41</sup> The compliance figure was calculated based on records of a sample of 81 cases that were supplied by RYOCHIN to the author.

<sup>42</sup> It is acknowledged that a new building is available and will be occupied soon.

<sup>43</sup> Minutes of the Child Justice Forum Meeting held on 13 July 2004 in the Conference Room of the Supreme Court Building at 1400, p. 5.

<sup>44</sup> Interview conducted with official on 12/5/2005.

- It appears that fuel consumption of the vehicle is higher than budgeted for and that there will need to be a re-allocation of funds in the Swedish budget to provide for running expenditure in this regard<sup>45</sup>. Clarification on this issue was sought from the CJF Secretariat but this was not received at the time of writing.
- The vehicle that UNICEF donated developed technical problems and was out of action for a considerable period of time in 2004<sup>46</sup>.

**v. Income and fundraising**

- The project is currently dependent almost exclusively on funding from the Embassy of Sweden and it is thus at severe risk. This funding agreement will come to an end on 30 October 2005 and it is not clear how the project will be sustained thereafter. It was however reported that the Judiciary is in process of developing a further funding proposal to submit to SIDA<sup>47</sup>.

**vi. Inter-sectoral cooperation**

- The decentralisation of children's cases of late (since the beginning of 2005) dismantled the inter-sectoral cooperation practices that were in place and now requires the police, social welfare officers and families of children to search for where cases are appearing. It was alleged by one person interviewed that "there are allowances involved and that is why all the magistrates want to do children's cases since the beginning of the year".
- There is not a clear case flow management and recording system in place to ensure that children do not "fall between the cracks", i.e. recording arrests and comparing that with cases that are appearing at court.
- Lengthy delays in the finalisation of cases are in most instances the result of poor inter-sectoral cooperation.
- The delays in the transportation of children from Kamwala to Katombora and Nakambala is a further indication of problems in inter-sectoral cooperation.
- It appears that some significant role players have been left out of the loop as the Director of the Legal Aid Directorate was completely unaware of any of the UNICEF initiatives and the CJF.

**(g) Conclusions in terms of:**

**i. Relevance**

- There is no doubt that a child friendly court is highly relevant in order to ensure that children's cases are dealt with in the appropriate manner. This is also in line with the

<sup>45</sup> Report on the Juvenile Justice Administration Project run by the Child Justice Forum, Third Quarterly Report, Oct – Dec 2004, authored by L Holmqvist and M Chanda, p. 19.

<sup>46</sup> Report on the Juvenile Justice Administration Project run by the Child Justice Forum, First Quarterly Report, April to June 2004, authored by L Holmqvist and M Chanda, p. 13.

<sup>47</sup> Information supplied by Secretariat for CJF Lusaka in personal communiqué dated 29/5/2005.

recommendations made in the Situational Analysis as well as the recommendations made by the group of Zambian delegates that visited South Africa<sup>48</sup>.

- The CFC also provided the mechanism for the introduction of diversion, although diversion is normally handled by the prosecution service and not the magistracy. In the absence of a well-developed and skilled prosecution service in the sub-ordinate courts, this was a pragmatic choice.
- The CFC is in line with developments in other jurisdictions, such as those visited in South Africa and the UK.

## ii. Efficiency

- The efficiency of the court is highly dependent on the inter-sectoral support it receives to ensure that children are brought there speedily, and that witnesses and parents are available.
- Social Welfare Officers reported that under the previous magistrate (that is until the end of 2004) efficiencies were created by discussing cases in chambers without these even going to trial in order to limit the child's exposure to the criminal justice system. A quantitative measurement of this is, however, not possible in the absence of court records and other relevant documentation.
- The close knit cooperation between different role players, as alluded to above, is in line with observations reported and recommendations made by the group often who visited the One Stop Centre in South Africa.
- The current allocation of cases (since January 2005) does not contribute to efficiency and in fact, has the opposite effect.
- The shortage of staff, transport problems and inadequate records has a negative impact on efficiency. Cases are postponed for various reasons such as that the parents not being available or that welfare reports have not been completed, etc.
- The partial inaccessibility of the vehicle causes delays in the tracing of parents, interviewing children and coordinating activities with the police.
- Whilst the notion of a child friendly court has been accepted and the objectives, as listed above, are well publicised, it does not appear as if these objectives have been described into operational standards that would meet the requirements of "child friendliness". In other words, the group that visited the One Stop Centre in South Africa recommended, quite correctly, the establishment of a "child justice court with its own rules" but it is not apparent that these rules have been developed in any detailed manner and that they have been agreed upon and written up so that efficiency may be measured against them.

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<sup>48</sup> See report from the delegation: Report of the Juvenile Justice training at the Stepping Stones One Stop Youth Justice Centre, Port Elizabeth, South Africa, 13 -17 August 2001.

### **iii. Effectiveness**

- The CFC was effective in terms of establishing diversion as a manner of dealing with children's cases in the criminal justice system and a high-end estimate of 23% of cases were diverted over a 34-month period.
- The notion of a child friendly court was introduced and accepted by role players.
- Physically the Boma Court room is not child-friendly and the holding cell at the court building is contrary to any notion thereof.
- Less than 40% of children arrested benefit from the services of a social welfare officer. It remains, therefore, possible for a child to appear in court and be sentenced without having been assessed by a social worker. This was also confirmed by children who were interviewed in the remand prison.
- The available records (from Social Welfare Services for 2005) indicate that the court takes excessively long to finalise cases (9 out 31 cases finalised in a four and half month period). This cannot be regarded as an effective utilisation of resources.
- There are not sufficient records available to indicate that there has been a change in order (sentence) patterns.

### **iv. Impact**

- It is not possible at this stage to come to any substantial conclusion on the impact of the CFC as it pertains to case management, orders imposed or the participation of children. It can, however, be said that it appears to have functioned reasonably well for a time but the transfer of the previous magistrate lead to a number of changes in case allocation that did not contribute to child-friendliness. Cases are now heard by magistrates who have not been trained in managing a child-friendly court.
- The physical building and specific room where the children appear do not contribute to "child friendliness".
- A further result is that the information will be used to address the Judiciary Training Committee and that UNICEF will train 105 of the 222 magistrates in 2005.

### **v. Sustainability**

- Sustaining this court will necessitate the centralisation of cases at one court. It is not foreseen that the CFC is highly dependent on resources, apart from those applied to assess children and secure the attendance of their parents at court.
- The court is currently functioning with limited and untrained or semi-trained staff members and this places its sustainability at risk.
- Funding and maintenance of the vehicle is a sustainability risk.
- Staff shortages and the re-distribution of cases place the entire court concept at risk as it is only a proportion of children who benefit from it.
- The Swedish funding for the court service is coming to an end and this evaluation should be used to inform the decision regarding continued support.

#### **vi. Lessons learned**

- A clear management plan and accountability structure would have assisted in the transition of one magistrate to another by ensuring continuity in operations.
- The notion of “child friendly” should have been operationalised into “rules for the court” that would make it substantively different from other courts and ensure continuity when staff leaves.
- Record-keeping is essential to monitor effectiveness and efficiency.
- Baseline data is essential to track improvement and concomitant development of key indicators would have assisted greatly.

#### **(h) Recommendations**

- The CJF can be used more effectively to improve case management through monitoring and reporting, and thus contribute to an important attribute of child friendliness, namely swift adjudication.
- Rules of operation and management need to be formulated and documented for the CFC.
- The operations of the CFC need to tie in with the case flow management plan recommended under the ARRS.
- All children’s cases must be heard at one court, preferably Boma Court.
- Guidelines for diversion of cases need to be developed in consultation with the Director of Public Prosecutions.
- A number of magistrates need to be exposed to children’s cases but this should be done on a rotational basis at the Boma Court. The magistrates need to be trained in the rules and operations of the court before they commence with duties.
- More social welfare officers need to be trained in working together with the CFC in order to contribute to more effective case flow.
- Key performance indicators need to be developed such as detention cycle time, number of cases finalised as a percentage of cases referred to court, order profile in terms of custodial and non-custodial, and so forth.
- A simple database programme run on Excel will be adequate to monitor case progress from arrest to adjudication.
- An effort should be made to give the court room more of the appearance of child friendliness although this is only one aspect of child friendliness. The move to the new Magistrates Court Complex will hopefully address this to some extent.
- If children must be detained at the court, they should rather be kept at the Central Police Station cells than at the court cells.
- The court must provide a detailed monthly report to the CJF on its operation with regard to the adjudication of cases and the key performance indicators noted above.

- The magistrates of the court should pay regular visits to the police stations cells at Central and Matero as well as to Kamwala Remand Prison to monitor the situation. This can be done on a roster basis and magistrates can accompany the social welfare officers when they visit the cells or prison in order to save on transport.
- The project needs to take active measures to secure funding for after 30 September 2005.

### **3. Diversion programme in Lusaka (RYOCHIN)**

#### **(a) Background and motivation**

The 2000 Situational Analysis recommended the establishment of diversion programmes. At that stage RYOCHIN was identified as the only NGO able to take up the establishment and development of a diversion programme in Lusaka. RYOCHIN received support from UNICEF to undertake a number of activities since 2000, namely:

- develop and render a diversion programme
- implement a crime awareness and crime prevention programme
- conduct training with role players outside of Lusaka to establish CJFs.

The following will focus on the diversion programme and its implementation. The other supported activities will be discussed in a shortened version in the subsequent sections.

The overall approach to diversion leaned heavily on knowledge and experience from South Africa and Namibia which is regarded as more appropriate than British or North American models.

#### **(b) Purpose**

To render a suitable diversion programme for children referred from the Chikwa/Boma Court as an alternative to prosecution, a guilty finding and passing of an order<sup>49</sup>.

#### **(c) Objectives**

Clearly articulated objectives could not be found in the available documentation and an overview report dated 2005 only articulates the aims of diversion in general<sup>50</sup>. Ambitious numerical targets were set in initial project proposal<sup>51</sup>. In view of this, the objectives are defined as being:

<sup>49</sup> S 68 of the Juveniles Act [CAP 217] disallows the use of the words “conviction” and “sentence” with reference to juvenile cases in subordinate courts.

<sup>50</sup> Summary Report on Juvenile justice Administration in Zambia presented to UNICEF by RYOCHIN, Prepared by A Mofya, dated 4 May 2005, pp. 6-7.



- To render a life skills programme for children to the court that can function as an alternative to prosecution and conviction<sup>52</sup>.
- To facilitate the reintegration of children in conflict with the law through the provision of a diversion programme that will enable them to manage the risks in their environment better and avoid coming into conflict with the law again.

## (d) Stakeholders and their contributions

### i. Financial direct

Since 2001, UNICEF contributed a total amount of \$50 297 to RYOCHIN. The available documentation does not specify exactly what amount was spent on the diversion programme as opposed to other initiatives by the organisation. The bulk of the support was on running costs or “direct cash support” as referred to in UNICEF documentation.

**Table 8 UNICEF support to RYOCHIN**

<b>2001</b>					
<b>Description</b>	<b>Training</b>	<b>Equipment</b>	<b>Consumables</b>	<b>Running exp.</b>	<b>Total</b>
ARRS orientation Workshop	442				
Cash support to RYOCHIN for crime prevention				8,087	
Juvenile Justice T-Shirts for RYOCHIN			1,600		
<b>Sub-total</b>	<b>442</b>	<b>0</b>	<b>1,600</b>	<b>8,087</b>	
<b>2002</b>					
Cash support to RYOCHIN on diversion Programmes				6,856	
Stationery for RYOCHIN				3,015	
<b>Sub-total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>9,871</b>	
<b>2003</b>					
Cash support to RYOCHIN on diversion Programmes				11,791	
Motorbikes for RYOCHIN		10,560			
<b>Sub-total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>22,351</b>	
<b>2004</b>					
Crash Helmets for RYOCHIN Motorbikes		256			
Cash support to RYOCHIN on		7,690			

<sup>51</sup> A proposal submitted to UNICEF by RYOCHIN on 2002 estimated that 75% of cases appearing before the court could be diverted. See Project Proposal on pilot diversion programmes, presented to UNICEF by RYOCHIN, Dated 4/11/2002, p 5.

<sup>52</sup> The words “sentence” and “conviction” are being used to be in conformity with the international literature.

diversion Programmes					
<b>Sub-total</b>	0	7,946	0	0	
<b>GRAND TOTAL 2001-04</b>	<b>442</b>	<b>18,560</b>	<b>1,600</b>	<b>29,749</b>	<b>50, 297</b>

Table 6 above details the support rendered by SIDA to the child justice reform and reflects the support for diversion as \$22 000.00. This support is aimed at:

- a vehicle, fuel and maintenance
- vocational training of children who have been referred for diversion from the court
- transport allowances for volunteer counsellors assisting children who have been referred for diversion from the court<sup>53</sup>.

In the absence of audited financial statements and annual reports it is not possible to verify what other sources of income the organisation has received.

#### **ii. Financial indirect**

None were noted except for the fact that the offices occupied by RYOCHIN have been obtained rent-free from the Ministry of Sport, Youth and Child Development. This does constitute a significant benefit to the organisation.

#### **iii. Capex items donated**

RYOCHIN received office equipment in the form of computers, fax, and printer from UNICEF. The transport issues were addressed through a donation of one minibus vehicle and four motorbikes. The motorbikes were donated by UNICEF (value of \$10 560.00) as indicated above and the minibus by the Embassy of Sweden in 2004 to the value of \$7500.00<sup>54</sup>.

#### **iv Expendables and consumables donated**

None other than those recorded in the table above were noted.

#### **v. Training provided**

As with regards to the diversion programme (Mapping the Future), the RYOCHIN staff did not receive any training on the facilitation of the programme. A planned training programme for 2003 that would have focussed on the life skills programme did unfortunately not materialise due to funding constraints.

<sup>53</sup> It needs to be emphasised that the support is for services to court referred cases, as opposed to the substantial number of cases that end up on the programme from other sources.

## vi. Expert and specialist knowledge provided

The planned training programme, as noted above, did not materialise.

## (e) Findings

In addition to the normal interviews and verification of responses, RYOCHIN was also assessed against a set of minimum standards that were developed for the South African Department of Social Development. Although these standards are not finalised and are thus not available in the public domain, they serve as a useful guideline for the assessment of diversion programmes and the organisations that render such programmes. The full report is attached as Appendix 5. The following is a summary table of the findings of the assessment in terms of the minimum standards. It should be emphasised that the standards were developed with two broad objectives. Firstly, the standards had to be both desirable and feasible. In other words, the standard must be effective in protecting children's rights in a progressive manner and it must be possible for an organisation to adhere to this standard. Secondly, the standards had to be developmental and empowering. This means that in their application it is "acceptable" not to meet the standard, provided that a corrective plan is developed within an appropriate time frame.

There are a total of 95 standards, the first 60 focusing on organisational capacity to deliver services and the following 35 setting standards around programme outcomes. The table below is a summary categorisation of the 95 standards. The results should be read as follows, using "Legal structure" as the example:

*There are a total of 7 standards of which 4 were not applicable and 3 with which the organisation complied fully.*

The "no opinion" refers to instances where the required information was not available to express an opinion with regard to compliance or not. It may well be that the organisation is compliant but at the time of the fieldwork it was not possible to substantiate this. The percentages given at the bottom of the table are calculated based only on the applicable standards, 66 in total.

**Table 9 Summary assessment of RYOCHIN's compliance with the diversion programme minimum standards**

Category	Full compliance	Partial compliance	Non-compliance	No opinion	Not Applicable	Total
Legal structure	3				4	7
Governance			1		1	2
Business plan		1				1

<sup>54</sup> Report on the Juvenile Justice Administration Project run by the Child Justice Forum, First Quarterly Report, April to June 2004, Prepared by L Holmqvist and M Chanda, p 9.

Category	Full compliance	Partial compliance	Non-compliance	No opinion	Not Applicable	Total
Financial systems			1			1
Record keeping		1	6	2		9
Profit					1	1
Code of conduct		3				3
Working agreements		1				1
Recruitment procedures			2		1	3
Disciplinary procedures	1			2		3
Performance appraisals			4			4
Grievance procedures	2				1	3
Psychological debriefing	1					1
Programme environment and safety		2	1	1	1	5
Overnight and away from home care					1	1
Drugs and controlled substances	1	1				2
Protection children's rights	1					1
Promotional material	1		1			2
Equipment	1					1
Premises	1					1
Generic knowledge of facilitators				1		1
Additional knowledge: wilderness					1	1
Additional knowledge: restorative justice			1			1
Additional knowledge: therapeutic		1				1
Additional knowledge: sex offender					1	1
Additional knowledge: drugs					1	1
Additional competencies			1			1
Service level agreements			1			1
Post arrest assessment prior to trial					10	10
Programme design and delivery	1	6	6	1		14
Restorative justice programmes		2	1	2		5
<b>Sex offender programmes</b>					6	6

Category	Full compliance	Partial compliance	Non-compliance	No opinion	Not Applicable	Total
<b>Total</b>	13	18	26	9	29	95
<b>Percentage</b>	20	27	39	14		
<b>Nr of applicable standards</b>						66

**i. Inputs**

- Since 2002, substantial inputs have been made, primarily by UNICEF, to establish the infrastructure to develop the diversion programme. These inputs took the form of direct financial support capital expenditure items, training, and management support.
- The RYOCHIN staff did, however, not receive direct training on the implementation and facilitation of the life skills programme (“Mapping the Future” as develop by NICRO in South Africa).
- At the time of fieldwork, the minibus vehicle was not in working order and it appeared that is had been like that for a while. The problem was reported at a CJF meeting on 2 February 2005.
- At the time of the fieldwork, it was observed that RYOCHIN was using photocopied versions of the training manual of “Mapping the Future”. This is a copyright violation, even if it was done to save on input costs.

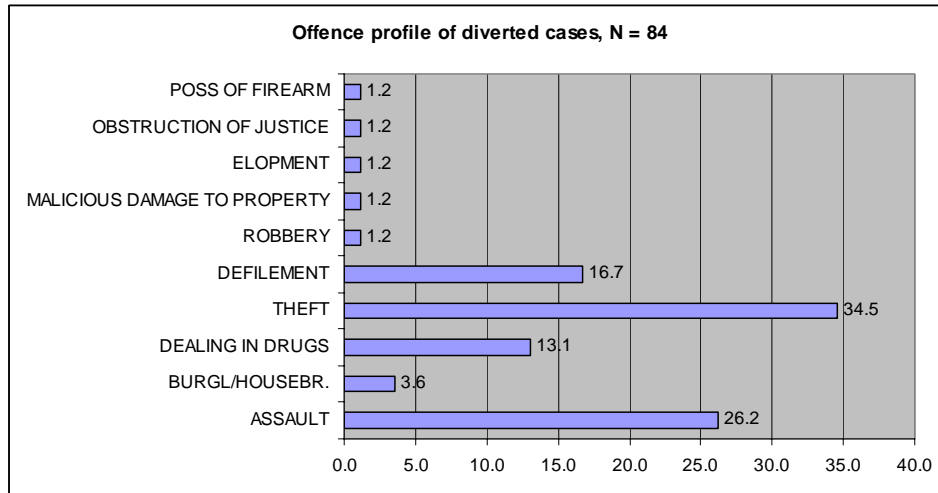
**ii. Outputs**

- RYOCHIN reports that over a 34-month period ending in April 2005 that the organisation dealt with a total of 584 diversion cases of which 158 were referred by the court. This gives an average of 4.6 cases per month referred from the courts, or not more than 25% of arrests. RYOCHIN also states that the courts deals with approximately 45 cases per month, which would then reflect a diversion figure of approximately 10%. The number of cases appearing in court is, however, unconfirmed.
- The table below reflects confirmed court referred cases that went through the diversion programme per year since 2002.

**Table 10 Number of confirmed diversion cases per year referred from the court to RYOCHIN**

Year	Number of cases
2002	25
2003	21
2004	35

2005	5
<b>Total</b>	<b>86</b>



- Reported compliance with the conditions of the diversion according to RYOCHIN records is 80%. It was not possible to establish what happened to the 20% that did not comply with the conditions of the diversion.
- An analysis of the non-compliant cases showed that cases with three characteristics showed an elevated non-compliance level; these are assault charges, children younger than 16 years and females. The numbers are very low and these observations should be treated with caution.
- A further approximately 400 children participated in the diversion programme but were referred from other sources than the courts, such as schools or families.
- RYOCHIN is implementing the life-skills programme “Mapping the Future” developed by NICRO in South Africa. There are however serious concerns regarding the integrity of the implementation of the programme by RYOCHIN. These are described below in more detail.

### iii. Outcomes

- Diversion is now established as a principle and practice at least in Lusaka and there is an expectation that such a service needs to be implemented in other centres.
- Diversion in the form of a life skills programme is accepted by significant role players.
- A total of 158 cases were reportedly referred by the court to the diversion programme.

#### **iv. Impact**

- No longitudinal study was done and it is therefore not possible to assess whether or not the programme had an impact on the behaviour of participants. Reports from facilitators state that behaviour and attitude had changed but this cannot be confirmed.
- As a principle and practice, diversion is now accepted by the judiciary, police and civil society as an alternative to prosecution and conviction.
- Interviews with five children who participated in the diversion programme were done and provide us with some insight as to what happened to them. It should be noted that these are subjective views from a small sample of children. The following trends emerged<sup>55</sup>:
  - In some cases it was not explained to them at the court what the purpose of the programme was and why they needed to attend it. The magistrate also told them that if they commit another offence, they would be sent to prison.
  - One child (female 17 years) stated that she was innocent but the magistrate still sent her to the programme.
  - The programme content is perceived in a positive light and the children reported that they found it a useful learning experience.
  - They did not report any unpleasant experiences or perceptions in relation to the programme.
  - When asked what they learned from the programme, they stated that they had learned to avoid risk behaviour (violence, sex, alcohol etc).
  - The programme facilitators were experienced in a positive light.
  - All the respondents said that they would recommend the programme to other children.
  - The children also reported that their parents attended the required sessions and that they had a strongly positive opinion of the programme.

#### **v. Unintended consequences**

- Victims are also referred to the diversion programme by the magistrate. Two cases were reported (one gang rape and one defilement) where the victim and offenders were all sent to the life skills programme.
- The majority of programme participants are not referred from the courts and are from other sources, such as schools, families and the like. This places an additional pressure on the organisation and may in fact prevent them providing the desired service to the court.

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<sup>55</sup> It was not possible for the author to interview the children during the fieldwork period. Mr Moses Kiiza from UNICEF was asked to interview two groups of five children and this was arranged for 24 May 2005 at the RYOCHIN office. However, instead of ten children arriving only five did. The sample therefore makes no claims as to representivity or validity and serves merely to get an opinion from former programme participants. The fact that RYOCHIN was able to contact these children and that they in fact arrived for the interview is a further selection mechanism that indicates stability in life style and positive attitude towards RYOCHIN and the programme.

## **(f) Difficulties experienced in terms of:**

### **i. Governance**

- The governing body of RYOCHIN is not functional and recent efforts to revive it have not been successful. The board was originally constituted in 1998 and has met approximately ten times over a six-year period. The last board elections were in 2002. Minutes of meetings could not be produced upon request.
- Donor reporting is not up to date and of the quarterly reports that are supposed to be submitted to UNICEF, only one was found. Other reports pertaining to specific training events, and an overview dated May 2005, were reviewed. It should also be noted that this evaluation was motivated in part by concerns that UNICEF developed over time regarding RYOCHIN's ability to deliver the services and be accountable in terms of the proposals submitted.
- To date a financial audit has not been done on the organisation. This is regarded as a serious sustainability risk as potential donors will not regard this in a positive light.
- Based on the minimum standards assessment, the following are regarded as more serious governance concerns:
  - Organisational policies and procedures are not developed and formalised (this covers most areas of operation)
  - Reporting and record-keeping is not of the desired standard
  - There is no code of conduct in place.

### **ii. Human resources**

- A human resource management, administration and policy is not formalised with the result that key human resource management tasks are not up to the desired standard. In this regard reference is made to personnel files, performance appraisals, staff records, job descriptions, and recruitment procedures.
- Facilitators have not received specific training to implement the life skills programme and have had to rely on the guidance given in the life skills manual itself.
- Non-payment of volunteers created instability in the organisation. It is noted that this decision was taken by the donor concerned as a result of low output level which could not justify the continued payment of the volunteers. Requests by the donor to submit the relevant substantiating documents were not responded to.

### **iii. Service delivery**

- The number of children referred to the diversion programme is relatively low compared to the estimates of children coming into the criminal justice system.
- Non-compliance with the diversion conditions borders on the high side (at 20%) and should, for the life skills programme, not be higher than 15%.



- Based on discussions with staff it is concluded that the approach seems to emphasise pathology as opposed to more recent thinking that emphasises a strengths-based approach.
- The programme is implemented in a manner that fundamentally deviates from the original design by being run continuously with a changing group composition as opposed to a fixed group over eight sessions. Participants are required to attend 16 sessions over eight weeks.
- Case selection for referral appears to present a problem as both victims and offenders have been referred to the programme. Unsuitable cases are not referred back to the referring agency.
- It is assumed that children referred from the court and children referred from other sources are all mixed into one group. If this is indeed the case, this would further detract from the programme purpose.
- Although an assessment of each child is done prior to participation, this is not sufficiently detailed to ensure that children are matched appropriately to the programme.
- There is essentially one programme in place at the moment, which places a limit on the type of cases which should be accepted and may, in fact, be partially responsible for the elevated non-compliance rate.
- The location of the organisation in Kalingalinga makes it inaccessible for some children who live as far as 30kms away.
- Reportedly there are a growing numbers of drug offenders as well as sex offenders and the staff members are not trained to deal with these cases, especially if there are serious behavioural problems. These children may experience the life skills programme as unsuitable and become disruptive. Consequently they will fail in the programme and be returned to court as “non-compliant” cases and move deeper into the justice system because they were not properly assessed and matched to the appropriate programme.

**iv. Financial management, resource management and administration**

- As noted above, an audit has not been done of the organisation’s finances since it became a UNICEF grantee. Other financial reports were also not seen.
- Record-keeping is generally poor and records are inaccessible.
- The use of the vehicle to take children home after each programme session is an inefficient use of this resource, and approximately K1 million can be saved per programme if participants use public transport and only those most in need are reimbursed for the expense.
- There have been a number of allegations regarding the use of the vehicle for purposes other than what was intended. The use of the vehicle in this manner to transport children is also open to abuse and allegations in this regard were made at a CJF meeting in February 2005. At the March 2005, CJF meeting the forum recommended to RYOCHIN

that parents and children must make an effort to get to the programme by their own means in order to avoid a “dependency syndrome”.

- General management can be improved.

**v. Income and fundraising**

- It is not clear if RYOCHIN has explored other sources of funding, save for UNICEF, The World Bank and Irish Development Aid.
- The high reliance on UNICEF places the organisation at risk.

**vi. Inter-sectoral cooperation**

- No apparent problems were noted save for the fact that reports submitted to the CJF on RYOCHIN's out-puts are somewhat sketchy.
- One significant stakeholder reported that it is “difficult to work with RYOCHIN, they say yes when they mean *no*”. Reference was being made to the submission of information and delivery on due dates.
- Case selection and the reporting on referred cases require attention. RYOCHIN needs to communicate its selection criteria to other stakeholders, so that especially the magistrate is able to understand the programme and what it is intending to achieve.

**(g) Conclusions in terms of:**

**i. Relevance**

- Diversion is highly relevant in the Zambian criminal justice system and diversion as an initiative should continue to be supported. At the same time there is a need to review the relevance of the actual diversion programme being used and, more importantly, the manner in which it is being implemented. A range of programmes that are accurately matched to needs identified through proper assessment, will greatly enhance relevance and effectiveness.
- The operations of RYOCHIN have shown that there is a need for a programme that functions somewhere between the community and the criminal justice system and the high proportion of non-court referrals are testimony to this. In other words, a life skills programme that targets children who are exhibiting risk behaviour but who have as yet not come into conflict with the law may be an effective measure to reduce crime. This option could be explored on a pilot basis with one or two high-risk schools.

**ii. Efficiency**

- In principle, diversion is more efficient because it saves on court time, investigation time, etc. There is nothing to suggest that this is not achieved here. The scope at which it is occurring is perhaps an issue requiring attention; somewhere between 10 and 23% of

cases are being diverted whilst this figure can be substantially higher, especially in the light of the current offence profile.

- The programme is currently run as two sessions per week over eight weeks, totalling 16 sessions. This doubles the number of required sessions which is eight. The explanation presented by staff is that the children are “slow learners”. A problem of this nature probably relates to poor selection and matching of participants, facilitation skills and inappropriate programme content.
- Given the case load of the programme, as noted above, it is not clear why such a high number of “counsellors” need to be used. Up to the end of 2004 when services were suspended, there were 10 and after the resumption of the programme in February 2005, four were retained and this was regarded as adequate. The normal ratio for this type of life skills programme is two facilitators to a group of not more than 20 participants.
- The practice of transporting children (and apparently parents as well) to and from the programme is not regarded as contributing to efficiency as it places an undue financial burden on the organisation and ultimately the donor.

### **iii. Effectiveness**

- The issues raised regarding programme content, implementation of the life skills programme, assessment and selection places serious question marks behind the effectiveness of the current programme. At the same time, it should also be said that no longitudinal study was done to assess sustained behaviour change. This opinion is based on extant literature with specific reference to a recent meta-analysis done by Dawes and van der Merwe for NICRO<sup>56</sup>.
- Whilst the interviews with children support the view that the programme is achieving its intended outcome, it was also clear that there are a number of problems with the current design and the manner in which this is understood and implemented by the staff.
- The diversion programme is nonetheless effective as it provides an alternative to prosecution, trial and conviction.

### **iv. Impact**

- As proper impact measurements were not done of the diversion programme itself, an opinion cannot be expressed. However, given the fact that assessment conducted is fairly superficial and that there is only one programme, there is no real chance of matching programme intensity with the risk profile of the child. Positive impact of the programme will therefore be reduced to those children whose risk profiles incidentally (and unknowingly) match the intensity of the programme. It will therefore be a “hit and miss” result.

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<sup>56</sup> Dawes A and Van der Merwe (2004) The Development of Minimum Standards for Diversion Programmes in the Child Justice System, Forthcoming

- The impact of the overall initiative centres on the introduction and acceptance of diversion as an alternative and further that a life skills programme, is seen as an acceptable alternative by all stakeholders.

**v. Sustainability**

- Whilst the sustainability of diversion in Lusaka is not at any immediate risk, RYOCHIN is and this can be attributed to governance concerns, financial management, overall management and service delivery.
- Diversion will require financial inputs from the donor community for the foreseeable future until government sees it way through to support or at least subsidise service providers.
- The sustainability of diversion programmes will be greatly enhanced through the development of minimum standards for such programmes and service providers accompanied by a licensing and accreditation system.
- RYOCHIN's sustainability will be greatly enhanced if it is able to address the shortcomings addressed through this review.

**vi. Lessons learned**

- Diversion programmes should not be adopted cross-context without proper training and testing.
- Children should be properly assessed prior to programme allocation to ensure appropriate matching.
- All stakeholders should have a thorough understanding of diversion, even if this does not have a direct impact on their work.
- There is no substitute for accurate record-keeping.
- Diversion is not a panacea for all the problems. It will work for some of the cases some of the time, even if they are properly matched. This also means that attention needs to be given to new sentencing options to deal with more serious cases.

**(h) Recommendations**

- Research needs to be conducted to develop an assessment format that will be appropriate to the Zambian context to ensure that children are matched to the appropriate programmes
- RYOCHIN needs to develop and implement a recovery plan as a matter of urgency based on the concerns and development areas raised in this review. Such a recovery plan will require financial support and UNICEF will need to make a decision as to whether it wants to support this recovery plan, and if so, to what extent it will support it. Should UNICEF decide not to support RYOCHIN it will in all likelihood have to support another organisation(s) to render diversion programmes. This will also require training

and assessing institutional capacity prior to rendering financial support. The decision will come down to the question of where will financial aid be spent more effectively and efficiently in terms of ensuring that a quality diversion programme is implemented in an organisational environment that has the institutional characteristics to ensure delivery.

- RYOCHIN needs to address as a matter of urgency the governance and financial management concerns identified as well as the human resource management problems. This may require a restructuring of the organisation in order to make best use of available skills.
- A standard operating procedures manual must be developed to ensure that cases are managed properly between the courts and the diversion service provider.
- Minimum standards for diversion programmes need to be developed in order to protect the rights of children and prevent victimisation.
- Programme facilitators need to be trained in running the life skills programme as well as other more intensive programmes.
- Court staff need to be trained on diversion theory and practice.
- RYOCHIN needs to develop clear criteria according to the programme being rendered and the cases accepted.

## **4. Child Justice Forums**

### **(a) Background and motivation**

Following the 2000 Situational Analysis it was clear that an improvement in child justice can only be achieved through inter-sectoral cooperation at delivery level. This implied that local actors and role players needed to come together on a regular basis and share information, coordinate activities and generally cooperate in order to bring about change in the criminal justice system for children. In May 2001, training was conducted on child justice and the first Child Justice Forum was subsequently launched.

### **(b) Purpose**

To improve inter-sectoral cooperation aimed at improved service delivery that is in line with the international instruments.

## (c) Objectives

The objectives of the forum are described as follows in a 2003 funding proposal submitted to the Embassy of Sweden<sup>57</sup>:

- to provide guidance on the transformation of juvenile justice system in accordance with the international instruments;
- to ensure that children's rights are respected at every stage of juvenile justice administration;
- to create awareness and sensitise key stakeholders such as the police, prosecution, the court, prisons, the social welfare, civil society and the community at large on juvenile justice issues;
- to prevent juveniles from unnecessarily moving further into the criminal justice system; and
- provide oversight on the implementation of the child (juvenile) justice pilot projects and others.

## (d) Stakeholders and their contributions

### i. Financial direct

The following two tables present the direct financial support rendered by UNICEF and the Swedish government to the Child Justice Forum in Lusaka and the general activities to expand this model.

**Table 11 Financial support from UNICEF to the Lusaka CJF**

<b>2001</b>				
<b>Description</b>	<b>Training</b>	<b>Equipment</b>	<b>Consumables</b>	<b>Total</b>
JJ course fees at NICRO	3,000			
Tickets for Police Officers to SA for J.J training	2,600			
<b>Sub-total</b>	<b>5,600</b>	<b>0</b>	<b>0</b>	
<b>2002</b>				
Juvenile Justice course fees in UK for GRZ officers	12,754			
DSA/tickets for GRZ officers attending J.J course in UK	12,999			
<b>Sub-total</b>	<b>25,753</b>	<b>0</b>	<b>0</b>	
<b>2003</b>				
Printer, Computer, fax and Photocopier for CJF		4,966		

<sup>57</sup> Project Proposal on Juvenile Justice Administration in Zambia, Presented to the Government of Sweden by the Child Justice Forum, Prepared by A Mofya, 3 April 2003, pp 9-10.

<b>Sub-total</b>	<b>0</b>	<b>4,966</b>	<b>0</b>	
<b>2004</b>				
<b>Sub-total</b>	<b>0</b>	<b>0</b>	<b>0</b>	
<b>GRAND TOTAL 2001-04</b>	<b>31,353</b>	<b>4,966</b>	<b>0</b>	<b>36,319</b>

The contribution from the Swedish Embassy is an estimated \$265 685 as shown below. The table depicts the allocations as for the current support agreement.

**Table 12 Financial support from Swedish government to the Lusaka Child Justice Forum**

<b>Category</b>	<b>SEK</b>	<b>US\$</b>
Establish and operationalise the secretariat of the CJF secretariat.	1 575 000	201,665
Advocacy sensitizing and running three pilot programmes	400 000	51,216
Further planning of the project	100 000	12,804
<b>total</b>	<b>2 075 000</b>	<b>265,685</b>

**ii. Financial indirect**

The government of Zambia, through the judiciary, has contributed significantly in that an office, furniture, secretary, driver, fuel, cleaner, fuel and lubrication for vehicle have been available to the Secretariat of the CJF.

**iii. Capex items donated**

UNICEF supported the Lusaka CJF with a printer, computer, fax and photocopier. The Swedish government purchased a vehicle for the secretariat in 2004 to the value of \$6500.00.

**iv. Expendables and consumables donated**

None were noted from the documentation. Consumables were made available through the "Operationalisation" line item in the budget above.

**v. Training provided**

Training was provided to various Lusaka based stakeholders in the period 2001 to 2004 which included training in South Africa and the UK; these have already been commented upon in preceding sections.

RYOCHIN provided training to stakeholders in several Zambian towns and this will be described in more detail below under “Outputs”.

**vi. Expert and specialist knowledge provided**

A magistrate who has been involved with the child justice project in general accompanied the RYOCHIN team to the Copperbelt to set up the forum there. The training completed in South Africa and the United Kingdom, and the assignment of a Project Advisor with the support of the Swedish government are also regarded as specialist inputs.

**(e) Findings**

**i. Inputs**

- The first forum was set up in Lusaka with the support of UNICEF and subsequent training was provided in Ndola, Kitwe, Choma, and Livingstone.
- The training focused on children’s rights as described in domestic and international law
- An estimated 270 people were reached through the training programme run by RYOCHIN
- The training provided by RYOCHIN (in which a magistrate was part of the training team) was supported by UNICEF.
- The financial inputs are reflected in the above.

**ii. Outputs**

- RYOCHIN (assisted by a magistrate) undertook a number of visits and training sessions supported by UNICEF (as note above) in an effort to build the CJFs outside and also in Lusaka. A reconstruction based on the available documentation of that programme is presented below. It should be noted that the documentation is conflicting with regard to certain dates.
- There are fairly detailed reports available on the content of the training and these relate primarily to children’s rights, international instruments and domestic law. These training workshops also went further to describe some practical issues that can be addressed in the treatment of children in the criminal justice system.
- In overview, it appears that the training was more focused on children’s rights (which was useful and informative) than on the CJF understanding and interpreting its mandate in the local context.

**Table 13 Training of the CJF structures on children's rights**

Date	Purpose	By whom	Comment
19 – 21 May 2003	Visit to Kitwe	RYOCHIN	No documented proof or reports



<b>Date</b>	<b>Purpose</b>	<b>By whom</b>	<b>Comment</b>
17 – 19 Sept 203	Visit to Ndola	RYOCHIN	No documented proof or reports
26 – 27 Sept 2003	CJF formation in Ndola and Kitwe	RYOCHIN	The RYOCHIN report refers to this date and the report from the Child justice Forum refers to the dates of 30 Nov to 7 Dec 2003 for this visit. It is not clear of these are two different visits or not.
19-21 Nov 2003	Training workshop on juvenile justice in Livingstone	RYOCHIN	
30 Nov – 7 Dec 2003	CJF formation in Ndola and Kitwe	RYOCHIN and magistrate	See note above. For this visit Swedish funding was used <sup>58</sup> .
30 Jan 2004	CJF Formation in Livingstone	RYOCHIN	
10- 13 Aug 2004	Inception visit to Kafue, Choma, and Livingstone	UNICEF, magistrate, CJF Secretariat, RYOCHIN	
20 -22 Oct 2004	Inception visit to Chipata	Lusaka CJF Secretariat	

- The Lusaka forum is the one that has been meeting most regularly and the Secretariat is mainly responsible for ensuring that meetings occur, minutes sent out and items followed up.
- All other forums are either meeting very irregularly or there are long time lapses between meetings. Minutes of meetings could not be traced for the other forums.

### **iii. Outcomes**

- A review of the Lusaka CJF minutes reveal that a substantial amount of time and energy at the meetings are spent on administration and coordination of activities and resource issues. Vehicles, the water tank at Matero Police Station, and food for children in custody are recurring issues on the Lusaka CJF's agenda.
- There is a tendency to address focussed practical issues and ignoring broader systemic problems that have an impact on large numbers of children.

<sup>58</sup> Report on the Juvenile Justice Administration Project run by the Child Justice Forum up to 31 March 2003, prepared by L Holmqvist and M Chanda, p 6.

- Based on the interviews conducted it appears that that the Ndola Forum is reasonably active and there appears to be frequent contact between members, even if formal meetings are not that regular.
- The forums in Kitwe, Choma and Livingstone appear to have gone into hibernation and in all three instances this is ascribed to staff turnover. An interviewee in Kitwe described the forum as having “collapsed”.
- Some key players are not invited, for example the OIC of Wusakile Police Station in Kitwe stated that he is aware of the forum but has not been invited and he has been based at that station since 2002. The 2IC of the Kitwe Central Station confirmed this and he has been based there for 25 years. The OIC of the Kanfinsa Remand Prison also stated that he was not invited to forum meetings. This was also confirmed by the Mindola 2IC.
- Towards the south at Choma, this pattern continues and the head of the Victim Support Unit (VSU) there also stated that he has no involvement in the forum. The social welfare officer at Choma confirmed that the forum is not active.
- The Livingstone Forum appears to be slightly more active and is “limping along” primarily because the Provincial Social Welfare Officer has shown a direct interest in child justice. He has, in fact, used departmental resources to purchase paint to paint the police cells. This was found to have been done on the day of the visit. The OIC at Livingstone Prison (who has been there since July 2004) stated that the forum has not met since he has been there.
- According to the Provincial Social Welfare Officer, there was an expectation that the forum would start diversion services in Livingstone but this did not materialise as there was no budget for the forum to do this.
- There appears to be a general understanding of what the forums are supposed to do, as articulated in the terms of reference noted above.
- The Kitwe CJF was supposed to distribute the mattresses but the previous Chairperson decided that this would not be done until the police stations have been renovated.

**iv. Impact**

- Whilst the terms of reference for the forums are appropriate and there is no reason at this stage to amend them, it is also clear that “impact” were not effectively defined as part of the training process. In other words, do the forums know and understand when they are succeeding or failing?
- The objectives of the CJFs place emphasis on monitoring and providing guidance in order that the correct results are achieved. From the available minutes and interviews it appears that CJFs are either internally focused or (with the best intentions) become involved in detailed ground-level activities. By way of example, there is very little sense in painting police cells if there are children charged with minor offences sitting in the remand prison for months because their parents have not been found, or they have no parents.
- It is noted from the minutes of the Lusaka Forum on the last two to three meetings that there has been an increased focus on the key areas for child justice reform, ie children in

remand, detention in police cells and delays in processes of cases. It should be assessed whether this translates into improved service delivery.

- The impact that the CJFs could have on the facilitation of inter-sectoral cooperation and implementation level accountability is diluted through the above distractions. At the same time it is acknowledged that, even where the forums are not functioning particularly well, the concept of an inter-sectoral forum has been successfully introduced and has been accepted by role the role players.
- The impact of the forums seems to be highly dependent on the chairperson and his/her status.
- The impact of the forums has been undermined by not inviting all the relevant role players to the meetings.

**v. Unintended consequences**

- The forum in Kitwe took up a gatekeeper function in relation to the mattresses that were donated by UNICEF for distribution to police stations. The unintended consequence was that the mattresses are lying in storage whilst the forum is waiting for the police station cells to be renovated. It is unlikely that this will happen in the near future.

**(f) Difficulties experienced in terms of:**

**i. Governance**

- Most, if not all, of the forums were affected by turn-over in chairpersons. These were magistrates that were transferred from one court to another. Apart from the loss in skills and experience, this created problems in terms of governance as a new relationship with the stakeholders had to be developed, and in some instances the forum did not really recover and have since became stagnant.
- Whilst the training focused on children's rights, it did not address specifically how a CJF should define and implement its task through the development of a strategy and implementation plan. Defining the task is the first step towards good governance.
- Following from this, it can be concluded that the forums did not develop a clear accountability mechanism and procedure. In a voluntary and open structure such as these forums, that do not have any official standing, this is a difficult issue because the success of the forum is dependent on the goodwill, commitment and integrity of its participants. The question therefore arises as to how to achieve this level of effectiveness and efficiency where participants voluntarily submit themselves to an accountability structure which will have no direct bearing on their usual performance rating.

**ii. Human resources**

- Staff turn-over and staff shortages create problems for meeting attendance.

- The forums outside of Lusaka do not have the same secretarial support and this also had a negative impact on the level of activity.
- New members join the forums due to staff turn-over, but they did not undergo the training programme that the other members did.

**iii. Service delivery**

- In the absence of a clear strategy and performance indicators, service delivery becomes difficult and different forums engage in different activities, if at all
- Indicators to measure performance in relation to service delivery performance were not identified.

**iv. Financial management, resource management and administration**

- Minutes are not accessible or distributed at the forum meetings, with the exclusion of the Lusaka forum.
- Difficulties are experienced in setting up meetings and agreeing to dates.
- In a number of instances the distribution of blankets and mattresses has been delayed subject to the renovation of police cells, such as Kitwe.
- The minutes of the Lusaka CJF of 22 December 2005 reflect that members of the forum requested that they be paid transport allowances to attend the meetings. It is not clear from later minutes if this request was granted but it is nonetheless regarded as an unusual request that does not contribute to the parsimonious use of scarce resources to the betterment of children's position in the criminal justice system.

**v. Income and fundraising**

- Whilst the Lusaka forum has been well supported since its inception, the same cannot be said for the other forums. It was noted above that the Judiciary is reportedly preparing a proposal to be submitted to SIDA for the Lusaka operation.

**vi. Inter-sectoral cooperation**

- Facilitating inter-sectoral cooperation is the core business of the CJFs and this seems to be the biggest challenge. Ensuring that the correct role players are invited, attend and are able to make decisions will be the deciding factors in the CJFs.
- In several localities, it was found that key role players such as the superintendent of the local prison or the OIC of a police station were not even aware of the forum or knew of it but were not invited.
- One police station commander reported that she had become frustrated with the CJF and was not attending anymore because her staff members were expected to do the work but had not received the training to do so.

**(g) Conclusions in terms of:**

**i. Relevance**

- The forums are regarded as highly relevant and the terms of reference (or objectives) are sufficient to define their responsibility.

**ii. Efficiency**

- The forums are key to creating efficiencies at implementation level and hold great potential in this regard.
- The forums did not define efficiency measurements that would indicate whether they are succeeding or failing, and it is therefore not possible to measure them in this regard. The overview on child justice presented in Section B of this report alludes to a large number of the problems that were described in the 2000 Situational Analysis. It seems therefore unlikely at this stage that the forums in their relatively short existence could have had an impact on creating efficiencies in the criminal justice process on a general level.
- The placing in storage of the mattresses is not regarded as creating efficiency.

**iii. Effectiveness**

- The absence of local level strategies and implementation plans as per the general objectives make it difficult to measure what the forums are attempting to achieve, and have in fact achieved. Interviews with role players reveal that claims are being made regarding effectiveness and efficiency but that these cannot be substantiated by verifiable sources.
- Similarly, the RYOCIN overview report makes a number of claims without providing substantiating information<sup>59</sup>. In a number of instances these claims are refuted by observations made during the fieldwork conducted for this report. For example, that children are detained separate from adults at police stations. This is in fact true only for three police stations namely Livingstone Central, Ndola Central and Matero.
- The irregularity of meetings also undermines effectiveness.
- The forums were effective in raising inter-sectoral awareness on children's rights and this is regarded as a positive development. These gains were undermined by primarily human resource challenges.

**iv. Impact**

- The Lusaka forum undoubtedly had an impact in setting up the three pilot projects and contributed significantly to increasing their effectiveness.
- The forums in the other areas had a more limited impact as they do not appear to have sustained their momentum after establishment. The Ndola forum is perhaps the

exception to this and members are in regular contact and intervene on a practical level to resolve problems.

- The training received and the meetings that forums had to discuss challenges raised awareness among stakeholders on children's rights in the criminal justice system. It is however concluded that the training, increase in knowledge and increased contact between role players has not resulted in a general improvement in service delivery and this is in many instances prevented by resource constraints.

**v. Sustainability**

- The sustainability of all the forums are under threat as they are dependent on people's goodwill since they are open ended forums that do not have any real decision-making power.
- The forums are, however, indispensable in the transformation of the child justice system and therefore need to be sustained.
- Resource constraints have a negative impact on the forums, for example record-keeping and reporting and administration.

**vi. Lessons learned**

- Whilst the training provided was good for forum members regarding children's rights, it did not go far enough to equip them to make the forum work effectively and efficiently in their area. The information needs to be taken one step further and be turned into a plan of action.

**(h) Recommendations**

- Forum membership needs to be guided and stabilised. Each forum must be clear what it wants to achieve over the next 12 months and how this will be monitored. The forums need to achieve their objectives through essentially three functions:
  - Brokering relationships between role players
  - Coordination of activities between different role players
  - Problem solving.
- As participation in the forums is voluntary, clear benefits of participation need to be identified and communicated to members, and where necessary, to their managers. In essence, members need to be able to articulate why participation in the forum is beneficial to their job performance.
- Minutes of meetings needs to be circulated widely to the relevant departments and officials.
- Forum members need further training and guidance in the development of a local level strategic plan and implementation schedules.

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<sup>59</sup> Summary Report on Juvenile Justice Administration in Zambia, Presented to UNICEF by RYOCHIN,

- The current forums need to be stabilised before any further forums are set up.
- A national CJF needs to be established that is separate from the Lusaka CJF.
- The National CJF need not meet that frequently (possibly three times per year) but needs to have the appropriate membership and chairperson.
- Local CJFs need to meet on a monthly basis on a fixed date, such as the first Tuesday of every month.

## **5. CRIME PREVENTION PROGRAMME**

### **(a) Background and history**

In late 2001 to early 2002, for a period of four months, RYOCHIN with the support of UNICEF undertook the implementation of a crime prevention programme targeting eight high density communities and seven schools<sup>60</sup>. Reporting on this programme is very scant and the assessment presented below should not be interpreted as an evaluation but as an assessment based on the available documentation and the extant literature.

### **(b) Objectives**

The objectives of the programme were:

- To raise awareness among schools children and communities on the consequences of crime
- To raise awareness among children on the dangers of substance abuse and violence as contributing to delinquency and conflict with the law
- To familiarise children with the rights of the child under the UN CRC and other international instruments
- To engage children in discussion concerning conflict resolution and obtaining their views on what can be done to prevent crime
- To introduce children to the key aspects of law related to juvenile delinquency so that they may make informed choices in life.

### **(c) Inputs**

- UNICEF supported RYOCHIN to the amount of \$ 8087.00 in response to a proposal that was submitted in 2000. A further input was T-Shirts and stationery to the value of \$1844.00

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Prepared by A Mofya, 4 May 2005, p 9.

<sup>60</sup> Summary Report on Juvenile Justice Administration In Zambia, Presented to UNICEF by RYOCHIN, Prepared by A Mofya, 4 May 2005, p 5.

#### **(d) Outputs**

- It is claimed that 6 000 children were reached but during the fieldwork it was found that this figure was closer to 600.
- Ten workshops involving approximately 60 children each were run over three days each
- One follow-up session was conducted approximately three months later.
- Three music rallies were held that aimed to bring about awareness of crime and risk behaviour.

#### **(e) Impact**

- No baseline or longitudinal study was done, nor a needs analysis, and an opinion cannot be expressed conclusively on impact
- There are, however, serious design shortcomings that makes a positive impact unlikely. These design shortcomings are identified based on extant literature and documented research.

#### **(f) Design shortcomings**

- *Information giving is not sufficient* – Our approach to crime prevention will be determined by our understanding of the reality of crime and the assumptions that we make in order to develop an appropriate strategy. This we may define as the paradigm that we adopt in terms of crime prevention. The RYOCHIN programme embarked upon a process of information giving and informing young people of the risks of crime as well as their rights and responsibilities. Recent research on crime prevention indicates a more sophisticated approach and leaning on the public health approach for guidance. In a review of seven South African crime prevention programmes Griggs advises the following steps in programme design<sup>61</sup>:
  - Risk-factor identification
  - Using research to design programmes
  - Addressing the seven factors<sup>62</sup> that help reduce crime within our programme design
  - Testing our interventions at a manageable scale
  - Evaluating and improving on those interventions yearly
  - Engaging and capacitating the target community in advocacy

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<sup>61</sup> Griggs R (2003) Lessons from local Crime prevention, Open Society Foundation for South Africa, Cape Town, p 132.

<sup>62</sup> The seven factors are epidemiology, environmental intervention, engineering intervention, education, enforcement, evaluation and empowerment.



On informational programmes Griggs, refer to a meta-analysis conducted by Gottfredson that found that such programmes have a very weak impact<sup>63</sup>.

- Not measurable – “*how many crimes did you prevent and how many “awarenesses” did you raise?*” The RYOCHIN programme did not develop a baseline study and there is therefore no way of determining whether it had any impact. But even if this was done, the programme described its outputs as information giving but did not illustrate or describe how this is going to lead to a reduction in crime.
- *Selecting the problem children for participation may lead to labelling and stigmatisation* - During the interviews it was established that so-called “problem children” were identified for the workshops by the teachers of the school. This type of selection and targeting process has obvious problems and may indeed have the opposite effect by confirming an emerging label of a child as “a problem case”.
- *Impact, if there was, was not sustained* - RYOCHIN conducted a once-off follow-up visit and the children who participated in the programmes were not assisted in an effective manner to take the programme achievements further. There was an expectation that the children will, upon their return to their school, set up “crime prevention clubs”. RYOCHIN admits that the three-day workshop did not focus on exactly how they should go about setting up these clubs and what these clubs are suppose to do, nor was there any support given to set up such clubs after the initial intervention.
- *Activities are not integrated into the school activities* - Crime prevention activities that stand loose from core school activities are unlikely to succeed. Griggs describe the integrated approach as follows<sup>64</sup>:

*For the design of crime and violence prevention programmes in South Africa schools, it has been recommended that a best practice strategy focus on developing well-managed classrooms, homes, schools and communities [be adopted]. The linkages between them are also fundamental to the strategy. It is unlikely that one NGO or organisation will accomplish this. It is more likely that such a strategy requires partners working together within an integrated strategy.*
- *The “pathology” approach does not advance the idea of constructive solutions* - Focussing on the negative aspects of crime and the risk behaviour that should be avoided (in a prohibitive sense) ignores the fact that children often have to deal with extremely challenging risks that they are not equipped for. In this sense then, the success of crime prevention lies in the ability that children develop to manage the risks in their environment and the access that they have to support and resources to avoid making a decision that may bring them into conflict with the law.

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<sup>63</sup> Griggs R (2005) Lessons from Crime Prevention and Violence prevention in Schools – reviewing learning and good practice from eight South African interventions, Opens Society Foundation for South Africa, Cape Town, p 140.

<sup>64</sup> Griggs R (2002) Preventing Crime and Violence in South African School a review of learning and good practice from eight interventions, Opens Society Foundation, Cape Town, p 122.

## SECTION D OVERALL CONCLUSIONS AND RECOMMENDATIONS

The following recommendations are made within the context of the total picture of child justice reform in Zambia. Recommendations with regard to the specific projects have been made in the body text. The recommendations are made in no particular order.

- *Law reform:* The current legislation is antiquated and is increasingly an impediment to transformation and improved service delivery. It is therefore recommended that law reform be embarked upon as a matter of priority. The scope of law reform should be determined from the outset and if a comprehensive reform process is not possible, then certain key concepts and standards need to be reviewed. In this regard, special attention should be given to the definitions of child, age of criminal capacity, custodial sentencing, remand period, diversion and certain offences.
- *UNICEF:* UNICEF needs to support initiatives conforming to three requirements of equal importance. Firstly, good governance principles need to be complied with, with specific reference to management skills, ability to deliver and quality control. Secondly, initiatives need to be in support of democracy and children's rights by ensuring access to justice aimed at holding the rights of children as paramount. Thirdly, crisis points need to be addressed as priority areas, and specific reference is made to children deprived of their liberty.
- *Orphans and vulnerable children (OVC):* The OVC recommendations framework, as espoused in the summary report<sup>65</sup>, provides a useful guideline to the general donor community on areas to focus on in the criminal justice framework. It is especially Recommendations 2 and 6 that are relevant in the criminal justice context:
  - *Provide adequate legal and regulatory protection for OVC*
  - *Introduce comprehensive programmes to address the needs of children without parents or adult caregivers.*

The key result areas identified in the recommendations overlap to a large extent with more detailed recommendations made throughout this report. These recommendations should be interpreted for their application to children in vulnerable situations (i.e. in the criminal justice system) as oppose to their orphan status.

- *A ten point plan:* It has been close to five years since the Situational Analysis was conducted and whilst improvements have occurred (primarily in Lusaka) it cannot be concluded that there has been a general improvement in service delivery. It is therefore recommended that in order to kick-start a reform process that is explicitly aimed at improved service delivery, that an

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<sup>65</sup> Ministry of Youth, Sport and Child Development (2004) Orphans and Vulnerable Children in Zambia: 2004 situational Analysis (Summary report), pp 2-4.

- action plan with not more than ten key deliverables is widely consulted upon and that this be communicated thoroughly to all levels of government and civil society.
- *Strengthen diversion:* Diversion has been shown to be effective in avoiding prosecution and conviction and, even under the current legislative framework, it is possible to implement. In view of this it is recommended that diversion programmes be expanded by:
    - Training the appropriate role players
    - Supporting service providers
    - Developing guidelines for diversion
    - Implementing standards for diversion programmes.
  - *Improve general management:* Many of the ills that children suffer in the criminal justice system, especially lengthy stays in remand prisons, are attributable to poor management. In essence, this means understanding what the task is, the required level of performance, monitoring and accountability. Management support should therefore be aimed at known bottlenecks in the “production process”.
  - *Set key indicators of performance:* Following from the above, it is essential that officials and NGOs working with children in the criminal justice system are clear on what the key performance indicators for service delivery are, and that these are monitored on a continuous basis. Performance indicators should be simple and clear, but more importantly, they should make sense in terms of the relevant human rights standards and relate to performance measurement.
  - *Create stability through the insertion of staff at coordinating functions:* The high turnover of staff in the Zambian civil service has an adverse effect on the overall process of child justice administration as training is lost or key relationships ended. In view of this, it may be incumbent on the donor community to insert staff into key coordinating positions for a minimum of three years to ensure that systems and procedures are established and maintained through the development of institutional knowledge. It is proposed that provincial coordinators be inserted at the appropriate rank.
  - *Urgently address case management:* Case management in the police, and from the police to court, and then to the prison service is a major cause of concern. Lengthy delays are experienced and there does not appear to be a system that monitors this. This is not a problem that is unique to Zambia and solutions and technical advice should therefore be sought from other jurisdictions in this regard. The emphasis should again be placed on developing and adhering to key performance standards.
  - *Urgently address information systems:* Accurate recording and monitoring is central to delivering on a reform process. The current information systems fall far short in providing management with an accurate picture. Investments in information management will be wise.
  - *Assist NGOs to develop longer term multiple donor agreements:* It is acknowledged that government is under financial strain and that expectations in terms of government spending should be tempered. In view of this, it is important for the current donors and agencies

- involved to assist NGOs to develop longer terms support agreements with multiple donors and avoid the situation of being dependent on one or two donors.
- *Develop a programme of oversight:* It will be strategically sound if an internal but independent mechanism of oversight and inspection was established to provide reporting to Parliament on a regular basis (eg. twice a year) on the state of children in the criminal justice system. Such reports need not provide a comprehensive review every six months, but may deal with particular focus areas depending on what are regarded as the priorities. It is recommended that this inspection mechanism takes the form of a Judicial Inspectorate that reports to Parliament.
  - *Agree with government on financial support framework:* Whilst government is under pressure in terms of spending, it should not preclude discussions at this stage already exploring models of (government's) financial support for child justice reform. It is regarded as an important development to explore future support models as government needs to demonstrate that it accepts its responsibility towards children in the criminal justice system, as it is assumed in the signing and ratification of the CRC.
  - *Give more publicity to child justice:* Whilst there is a growing awareness of children's rights, there remains substantial ignorance in relation to children in conflict with the law. Two immediate initiatives are therefore recommended:
    - Host a regional conference aimed at developing solutions for Zambia that involves the SADC region
    - Commence with a media campaign that publicises the fate of children in the criminal justice system but that also profiles success stories, for example, diversion or the new child friendly court.
  - *Claim the small victories:* Following from the above it is important to acknowledge achievements as this has dual purpose. It firstly acknowledges those individuals who have performed well, and secondly, it sets the standard on what is desirable and thus becomes the measurement of what is achievable.
  - *Develop a more comprehensive training programme for CJFs:* The CJFs will be a key ingredient in the transformation process and they therefore need to understand their role clearly and have the ability to perform their key functions effectively.
  - *Parliamentary information programme:* Parliament has had limited exposure to child justice and one submission has been made [by UNICEF (Head of Child Protection Section), Child Justice Forum, Ministry of Youth, Sport and Child Development]. The Parliamentary committees form an important component of good governance and advocating for child justice reform, for the executive need to account to parliament on its performance. It is therefore recommended that civil society creates a parliamentary information programme regarding child justice. This information programme need not focus on one committee only and may need to address the information needs of more than one committee that has a responsibility towards children and social services.

- *Research and documentation programme:* For Zambia to embark on a process of child justice transformation it is vital to build up a body of local knowledge and recorded experience. A research and documentation programme will therefore greatly enhance the quality and speed of the transformation process by ensuring that the process is knowledge-based.

*end*

## SECTION E APPENDICES

### APPENDIX 1

#### **Statement to children participating in evaluation of UNICEF's support to child justice in Zambia May 2005**

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My name is Lukas Muntingh and I am a South African-based consultant who has been contracted by UNICEF to conduct an evaluation of their support to child justice programmes.

UNICEF is an agency of the United Nations focussing on the well-being of children. Child justice is concerned about what happens to children when they enter the criminal justice system, for example when they are arrested by the police, have to appear in court or are sentenced to a prison or reformatory.

Almost five years ago I was asked to investigate what happens with Zambian children when they enter the criminal justice system. A number of recommendations were made then to improve the situation. Now I am trying to find out what has happened since then.

I am asking you to help me find out what is happening with children in the Zambian criminal justice system and this you can do by telling me about your experiences. I am interested to hear about your experiences of the police, private security guards, prosecutors, courts, prisons and reformatories.

Your participation in this interview/ focus group is completely voluntary. If you do not want to participate that is fine and it will not be held against you in any way.

Permission for your participation has been granted by the head of this facility in whose care you have been placed but it is still your individual decision to participate.

You will remain anonymous and will not be identified in any way in the report that I write.

If I ask a question that you feel uncomfortable to answer, you are free to refuse. All you need to say is: "I do not want to answer or discuss that". I will not ask you why you do not want to answer the question.

Your participation in this interview or focus group will not have any impact on your case or the length of time that you remain in custody.

You may not be disciplined for participating in this interview; this has the permission of the head of the facility.

My report will be submitted to UNICEF by the end of May 2005. If you have any complaints about this interview or focus group, please speak to the head of this facility who will contact the UNICEF Office in Lusaka.

Are there any questions that you would like to ask me before we start. Do you want to think it over individually or as a group before you give your consent?

Thank you

## APPENDIX 2

### QUESTIONS AND THEMES TO BE EXPLORED

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#### CHILDREN IN CUSTODY

- How long have you been here?
- Why are you here?
- What is good about being here?
- What is not so good about being here?
- What happens if you get sick?
- What happens if you do something wrong/naughty?
- What do you do here during the day?
- Do you enjoy the schooling?
- How can this place be made better?
- How does your family feel about you being here?
- How do you feel now about the offence you committed?
- How did the police treat you before you arrived here?
- What happened in court?

#### CHILDREN FROM, OR IN DIVERSION PROGRAMME

- Why are you attending the programme?
- What does diversion mean?
- What is good about this programme?
- What have you learned?
- What is not so good about this programme?
- How can this programme be made better?
- How do you feel now about the offence you committed?
- What are you going to do after this programme?

#### MANAGER OF THE DIVERSION PROGRAMME

- What do you see as the overall purpose of the diversion programme?
- Do you feel that the programme content addresses the needs of the children?
- How do you see the purpose of the programme? What is it trying to achieve?
- Who are the significant stakeholders of the programme?
- Do the children get an opportunity to provide an input?
- What do you regard as the greatest achievements of the programme?
- What do you regard as the biggest challenges of the programme?
- How do you rate the counsellors of the programme?
- See *the DMS*

#### SECRETARIAT OF THE CJF

- What do you see as the ultimate impact of the JJAP?
- How do you see the role of the CJF and the Secretariat in that?
- Who are the stakeholders and how would you rate their contribution to date?
- What is facilitating inter-sectoral cooperation and what is undermining it?
- There are four broad objectives for the JJAP. How far are you in achieving that?
- Given the limited resources available, what would you change to accelerate achievement?
- What do you see as the greatest achievements of the Secretariat over the past 24 months?



- What do you see as the greatest failures/stumbling blocks/challenges of the Secretariat over the past 24 months?
- 

### **PRISON AND INSTITUTION MANAGERS**

- How would you like to see children treated in the criminal justice system?
- Have your views on child justice changes over the last 2-3 years. If so why and how?
- Have you received any training? Did you find the training useful?
- Were you part of any external excursions? If so, did it enable you to do your work better?
- What has been your greatest achievement with regard to children over the past 2-3 years?
- What has been the greatest challenge over the last 2-3 years?
- What would require to deal with children in you institution more effectively?
- Are you familiar with the JJAP, the CJF, and regional CJF? How do you rate their contribution?

### **MAGISTRATES**

- How would you like to see children treated in the criminal justice system?
- Have your views on child justice changes over the last 2-3 years. If so why and how?
- Have you received any training? Did you find the training useful?
- Were you part of any external excursions? If so, did it enable you to do your work better?
- What has been your greatest achievement with regard to children over the past 2-3 years?
- What has been the greatest challenge over the last 2-3 years?
- What would require to deal with children in you institution more effectively?
- Are you familiar with the JJAP, the CJF, regional CJF? How do you rate their contribution?

### **SOCIAL WORKERS**

- Have you received any training? Did you find the training useful?
- What has changed for children in the criminal justice system?
- How do you rate your working relationship with other stakeholders such as the police and the magistrates?
- What is helping cooperation?
- What is the most difficult of your job?

## APPENDIX 3

### History of UNICEF's support to Child Justice Reform in Zambia

The table below outlines the history of UNICEF's support to child justice reform in Zambia, unless otherwise indicated.

Date	Event	Comment
<b>2000</b>		
Jan		
Feb		
Mar		
Apr		
May		
June		
July		
Aug	Report on Situational Analysis of Juvenile Justice is submitted to stakeholders	
Sep		
Oct		
Nov	Child Justice Forum is constituted Strategic framework is submitted by consultant and distributed to stakeholders.	
Dec		
<b>2001</b>		
Jan		
Feb		
Mar		
Apr		
May	Stakeholder meeting and training on child justice. Child Justice Forum is launched	
June		
July	RYOCHIN submits proposal to UNICEF for crime awareness workshops in schools in Lusaka. Orders are issued by the Inspector General of Police that three police stations in Lusaka will become part of the ARRS.	
Aug	.	
Sep		
Oct	Blankets (20) and mattresses (30) are handed over to the police as well as OBs (40) PAP books (20) to the three station part of the ARRS. Ten Zambian delegates are trained at the One Stop Child Justice centre in Port Elizabeth, South Africa.	

Date	Event	Comment
Nov	Child Friendly Court Commences services at Chikwa	
Dec	RYOCHIN received support from UNICEF for crime prevention workshops for a two-month period (till February 2002)	
<b>2002</b>		
Jan	Magistrate, prosecutor and social worker attend training in UK on Child Courts in the UK.	
Feb	Lusaka CJF sets up working groups on training, advocacy, legal reform, diversion and monitoring.	
Mar		
Apr	Lectures to 42 police recruits on child justice commence.	
May	Work on a manual for police on child justice commences.	
June		
July		
Aug		
Sep		
Oct		
Nov	RYOCHIN submits proposal to UNICEF for diversion programme.	
Dec		
<b>2003</b>		
Jan		
Feb	Embassy of Sweden decides to support the CJF through support of a Secretariat (Decision nr ZMB 44/03)	
Mar	Child Justice Forum Workshop 20/3/2003	
Apr		
May	RYOCHIN visits Kitwe to set up CJF	
June		
July		
Aug		
Sep	RYOCHIN visits Ndola to set up CJF	
Oct		
Nov	RYOCHIN conducts training with role players in Livingstone	
Dec	Chairperson of CJF and Director of RYOCHIN visit Copperbelt and set up Regional CJFs in Kitwe and Ndola.	
<b>2004</b>		

Date	Event	Comment
Jan		
Feb		
Mar	Project Advisor from Sweden (L Holmqvist) commences duties (supported by SIDA)	
Apr	Submission to parliament regarding Child justice issues by Head of UNICEF Child Protection Unit, CJF Chairperson, Ministry of youth, Sport and Child Development.	
May		
June	Ms N Kaloto commences duties with the CJF secretariat in Lusaka (supported by SIDA).	
July	Submission by Secretariat of CJF to parliamentary committee on Sport, Youth and Child Development. The Child Friendly Court is transferred from Chikwa Court to Boma Court.	
Aug	CJF Secretariat visits the Southern Province (Livingstone, Kafue and Choma)	
Sep	Workshop is held on data collection in Lusaka, 20-21/9/2004  Magistrate and social worker attend training on children, courts and gender in the UK.	
Oct	Retreat held for role players on "Training manual for juvenile justice role players", 29/10/2004  CJF Secretariat makes inception visit to E-Province (Chipata)	
Nov	Diversion programme vehicle used to transfer 9 children from 2 prisons to Nakambala and Katombora. Zambian delegation attends "Pre-planning meeting for Southern and Eastern African Juvenile justice network in Cape Town.	
Dec	Visit by Ms Eva-Lena Pettersson (SIDA Zambia Desk Stockholm 29/11-4/12) CJF Secretariat visits the Southern Province (Livingstone) CJF Secretariat visits Copperbelt (Kabwe, Ndola, Kitwe) RYOCHIN suspends diversion services on 30/12/2004 due to discrepancies in payments to counsellors and observed and reported out-puts	
<b>2005</b>		
Jan	Quarterly Report (Oct – Dec 2004) from Secretariat submitted.	
Feb		
Mar		
Apr		

Date	Event	Comment
May	Update on Situational Analysis and evaluation on pilot projects conducted.	
June		
July		
Aug		
Sep		
Oct	On 30 October the Swedish support comes to an end its Decisions ZMB 37/04 and 44/03	

## APPENDIX 4

### LIST OF PROJECT SPECIFIC DOCUMENTS CONSULTED

Date	Report title	Author(s)
2000-8-15	Report on Situational Analysis of juvenile justice in Zambia	L Muntingh
2000-11-11	Strategic framework for intervention in support of child justice in Zambia	L Muntingh
2001-7-15	Project proposal on crime prevention programmes for children at risk, Presented to UNICEF	RYOCHIN, A Mofya
2001-8-30	Draft Report of the juvenile justice training at the Stepping Stones One Stop Youth Justice Centre , Port Elizabeth, South Africa, 13 -17 Aug 2001.	E Tukombe et al
2002-2-28	The Report on the children in the criminal justice system training held at RIPA International, London, UK	Chanda M et al
2003-3-10	Invitation to attend a workshop for the role players on juvenile justice administration in Zambia to be held at the Royal Swedish Embassy on 20/3/2003	Ms Mwamba Chanda, Acting Chairperson of the CJF
2003-4-3	Project Proposal – Juvenile Justice administration in Zambia. Presented to the Government of Sweden by the CJF	A Mofya, H Schapp and E Sampa
2003-9-30	Report on the formation of the Child Justice Forum chapters on the Copper Belt.	RYOCHIN, A Mofya
2003-11-15	Zambia: 2000 Census of Population and Housing.	Central Statistical office
2003-11-30	Report on the training of role players in juvenile justice administration conducted in Livingstone, 19-21 Nov 2003	RYOCHIN, A Mofya
2003-11-30	Quarterly Report on the Activities undertaken by RYOCHIN in Juvenile Justice Administration, Sep – Nov 2003.	RYOCHIN, A Mofya
2004-1-31	Report on the formation of the Child Justice Forum chapters in the Southern Province,	RYOCHIN, A Mofya

Date	Report title	Author(s)
	Livingstone.	
2004-3-17	Pre-programme support to access to justice – Zambia: Zambia Police Service – Victim Support Unit, Evaluation.	M Jacobsgaard
2004-03-20	Workshop-Child Justice Forum – Four working groups	Unknown, CJF
2004-04-15	Report on the juvenile justice administration project run by the Child justice Forum up to 31/3/2004	Ms Mwamba Chanda (Chairperson of the CJF) and Ms Lena Holmqvist (Project Advisor SIDA)
2004-05-20	Unicef support to Juvenile justice programmes, 2001 to 2004	UNICEF
2004-06-15	Agreement between the Embassy of Sweden and the Judiciary of the republic of Zambia	Ms Ngosa Kaloto (JJAP) and Ms Lena Holmqvist (Project Advisor SIDA)
2004-7-7	Memorandum on the Child Justice System in Zambia to the Parliament Committee on sport Youth and Child Affairs	Unknown
2004-7-13	Report on the assessment of an alternative police station to be used as a pilot centre for arrest, reception and referral services	Secretariat of the CJF
2004-7-13	Minutes of the CJF meeting on 13/7/2004 at the Conference Room Supreme Court Building	CJF Secretariat
2004-7-15	Report on the juvenile justice administration project run by the Child justice Forum, First Quarterly report, April –June 2004	Ms Mwamba Chanda (Chairperson of the CJF) and Ms Lena Holmqvist (Project Advisor SIDA)
2004-8-17	Report on the Inception visit to Kafue, Choma and follow-up visit to Livingston undertaken from 10-13 August 2004	Secretariat of the CJF
2004-8-18	Minutes of the CJF meeting on 18/8/2004 in the RYOCHIN Conference Centre at Kalingalinga Youth Centre	CJF Secretariat
2004-9-15	UNICEF Evaluation Report Standards	Evaluation office, UNICEF

Date	Report title	Author(s)
		NYHQ
2004-9-21	Paper presented on JJA at capacity building workshop for role players in juvenile justice administration held at Long Acres on data collection from 20-21 September 2004.	RYOCHIN, A Mofya
2004-9-22	Minutes of the CJF meeting on 22/9/2004 in the RYOCHIN Conference Centre at Kalingalinga Youth Centre	CJF Secretariat
2004-9-27	Report on the workshop on juvenile justice data collection held on 20-21 September 2004 at Long Acres Lodge, Lusaka	Secretariat of the CJF
2004-10-01	Juvenile Justice in Zambia, Training Manual for juvenile justice role players – a course guide for role players working with juvenile offenders	Unknown
2004-10-15	Report on the juvenile justice administration project run by the Child justice Forum, second Quarterly report, July to September 2004	Ms Mwamba Chanda (Chairperson of the CJF) and Ms Lena Holmqvist (Project Advisor SIDA)
2004-10-27	Minutes of the CJF meeting on 27-10-2004 in the RYOCHIN Conference Centre at Kalingalinga Youth Centre	CJF Secretariat
2004-11-1	Report on the Inception visit to Chipata undertaken from 20-22 October 2004.	Secretariat of the CJF
2004-11-24	Training manual for juvenile justice role players – some comments from the retreat with role players held on 29/10/2004	Ms Lena Holmqvist (Project Advisor SIDA)
2004-11-30	Report on the training of role players in juvenile justice administration conducted in Choma	RYOCHIN, A Mofya
2004-12-15	Social welfare report on juvenile justice for the period of September to October 2004. <i>Presumably submitted to the Lusaka CJF</i>	Unknown
2004-12-22	Minutes of the CJF meeting on 22/12/2004 in the RYOCHIN Conference Centre at Kalingalinga Youth Centre	CJF Secretariat



Date	Report title	Author(s)
2005-01-15	Report on the juvenile justice administration project run by the Child justice Forum, 3 <sup>rd</sup> Quarterly report, Oct - Dec 2004	Ms Mwamba Chanda (Chairperson of the CJF) and Ms Lena Holmqvist (Project Advisor SIDA)
2005-2-2	Minutes of the CJF meeting on 2/2/2005 in the RYOCHIN Conference Centre at Kalingalinga Youth Centre	CJF Secretariat
2005-3-2	Minutes of the CJF meeting on 2/3/2005 in the RYOCHIN Conference Centre at Kalingalinga Youth Centre	CJF Secretariat
2005-3-15	Juvenile Justice Administration in Zambia	Unknown
2005-3-15	The Monthly: Economic Indicators	Central Statistical office
2005-5-4	Summary Report on juvenile justice administration in Zambia, Presented to UNICEF by RYOCHIN	RYOCHIN, A Mofya

## APPENDIX 5

### Assessment of RYOCIN in terms of diversion minimum standards

#### NOT TO BE CIRCULATED

#### Colour code:

Green - Compliant with the standard

Yellow - Partially compliant with the standard

Orange - Not compliant with the standard

White – Not applicable (NA) or an opinion cannot be expressed.

Standard		Rating
1	The hosting organisation of a diversion programme may be a non-profit organisation, a school, a company, or a government department.	<i>Reportedly registered as a non-profit organisation into the relevant legislation. A registration certificate was however not seen. Complies</i>
2	The implementing organisation may be a non-profit organisation, a school, a company, or a government department.	<i>Based on assessment of S 1 the organisation complies.</i>
3	Non-profit organisations should have NPO accreditation with the Directorate of Non-profit Organisations, Department of Social Development in terms of the Non-profit Organisations Act.	NA
4	Schools should have been established under the South African Schools Act (84 of 1996).	NA
5	Companies should have been established under the Companies Act.	NA
6	Non-profit organisations should ensure that they are governed in alignment with standards set out in section A of the Codes of Good Practice for Non-profit Organisations.	<i>All public benefit organisations are required to be registered in terms of the Societies Act and the legislation requires the submission of an annual report and financial statements. The organisation is reportedly up to date with this requirement.</i>
7	Companies should ensure that they are governed in alignment with the standards set out in the King Report on Corporate Governance in South Africa (2002).	NA
8	The governing body of the hosting organisation should appoint: <ul style="list-style-type: none"> <li>• an individual or <i>implementing organization</i> who will be responsible for the day-to-day running of the programme and to ensure that the programme's strategic objectives and targets are achieved</li> <li>• an individual or <i>implementing organisation</i> who will ensure that the programme's finances are correctly managed, and that</li> </ul>	<i>The board was constituted in 1998 and has since met approximately 10 times over a six-year-period. The last elections were in 2002 and the same members continued. Minutes of the meetings were not available and in the absence of this it is concluded</i>

Standard		Rating
	record keeping and reporting are done correctly.	<i>that the governing body is not functional. The organisation does not comply with the standard.</i>
9	If the governing body of the hosting organisation has appointed another organisation to implement the diversion programme, then the <i>implementing organisation</i> must appoint a person or persons responsible for the functions of programme coordination and financial management (see Standard 10).	NA
10	The hosting organisation should ensure that diversion services are implemented in terms of a business plan, that has been approved by the Department of Social Development (see full list <sup>66</sup> )	<i>A copy of the annual work plan was seen and reviewed during the interview. This plan does address some of the issues listed in the standard but there are substantial gaps; the most significant are: the specific objectives of the diversion programme, the content/methodology and theoretical basis for the diversion programme the budget and work-plan for the programme how the programme and its activities will be monitored and evaluated, and risk management and emergency procedures. Compliance with the standard is therefore rated as partial.</i>
11	Financial management and accounting procedures should be in alignment with the standards set out by the South African Accounting Practices Board, GAAP, the Accounting Practices Committee and the Public Finance Management Act (1 of 1999).	<i>Although there is a bookkeeper function in place an audit of the organisation has not been done. Compliance is therefore rated as non-compliant.</i>
12	All records should be kept neat and correctly filed.	<i>Some files were observed in the office and a sample was reviewed. These were not filed in an orderly manner and were stacked in no particular order on an open shelf. Performance with the standard is therefore rated at non-compliant.</i>
13	All records should be kept appropriately secure to prevent unauthorised access.	<i>As noted above (S 12) some files were found in the Director's office lying on an</i>

<sup>66</sup> Please see the full standard description in Chapters 4 and 5. Due to space constraints the text was shortened.

Standard		Rating
		<p><i>open shelf. Assurances were given that the Director's office is locked at all times when he is not there. Other files were apparently in storage in another part of the office building and an opinion cannot be expressed about their security. It is the assessor's opinion that files should be locked away in a filing cabinet that provides protection against not only unauthorised access but also extreme conditions such as flooding and fire. Performance against the standard is therefore rated at non-compliant.</i></p>
14	<p>The organisation should open a personnel file on all programme staff, inclusive of volunteers, part-time staff and full-time staff. This file must contain the following (see full list)</p>	<p><i>Upon request a lever-arch file was shown with some records in it but it was not organised in any manner that resembles the description in the standard. Performance against the standard is therefore rated at non-compliant.</i></p>
15	<p>The implementing organisation should keep a case file on each child referred to it for diversion. This file must contain: (See full list)</p>	<p><i>From the discussions and observations it emerged that an improved referral and recordkeeping system has been implemented of late (towards the end of 2004) and it was primarily these files that were found stacked on an open shelf in the director's office (see S 13). The contents and format of the files are however not fully compliant with the requirements of the standard. Compliance is therefore rated as partially compliant.</i></p>
16	<p>The hosting organisation should ensure that records are kept of the programme's strategic planning sessions.</p>	<p><i>It was reported that there is one strategic plan for the organisation but a copy of this could not be found and in the absence of verification an opinion on this standard cannot be expressed.</i></p>
17	<p>The hosting organisation should ensure that minutes of are kept of governing body and management meetings.</p>	<p><i>It was reported that there are minutes but that a member of the governing body had</i></p>

Standard		Rating
		<i>taken the minutes file. The situation with regard to the minutes can therefore not be verified. It is however a matter of concern that there is allegedly only one set of minutes of the governing body's meetings over a six year period and that none of the staff members or the donor (UNICEF) had received minutes of the meetings. An opinion on compliance can therefore not be expressed.</i>
18	The organisation should maintain an updated list of resources and potential service providers to the programme to address the needs of clients that fall outside of the abilities of the hosting or implementing organisation.	<i>The organisation does not maintain such a list although staff members reportedly know what other resources are available to clients. Performance in terms of the standard is therefore rated as non-compliant.</i>
19	The organisation should keep a register of all the children that have been referred to the programme. This register should contain the following information: (See full list)	<i>The organisation records details of children in the case files and the attendance register but these are not cross referenced in order to form one central register that could be used for quick reference if there is doubt as to whether a child has attended the diversion programme before. Performance in terms of the standard is therefore rated as non-compliant.</i>
20	The organisation should keep records of all service agreements with other service providers or agencies.	<i>Agreements with other service providers are done verbally and not recorded on paper. Performance in terms of this standard is therefore rated as non-compliant.</i>
21	The profit made by companies on the hosting and implementation of diversion programmes should be set at a level in line with the guidelines on public private partnerships set down by Treasury.	NA
22	The organisation should have a written and displayed code of conduct that sets ethical and professional standards for all programme staff.	<i>There is no such code for the organisation. Performance is rated as non-compliant.</i>
23	The standards set out in this code of conduct should be in alignment with the UN Convention on the Rights of the Child, the South African Bill	<i>In the absence of the code (see S22)</i>

Standard	Rating
of Rights, the African Charter on the Rights and Welfare of the Child, the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the UN Rules for the Protection of Juveniles Deprived of the Liberty, the UN Guidelines on the Treatment of Prisoners and the Code of Conduct for Social Service Professionals	<i>performance is rated as non-compliant.</i>
24 The hosting organisation should ensure that all programme staff understand, agree to, sign and comply with this code of conduct.	<i>In the absence of the code (see S22) performance is rated as non-compliant.</i>
25 The hosting organisation should have a written agreement, with any individual, company or organisation contracted to provide additional and/or specialised services to the diversion programme. This agreement must describe the roles and responsibilities of each party.	<i>Written agreements are reportedly in place for staff employment, UNICEF and other donors. It could not be established with certainty what the extent and scope of the agreement with volunteers is. Compliance in terms of the standard is rated as partial.</i>
26 All programme staff should be recruited in such a way as to ensure that they pose no risk to the welfare of the child: To this end: (See full list)	<i>Reportedly references submitted by applicants are checked but no attempt is made to conduct further background checking. The impression was created that information was accepted on good faith at face value. Given the sensitivity and importance of this standard, performance is rated as non-compliant.</i>
27 Records must be kept of all recruitment and selection processes.	<i>No such records are kept. Performance is rated as non-compliant.</i>
28 The recruitment process should be in alignment with the standards set out in the Employment Equity Act (55 of 1998), the Labour Relations Act (55 of 1995).	NA.
29 The organisation should ensure that all programme staff are aware of: <ul style="list-style-type: none"> <li>• what constitutes unacceptable behaviour</li> <li>• the consequences of the different types of unacceptable behaviour</li> <li>• the disciplinary procedure that the organisation will follow.</li> </ul>	<i>There is a disciplinary code and staff members are reportedly aware of its contents. The organisation complied with the standard.</i>
30 The organisation should keep records of all disciplinary actions and results	<i>Reportedly there have been none. The absence of proper personnel files, as required in terms of S 14, does however not bode well for compliance with this standard.</i>
31 Disciplinary procedures should be conducted in alignment with the standards set out in the	<i>Reportedly there have been none and an</i>

Standard		Rating
	South African Labour Relations Act	<i>opinion cannot be expressed.</i>
32	The performance of programme staff should be appraised at least once each year by their manager or supervisor.	<i>Whilst such an assessment is done, it was also clear that in the absence of clear detailed job descriptions it would be almost impossible to conduct a proper performance appraisal. No records of appraisals conducted were also presented. Performance is therefore rated as non-compliant given the importance of this standard as a management tool.</i>
33	A Personal Development Plan should be developed for all programme staff.	<i>No such plans are formulated. Performance is therefore rated as non-compliant.</i>
34	Programme staff should be allowed to appeal against the results of an appraisal.	<i>Staff are allowed to appeal against the finding but it was not clear exactly what the appeal procedure is and this is further compounded in the absence of a strong governing body. Performance is therefore rate as partially compliant.</i>
35	The organisation should keep records of all performance-appraisal sessions.	<i>These were not presented. Performance is therefore rate as non-compliant.</i>
36	The hosting organisation should ensure that all programme staff and participants (children) and parents or guardians of the participants are aware of the process by which they may lodge a grievance, without prejudice to their rights, against the organisation, a member of the organisation or someone else delivering services to the programme	<i>This is reportedly the case and programme participants are informed verbally that they lodge complaints if they so wish to do. Performance is rated as compliant.</i>
37	The organisation should keep records of all grievances lodged and the results thereof.	<i>In principle this is reportedly done. Recorded proof of this was however not presented. Performance is rated as compliant.</i>
38	Grievance procedures should be aligned with the standards set out in the South African Labour Relations Act (55 of 1995) as amended and the Social Work Act (110 of 1978).	NA
39	The organisation should ensure that all programme facilitators are able to access appropriate support or debriefing services on a regular basis, at no cost to themselves and from An appropriately qualified professional or suitable lay person.	<i>All staff have access to the Head Counsellor who will debrief them. Performance is therefore rated as compliant.</i>

Standard		Rating
40	The hosting and implementing organisation should be aware of which activities are potentially dangerous and should apply appropriate risk management strategies.	<i>Programme staff report that through experience and knowledge the risk activities and areas have been identified although these have not been written up. Performance is therefore rated as partially compliant.</i>
41	The organisation should ensure that all programme equipment is of a safe standard and properly maintained.	NA
42	The organisation should have a procedure for ensuring that programme facilitators and children do not have unauthorised access to or possession of weapons or potentially dangerous items while participating in the programme.	<i>The facilitator asks children if they have dangerous items on them before participation but they are not searched. This particular issue is hotly debated amongst service providers and there are very divergent opinions on voluntary surrendering of dangerous items and physical searches. The profile of programme participants should perhaps serve as guide here, which again points to the importance of detailed and accurate assessments. It is nonetheless clear that the organisation does not have a formal written policy on this matter. In view of this, performance is rated as partially compliant.</i>
43	The organisation should conduct the programme in accordance with appropriate safety legislation and procedures where they exist.	<i>Not possible to assess.</i>
44	When and wherever children are participating in a programme, they must have access to first aid equipment.	<i>Although there is access to a First Aid kit, the programme facilitators have not been trained in providing first aid. Performance is therefore rated as non-compliant.</i>
45	Overnight and away-from-home care The organisation should ensure that: (see full list)	NA
46	The organisation should have a written policy on controlled substances such as illegal drugs, alcohol, tobacco and prescription drug use that applies to all programme staff and participants (children).	<i>There appear to be some guiding ideas on the matter in the organisation but this has not been thrashed out thoroughly and written into a well-motivated policy</i>



Standard		Rating
		<i>document. Issues like smoking and alcohol use by both participants and facilitators are hotly debated, and it is important that an organisation takes a firm position on this in order to avoid confusion later. In view of this, performance is rated partially compliant.</i>
47	The programme should be run in a drug-free environment. Children who are on medication should have their medication handled appropriately by the programme facilitator in alignment with appropriate medical procedures.	<i>This could not be confirmed but prescription drugs are reportedly handled in the correct manner. The need for the development of a documented policy on this is acknowledged by the organisation. Performance is rated as compliant.</i>
48	The organisation should keep and make accessible to all staff the latest copies of the following documents: (See full list)	<i>Performance was only assessed in terms of access to the international instruments and copies of these are available to the staff. Performance is therefore rated as compliant.</i>
49	The programme's promotional material, annual reports and media releases should not contain any information that could identify a child or children participating in a programme, except with the express written permission of the child's primary caregiver and the child, as this would infringe on the child's right to confidentiality.	<i>The organisation complies with the standard.</i>
50	The organisation must have an information sheet describing the programme to be given to each child and that child's primary caregiver, detailing the following: (See full list)	<i>Information is presented verbally. The standard is specific on the fact that it needs to be an information sheet given to the child/caregiver so that it can be used for later reference. The organisation does not comply with the standard.</i>
51	The organisation should maintain an appropriate stock of the equipment and stationary that is required for the diversion programme.	<i>Reportedly, the organisation complies with the standard.</i>
52	The premises in which the programme is facilitated should be appropriate to the diversion programme.	<i>Reportedly, the organisation complies with the standard.</i>
53	All facilitators, regardless of their prior training, should have: (See full list)	<i>The programme facilitators received general social work training and it is not apparent that they have received any specialised training of a broadly</i>

Standard		Rating
		<p><i>therapeutic nature to work with children exhibiting risk behaviour. Three important facts are cause for concern. Firstly, that the staff members have not received specific training for the implementation of the life-skills programme currently being used. Secondly, the absence of a clear philosophical and theoretical understanding of child risk behaviour and what the programme is attempting to achieve (as should be discussed in the business plan). Thirdly, the absence of a performance appraisal system supported by clear job descriptions and development plans. Seen together, these three factors make compliance with the standard unlikely. However, to be fair it is acknowledged that the standard is complex and entails a wide range of variables and an assessment was not possible due to time constraints. Therefore it is recommended that an independent assessment of staff competencies be done at a later stage.</i></p>
54	All facilitators of <i>wilderness/adventure therapy</i> programmes, regardless of their prior training, should: <b>(see full list)</b>	NA
55	All facilitators of family group conference, victim offender mediation, and any other restorative justice processes and programmes, regardless of their prior training, should: (See full list)	<p><i>Discussion with the staff revealed that there is some understanding of restorative justice but that this is of such a nature that refresher training is highly advisable prior to engaging in further restorative justice processes. Given this, performance is rated as non-compliant.</i></p>
56	All facilitators of counselling/therapeutic programmes, regardless of their prior training, should (See full list)	<p><i>The programme staff members are trained social workers and it is assumed that they have received the appropriate training. An opinion can however not be expressed on the skills and abilities of the volunteers</i></p>

Standard		Rating
		<i>being used. In view of this performance is rated as partially compliant.</i>
57	All facilitators of sexual offender programmes, regardless of their prior training, should: (See full list)	<i>Although the organisation does not facilitate a programme of this nature, it was noted that a fair number of participants were charge with sexual offences. In view of this, it is highly advisable that the staff receive the appropriate training and that a separate programme for these participants is developed.</i>
58	All facilitators of substance abuse/misuse programmes, regardless of their prior training, should: (see full list)	NA
59	<p>Each organisation should either have a staff member or volunteer with the following competencies, or should have made an arrangement to access the following competencies:</p> <ul style="list-style-type: none"> <li>• the ability to conduct a developmental assessment of a child</li> <li>• the ability to conduct a programme impact evaluation</li> <li>• the ability to undertake numerical record keeping, data collection of services, and basic data analysis.</li> </ul>	<p><i>The assessment format currently being used provides primarily a biographic description of the child and requires revision in order to be described as a developmental assessment.</i></p> <p><i>The ability to conduct a programme evaluation can be contracted in at any time if there are sufficient funds.</i></p> <p><i>The record-keeping of the organisation does not appear to be of the necessary standard and it will therefore be problematic to do a quantitative analysis. At this stage it has to be concluded that there does not appear to be sensitivity in the organisation towards quantitative and statistical analysis.</i></p> <p><i>Seen together performance is rated as non-compliant.</i></p>
60	The contract recording the service level agreement should contain, in addition to any standard clauses already specified by the Department of Social Development, the following information: (see full list)	<p><i>No such agreement exists between the organisation and the Departments of Justice or Social Welfare Services. Performance is therefore rated as non-compliant.</i></p>

Standard		Rating
61	Every arrested child is assessed within 48 hours of arrest by a probation officer before the prosecutor makes the decision to (or not) to divert.	NA
62	Probation officers use a standard national assessment procedure.	NA
63	Probation officers have been trained in conducting the assessment procedure	NA
64	The purposes of the probation officer's assessment, and the procedures immediately following the assessment are explained to the child in a manner appropriate to the child's age.	NA
65	The assessment is appropriate to the child's age and conducted in a language the child understands.	NA
66	<i>The probation officer's assessment includes the following: (See full list)</i>	NA
67	The child's rights to privacy, confidentiality, appeal of decisions and participation during the probation officer's assessment are protected.	NA
68	The prosecutor's (and/or preliminary inquiry magistrate's) decision to (or not to) divert is informed by the probation officer's assessment.	NA
69	The prosecutor (and/or preliminary inquiry magistrate) has sufficient knowledge about the nature of available diversion programmes to make an informed referral.	NA
70	The prosecutor's referral of the child to a particular diversion programme is based on the needs and circumstances of the child.	NA
71	<i>Every child referred to a particular diversion programme is assessed before participation in the programme, and the assessment includes the following: (See full list)</i>	<i>Based on the case file information and the interviews with the staff it is concluded that some assessment is conducted but that this is to a large extent a verification process of what was recorded by the social welfare officer in his/her report, which is sent to the organisation. The purpose of this assessment is to ensure that the child is firstly, suitable for diversion and secondly, that the child is placed in the correct programme. Neither of this appears to happen. The first problem area is that all children are accepted to the programme, even the victims who are referred in error to the programme. Secondly, there is only one programme (the life skills programme) and</i>

Standard		Rating
		<i>there is therefore no “matching child to programme” process taking place. In view of this, performance is rated as non-compliant.</i>
72	Diversion programmes include post-intervention assessments that measure changes in factors assessed in the pre-intervention assessment.	<i>Based on interviews with the staff it is concluded that a fairly informal assessment is done at the end of the programme and does not appear as if this is recorded or formalised. Performance is rated therefore as partially compliant.</i>
73	The diversion programme is reasonably geographically accessible to the child.	<i>There is only one diversion service provider in Lusaka and is situated at Kalingalinga. Whilst this is accessible to some children, others have to travel as far as 30 kms. This cannot be regarded as “reasonably accessible”, especially if it is taken into consideration that most children are from impoverished households. It is recommended that alternative venues for the programme be investigated. The children are required to attend 16 sessions and this places an onerous burden on poor families who need to provide for this additional transport expense. In view of this, compliance is rated as partial.</i>
74	The programme is appropriate to the child's age, physical, and cognitive ability.	<i>The assessment process is not sufficiently detailed as noted above in S 71 and this has a negative impact on the composition of participant groups. From the interviews with the staff, it was not clear as if there is a clear policy and procedure for grouping participants together based on age, physical, and cognitive ability. The discussions did in fact reveal some of the problems experienced by staff that should be resolved by a grouping process. It was also discovered that the group composition is not stable and that the programme is not</i>

Standard	Rating
	<p><i>implemented in the original eight sessions with a fixed group membership format but rather that it is run as sixteen sessions over eight weeks. The explanation for this substantial deviation from the format is that “some of the children are slow learners”. This explanation confirmed that there are serious shortcomings on various levels that are now being “solved” by increasing the number of sessions. In view of this, performance is rate as non-compliant.</i></p>
75	<p>The development of diversion programmes is based on research evidence of what works in reducing criminal behaviour in children and adolescents.</p> <p><i>The organisation is implementing a programme that was developed by another organisation (Mapping the Future by NICRO, SA) but has deviated substantially from the original format (see S 74) that it has to be assumed that the programme integrity has been severely compromised. There is sufficient evidence that life-skills training can have a positive impact on risk behaviour if appropriately supported. In this instance, it will be appropriate for the organisation to redevelop a life skills programme that is appropriate for the Zambian context. At best compliance can be rated as partial.</i></p>
76	<p>Diversion programmes have clearly articulated programme objectives and outcomes.</p> <p><i>There is a vague and pathology-based understanding of what the diversion programme ought to achieve. Compliance is rated as non-compliant.</i></p>
77	<p>Diversion programme design and activities can be shown to address the factors directly associated with offending, and are therefore likely to reduce the problem of re-offending.</p> <p><i>Interviews with the staff revealed that there is an understanding of what needs to be achieved and how these can be achieved through particular activities. At the same time there was an acknowledgement that this requires substantial refinement in order to be effective. Performance is therefore rated as partial.</i></p>

Standard		Rating
78	Diversion programmes have a system for monitoring the quality of programme delivery.	<i>It was reported that “lesson plans” are prepared in advance and that the Director reviews these. He also sits in on some of the sessions. At the end of the programme, feedback is also sought from the children. It does however not appear as if this is recorded on a formal basis. Seen together, and although improvement are required, performance is rated as compliant.</i>
79	Diversion programmes have a system for monitoring the child's progress, including his/her compliance with the conditions of his/her diversion order, and a record of reasons for non-compliance, if applicable.	<i>An attendance register is in place and kept up to date. Records are not kept per session as to each participant's progress inputs and observations. A report is prepared at the end of the programme per child and sent to the court. Performance is rated as part compliant.</i>
80	The intensity of diversion programmes (frequency and duration of programme activities) vary according to the level of risk recorded in the pre-intervention assessment of participants (i.e. the most intensive services are delivered to higher risk cases; and less intensive services are delivered to lower risk cases).	<i>The assessment done as well as the case selection process makes it impossible to match according to risk and need. Performance is rated as non-compliant.</i>
81	A senior staff member regularly supervises diversion programme staff members.	<i>Supervision takes place but as noted above there is not a formal performance appraisal process against a fixed and detailed job description. Performance is rated as partial compliance.</i>
82	The manner in which the programme is delivered encourages the active participation of the young offender.	<i>This is reportedly done but could not be verified through observation and an opinion cannot be expressed.</i>
83	Diversion programmes are subject to regular outcome evaluations.	<i>This has not occurred to date. Performance is therefore rated as non-compliant.</i>
84	Diversion programme staff track participating children within one year of programme completion to establish the overall well-being of the child with an emphasis on further offending behaviour.	<i>It is per chance that staff members meet up with former programme participants. There is no structured programme for making contact with children within a 12 month period. Performance is therefore rated as non-compliant.</i>
85	The details of the participants, the procedures	<i>This is reportedly done but it was not</i>

Standard		Rating
	involved in the restorative justice initiative, and the possible consequences of the restorative justice initiative, are discussed with all parties involved in the process before their participation.	<i>apparent from the interviews if there was a fixed format and procedure in place that would ensure consistency, fairness and the appropriate sensitivity. Performance is therefore rated as partially compliant.</i>
86	Participation in restorative justice initiatives is truly voluntary for both the offender and the victim (i.e. totally non-coercive).	<i>An assessment in terms of this standard was not possible due to the lack of record-keeping.</i>
87	A key objective of restorative justice initiatives is increasing children's investment in, and agreement with the decisions made.	<i>An assessment in terms of this standard was not possible due to the lack of record-keeping and staff members' understanding of restorative justice processes.</i>
88	Participants to the restorative justice process and parties with a direct interest (victim, offender, families, prosecutor, facilitator etc) must receive as soon as possible a written copy of the agreement that was reached (if applicable), setting out the respective duties and obligations of the relevant parties.	<i>Agreements are not recorded on paper. Performance is rated as non-compliant.</i>
89	A key objective of restorative justice initiatives is enhancing the perceived fairness of the process.	<i>Reportedly some follow-up is done on perceived fairness but it does not appear as if this structured or documented through a short questionnaire. Performance is rated as partially compliant</i>
90	<p><i>The pre-intervention assessment includes information on:</i></p> <ul style="list-style-type: none"> <li>• The degree of violence and coercion involved in the offence.</li> <li>• The offender's relationship to the victim, particularly the age difference and the offender's ability to demonstrate victim empathy.</li> <li>• The offender's ability to regulate his/her emotions and behaviour, particularly impulse control.</li> <li>• The offender's sexual history, including sex education, exposure to pornography, sexual abuse and sexual fantasies.</li> <li>• Social constructs of sex and crime.</li> </ul>	NA
91	The diversion programme includes sex education.	NA
92	The diversion programme addresses the child's ability to regulate his/her behaviour, specifically, impulse control.	NA
93	The diversion programme should consist of sessions amounting to no less than 24 hours in	NA



<b>Standard</b>		<b>Rating</b>
	total, excluding the time taken for conducting the pre-intervention assessment.	
94	The diversion programme addresses the development of victim empathy.	NA
95	The child's parent/caregiver is directly involved in the diversion programme.	NA

Appendix 6



## **APPENDIX 7            SUMMARY OF RECOMMENDATIONS**

### **ARREST, RECEPTION AND REFERRAL SERVICE**

1. The challenges facing the ARRS are primarily case management issues and the solution therefore lies in the establishment of a clear management (and coordination) function in this regard.
2. Clear non-negotiable time lines for the management of children's cases need to be established. This will function as the standard against which effectiveness and efficiency should be measured.
3. All arrests of children must be reported to the social welfare office immediately and this can be done with SMS, noting date, time, age, gender and case number. This will be kept as a central register and recorded cases can be managed from this point.
4. A quantitative monitoring system producing at least monthly reports must be established as a matter of urgency.
5. Full monthly quantitative reports must be submitted to and reviewed at the Lusaka CJF meetings
6. Problem cases must be identified, investigated and progress reported to the CJF who should develop solutions, assign responsibility and a report-back date.
7. Outlying police stations must be designated a central police station to which their cases must be referred to and to no other police station. This should preferably be one police station per metro and not two as is the case in Lusaka.
8. Children need to be assessed by a social welfare officer immediately after arrest in order to establish personal circumstances, locality of parents and suitability of release into care of guardian/parent. If a parent is available (and this should preferably be the case) the suitability of diversion should be investigated and a recommendation formulated in this regard, which will be submitted to the prosecutor prior to first appearance.
9. The number of children in detention at the Kamwala and Central Remand Prisons needs to be monitored on a continuous basis and reduced.
10. Children may only be detained at either Central or Matero police stations, and at no other station under any conditions.
11. All children's cases should be heard at the Boma Court and children appearing there should rather be kept at the Central Police Station cells than at the court holding cells, which are across the road.
12. All relevant staff members from the social welfare services, police and prisons service must attend the CJF meetings in order to address case flow issues.
13. The use of family finders (volunteers or sessional workers) needs to be investigated as this will lighten the load of the police and social welfare officers and increase efficiency.
14. Conditions and practices at the Kamwala Remand Prison require investigation with specific reference to the use of adults as cell captains, overcrowding and access to health care.

15. Gaps in the service delivery process need to be resolved, for example that children are detained at other police stations or that children appear in court without being seen by a social welfare officer.
16. The police should receive guidance on the types of offences they can arrest children for and it is proposed that the Inspector General issues orders with regard to offences such as loitering and being idle and disorderly.
17. Proactive measures need to be implemented to prevent that children are assaulted by the police. Similarly, an effective reactive measure needs to be set up to investigate and punish, if found guilty, police officers who assault child suspects. It is proposed that magistrates at designated child courts take up this issue and investigate where necessary.

## **CHILD FRIENDLY COURT**

18. The CJF can be used more effectively to improve case management through monitoring and reporting, and thus contribute to an important attribute of child friendliness, namely swift adjudication.
19. Rules of operation and management need to be formulated and documented for the CFC.
20. The operations of the CFC need to tie in with the case flow management plan recommended under the ARRS.
21. All children's cases must be heard at one court, preferably Boma Court.
22. Guidelines for diversion of cases need to be developed in consultation with the Director of Public Prosecutions.
23. A number of magistrates need to be exposed to children's cases but this should be done on a rotational basis at the Boma Court. The magistrates need to be trained in the rules and operations of the court before they commence with duties.
24. More social welfare officers need to be trained in working together with the CFC in order to contribute to more effective case flow.
25. Key performance indicators need to be developed such as detention cycle time, number of cases finalised as a percentage of cases referred to court, order profile in terms of custodial and non-custodial, and so forth.
26. A simple database programme run on Excel will be adequate to monitor case progress from arrest to adjudication.
27. An effort should be made to give the court room more of the appearance of child friendliness although this is only one aspect of child friendliness. The move to the new Magistrates Court Complex will hopefully address this to some extent.
28. If children must be detained at the court, they should rather be kept at the Central Police Station cells than at the court cells.
29. The court must provide a detailed monthly report to the CJF on its operation with regard to the adjudication of cases and the key performance indicators noted above.

30. The magistrates(s) of the court should pay regular visits to the police stations cells at Central and Matero as well as to Kamwala Remand Prison to monitor the situation. This can be done on a roster basis and magistrates can accompany the social welfare officers when they visit the cells or prison in order to save on transport.
31. The project needs to take active measures to secure funding for after 30/9/2005.

## **DIVERSION**

32. Research needs to be conducted to develop an assessment format that will be appropriate to the Zambian context to ensure that children are matched to the appropriate programmes
33. RYOCHIN needs to develop and implement a recovery plan as a matter of urgency based on the concerns and development areas raised in this review. Such a recovery plan will require financial support and UNICEF will need to make a decision as to whether it wants to support this recovery plan, and if so, to what extent it will support it. Should UNICEF decide not to support RYOCHIN it will in all likelihood have to support another organisation(s) to render diversion programme. This will also require training and assessing institutional capacity prior to rendering financial support. The decision will come down to the question of where will financial aid be spent more effectively and efficiently in terms of ensuring that a quality diversion programme is implemented in an organisational environment that has the institutional characteristics to ensure delivery.
34. RYOCHIN needs to address as a matter of urgency the governance and financial management concerns identified as well as the human resource management problems. This may require a restructuring of the organisation in order to make best use of available skills.
35. A standard operating procedures manual must be developed to ensure that cases are managed properly between the courts and the diversion service provider.
36. Minimum standards for diversion programmes need to be developed in order to protect the rights of children and prevent victimisation.
37. Programme facilitators need to be trained in running the life skills programme as well as other more intensive programmes.
38. Court staff need to be trained on diversion theory and practice.
39. RYOCHIN needs to develop clear criteria according to the programme being rendered and the cases accepted.

## **CHILD JUSTICE FORUMS**

40. Forum membership needs to be guided and stabilised. Each forum must be clear what it wants to achieve over the next 12 months and how this will be monitored. The forums need to achieve their objectives through essentially three functions:
  - Brokering relationships between role players

- Coordination of activities between different role players
  - Problem solving.
41. As participation in the forums is voluntary, clear benefits of participation need to be identified and communicated to members, and where necessary, to their managers. In essence, members need to be able to articulate why participation in the forum is beneficial to their job performance.
  42. Minutes of meetings needs to be circulated widely to the relevant departments and officials.
  43. Forum members need further training and guidance in the development of a local level strategic plan and implementation schedules.
  44. The current forums need to be stabilised before any further forums are set up.
  45. A national CJF needs to be established that is separate from the Lusaka CJF.
  46. The National CJF need not meet that frequently (possibly three times per year) but needs to have the appropriate membership and chairperson.
  47. Local CJFs need to meet on a monthly basis on a fixed date, such as the first Tuesday of every month.

## OVERALL RECOMMENDATIONS

48. The following recommendations are made within the context of the total picture of child justice reform in Zambia. Recommendations with regard to the specific projects have been made in the body text. The recommendations are made in no particular order.
49. *Law reform*: The current legislation is antiquated and is increasingly an impediment to transformation and improved service delivery. It is therefore recommended that law reform be embarked upon as a matter of priority. The scope of the law reform should be determined from the outset and if a comprehensive reform process is not possible, then certain key concepts and standards need to be reviewed. In this regard, special attention should be given to the definitions of child, age of criminal capacity, custodial sentencing, remand period, diversion and certain offences.
50. *A ten point plan*: It has been some five years since the Situational Analysis was conducted and whilst improvements have occurred (primarily in Lusaka) it cannot be concluded that there has been a general improvement in service delivery. It is therefore recommended that in order to kick-start a reform process that is explicitly aimed at improved service delivery, that an action plan with not more than ten key deliverables is widely consulted upon and that this be communicated thoroughly to all levels of government and civil society.
51. *Strengthen diversion*: Diversion has shown to be effective in avoiding prosecution and conviction and, even under the current legislative framework, it is possible to implement. In view of this it is recommended that diversion programmes be expanded by:
  - Training the appropriate role players
  - Supporting service providers
  - Developing guidelines for diversion
  - Implementing standards for diversion programmes.

52. *Improve general management:* Many of the ills that children suffer in the criminal justice system, especially lengthy stays in remand prisons, are attributable to poor management. In essence, this means understanding what the task is, the required level of performance, monitoring and accountability. Management support should therefore be aimed at known bottlenecks in the “production process”.
53. *Set key indicators of performance:* Following from the above, it is essential that officials and NGOs working with children in the criminal justice system are clear on what the key performance indicators are for service delivery, and that these are monitored on a continuous basis. Performance indicators should be simple and clear, but more importantly, they should make sense in terms of the relevant human rights standards and relate to performance measurement.
54. *Create stability through the insertion of staff at coordinating functions:* The high turnover of staff in the Zambian civil service is having an adverse effect on the overall process of child justice administration as training is lost or key relationships ended. In view of this it may be incumbent on the donor community to insert staff into key coordinating positions for a minimum of three years to ensure that systems and procedures are established and maintained through the development of institutional knowledge. It is proposed that provincial coordinators be inserted at the appropriate rank.
55. *Urgently address case management:* Case management in the police, and from the police to court, and then to the prison service is a major cause of concern. Lengthy delays are experienced and there does not appear to be a system that monitors this. This is not a problem that is unique to Zambia and solutions and technical advice should therefore be sought from other jurisdictions in this regard. The emphasis should again be placed on developing and adhering to key performance standards.
56. *Urgently address information systems:* Accurate recording and monitoring is central to delivering on a reform process. The current information systems fall far short in providing management with an accurate picture. Investments in information management will be wise.
57. *Assist NGOs to develop longer term multiple donor agreements:* It is acknowledged that government is under financial strain and that expectations in terms of government spending should be tempered. In view of this, it is important for the current donors and agencies involved to assist NGOs to develop longer terms support agreements with multiple donors and avoid the situation of being dependent on one or two donors.
58. *Develop a programme of oversight:* It will be strategically sound if an internal but independent mechanism of oversight and inspection can be established that would provide reporting to parliament on a regular basis (eg twice a year) on the state of children in the criminal justice system. Such reports need not provide a comprehensive review every six months and may deal with particular focus areas depending on what are regarded as the priorities. It is recommended that this inspection mechanism takes on the form of a Judicial Inspectorate that reports to Parliament.

59. *Agree with government on financial support framework:* Whilst government is under pressure in terms of spending, it should not preclude discussions at this stage already exploring models of (government's) financial support for child justice reform. It is regarded as an important development to explore future support models as government needs to demonstrate that it accepts its responsibility towards children in the criminal justice system, as it is assumed in the signing and ratification of the CRC.
60. *Give more publicity to child justice:* Whilst there is a growing awareness of children's rights there remains substantial ignorance in relation to children in conflict with the law. Two immediate initiatives are therefore recommended:
- Host a regional conference aimed at developing solutions for Zambia that involves the SADC region
  - Commence with a media campaign that publicises the fate of children in the criminal justice system but that also profiles success stories, for example, diversion or the new child friendly court.
61. *Claim the small victories:* Following from the above it is important to acknowledge achievements as this has dual purpose. It firstly acknowledges those individuals who have performed well, and secondly, it sets the standard on what is desirable and thus becomes the measurement of what is achievable.
62. *Develop a more comprehensive training programme for CJFs:* The CJFs will be a key ingredient in the transformation process and they therefore need to understand their role clearly and have the ability to perform their key functions effectively.
63. *Parliamentary information programme:* Parliament has had limited exposure to child justice and one submission has been made. The Parliamentary committees form an important component of good governance and advocating for child justice reform, for the executive need to account to parliament on its performance. It is therefore recommended that civil society creates a parliamentary information programme regarding child justice. This information programme need not focus on one committee only and may need to address the information needs of more than one committee that has a responsibility towards children, social services and justice.
64. *Research and documentation programme:* For Zambia to embark on a process of child justice transformation it is vital to build up a body of local knowledge and recorded experience. A research and documentation programme will therefore greatly enhance the quality and speed of the transformation process by ensuring that the process is knowledge based.

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