

Analysis of Legal Frameworks with Special Reference to Access to Justice for Children

*Rom Thapa**

1. Introduction

Much attention has been paid on child victim and children in need of care and protection. It is also equally important to give utmost consideration to children in conflict with the law, the term refers to “anyone under 18 who comes into contact with the justice system as a result of being suspected or accused of committing an offence.” who are truly neglected children in our society. Children, because of their age and lack of maturity, are generally considered less culpable for their actions than adults, and are entitled to special treatment by justice system and thus, juvenile who come into conflict with the law also require special treatment as well as care and protection.

To develop specialized juvenile justice system, there are many aspects of a juvenile justice system, the people involved in it, the way they act, the procedures, the physical and other facilities. For example, it is about the manner in which police arrest or interrogate children; the attitude of lawyers and prosecutors; the way that judges make decisions about guilt or sentencing; handling by prison staff; the living, educational, recreational and safety conditions in detention facilities; and programs for rehabilitation and reintegration.¹ it is required to establish special laws, procedures, authorities, and institutions specifically applicable to children in conflict with the law. The law should provide mandate for a separate approach to deal with juveniles that is distinct from the adult criminal justice system. Every child in conflict

* Advocate.

¹ Save the Children, UK. (2004). *Justice: Modern Concepts Working with Children In Conflict with the Law*. 16.

with the law should be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedom of others, as well as which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

In order to ensure child friendly justice, an appropriate legal framework must be in place to assist a means of responding to children in conflict with the law in a way that respects their rights and promotes their rehabilitation and reintegration. The Children's Act, 2018 has been enacted on 18 September 2018 to respect, protect and fulfil the rights of children in Nepal. The Act has also introduced a separate and distinct approach to handle children in conflict with the law. This article provides a critical overview of Children's Act, 2018 with regard to children in conflict with the law.

2. Minimum Age of Criminal Responsibility

The minimum age of criminal responsibility is the lowest statutory age at which children may potentially be held criminally liable for infringements of penal law in a given state.² The significance of the minimum age of criminal responsibility is that it recognizes that a child has not attained the emotional, mental and intellectual maturity to be held responsible for his/her actions. The rationale for such exemption is the absence of *mens rea*, i.e. not to criminalise the acts of those who at the time of commission of the crime did not know the right from the wrong. The person below that age does not realize the consequences of their acts.

The domestic laws of countries have laid down a minimum age below which a person is exempt from prosecution and punishment. Article 40.3(a) of the Convention on the Rights of the Child, 1989 (CRC) requires states parties to establish a minimum age below which children are presumed not to have the capacity to infringe the penal law.³ The UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules) states that the age should not be fixed too low, and should be based on children's emotional, mental and intellectual maturity.⁴ The UN Committee on the Rights of the

² UNICEF, *South Asia and the Minimum Age of Criminal Responsibility: Raising the Standard of Protection for Children's Rights*. at 3 [https://www.unicef.org/rosa/Criminal_Responsibility_08July_05\(final_copy\).pdf](https://www.unicef.org/rosa/Criminal_Responsibility_08July_05(final_copy).pdf) (Accessed on 30 January, 2019).

³ CRC. Article 40.3(a).

⁴ Beijing Rules, 1985, Rule 4.

Child has stipulated 12 years as the minimum acceptable age, and recommends against using a *doli incapax*.⁵

In Children's Act, 2018, the minimum age of criminal responsibility is fixed at 10 years⁶ and upper age limit is fixed at 18 years. Hence, under this Act, a child below 10 years of age cannot be prosecuted and sentenced for criminal acts. The law has recognized that a person between the age of 10 and 18 years is less culpable than an adult, and has set out different levels of criminal responsibility depending upon the child's maturity and age. Hence, special juvenile justice protections must be applied to children under the age of 18 at the time of the alleged offence, regardless of the nature or seriousness of the offence. Juvenile justice legislation provides guidance on making accurate age determinations based on all available documentation, and, where necessary a medical report.⁷

3. Factors to be considered during Administration of Juvenile Justice

Generally, while administering child justice, office-bearers and child court involved in the administration of child justice should provide the opportunity to express the views of child⁸ and the expressed views should be taken into account during disposition of cases as well as in determining the sentence. In addition, father, mother, other family members or guardian of a child should be given opportunities to express their views before taking any decision that concerns the child's interest.⁹ To ensure friendly communication with the child, justice actors should adopt language, speech and behaviour that is suitable to child's age, level of mental development, beliefs, and cultural norms and values.¹⁰ The Act also ensures the preferential language of child during conversion or if language spoken by child cannot be understood, a help of interpreter can also be taken.¹¹

4. Arrest, Investigation and Pre-trial Detention

If a child charged with delinquent acts is arrested, he/she is taken into custody by a law enforcement officer. Charges may be filed either before or after a child is arrested for the commission of a delinquent acts. The decision to

⁵ UN CRC Committee, General Comment No. 10. Para. 30-35.

⁶ Children's Act, Sec. 36(1), (2018).

⁷ Ibid Sec. 83

⁸ Ibid Sec. 20(a)

⁹ Ibid, Sec. 20(b),

¹⁰ Ibid, Sec. 20(c).

¹¹ Ibid, Sec. 20(d).

arrest depends upon a variety of circumstances including the seriousness of the offense, the child's demeanour at the time he/she is confronted by law enforcement, availability, willingness and suitability of parents or guardians to care and supervise the child. The contact between investigation agencies and a child must be managed in such a way as to respect the legal status of the child, to promote his/her well-being and to avoid harm to the child.¹²

The Children's Act, 2018 sets general procedure of apprehension of the child. The investigation authority should start the investigating of an offensive act immediately upon receiving information about it. If, in the course of investigation, it appears that it is necessary to take the child accused of offensive act in custody for the purpose of investigation, the investigation authority may take such child into custody.¹³ If it does not seem necessary to keep the child in custody, Investigation Officer may release the child to members of her/his family, guardian or a close relative.¹⁴ Investigation Officer should also notify her/his family members, guardian or a close relative about the alleged offence he/she committed¹⁵ or reason of apprehension. The Act also prohibits the use of handcuffs and excessive use of force by police against the children during or after arrest.¹⁶

It is considered that children who have committed crimes are, with rare exception, not socially ill and morally deficient, but simply lack necessary skills to become viable members of the community. Juvenile delinquency is a complex psycho-social problem caused and reinforced by no single factor. So, counselling is the most effective treatment to young offenders to become healthy, happy and productive members of society. Counselling usually treat juveniles with emotional and mental health issues, substance abuse and behavioural problems. For the purpose of psychological treatment, children taken into custody should be referred to child psychologists or to persons engaged in child welfare activities for necessary counselling.¹⁷ In that respect, the Act has incorporated progressive steps to provide welfare services to juveniles.

Pre-trial detention should be used only as a last resort and for the shortest possible period of time, and there should be clearly stated conditions for

¹² Beijing Rules, Rule 10(3) (1985).

¹³ Children's Act, Sec. 21(1), (2018).

¹⁴ Ibid Sec. 21(2).

¹⁵ Ibid Sec. 21(3).

¹⁶ Ibid Sec. 21(4), 42.

¹⁷ Ibid Sec. 21(5), 22(3).

when pre-trial detention of a child may be justified. With respect to children in police custody and pre-trial detention, the Act has made provision to establish separate observation rooms in each Police Office.¹⁸ A child taken into custody may be kept in an observation room for a period not exceeding twenty-one days with the permission of the child court without exceeding five days at a time.¹⁹ However, in order to reduce pre-trial detention, the child court may provide a variety of alternatives by analysing the physical condition of observation room, age of the child or the circumstances in which the offensive act was committed. Such alternatives include: release child to her/his father, mother, other family members or guardian or, to a social organization working in the field of rights and interests of child or to a child correction home on the condition that child be produced before court when needed.²⁰ Questioning of the child, should be carried out in presence of parent, guardian, or, Child Welfare Officer, or defence lawyer.²¹ If the child is detained in police custody, s/he must have the right to challenge the legality of that detention before a court or other competent authority.

5. Special Provision of Bail

Detention of child offenders pending trial should be a measure of last resort. Once a decision has been made to charge a minor with a criminal offence, the authorities have to determine whether the child should be detained prior to the court hearing or whether he or she can be bailed and his or her attendance at court secured by means of a summons or court attendance notice. Any child denied bail and detained on remand should be the measure of last resort, either at a police station or a detention centre or a correction home, until his or her case comes to court. The purpose of bail is to ensure the attendance at court of a child charged with a criminal offence while recognising international human right principles of the right to liberty and presumption of innocence that underpin the justice system. Generally bail is granted where the authority is confident that the person is not a risk to him/herself or others and that he/she will appear in court when required. Bail should not be used as a punitive measure, the objects should reflect the fact that a child who has not been convicted of an offence should not be imprisoned unless there is a good reason to do so.

¹⁸ Children's Act, Sec. 22(2) (2018).

¹⁹ Ibid Sec. 21(7).

²⁰ Ibid Sec. 21(8).

²¹ Ibid Sec. 21(9).

The Children's Act, 2018 has made distinction between serious offences and other offences (bailable and non-bailable offences) for purposes of bail. The Act sets a general presumption in favour of releasing juvenile on bail or in other words, granting bail is a right of accused child when he/she commits bailable offences.²² However in case of non-bailable offence, the grant of bail is not a right; it is for the court to decide whether bail should be granted or refused depending upon the facts and circumstances of each cases. The Act sets condition for rejection of bails and child can be referred to Juvenile Correction Home for the purpose of trial. These conditions and circumstances include: (a) if there are sufficient grounds to believe that the child should not be kept elsewhere because of danger to her/his life, the fear of harm he/she may cause to others, the fear of her/his escaping or any other reason, (b) if, on the basis of the evidence immediately available, it is found, or there are reasonable grounds to believe, that the child accused of offensive act is guilty of committing an offensive act that is liable to punishment of imprisonment of three years or more.²³ In the case of general condition of bailable offences, a accused child can be released on parental custody or responsibility of any organization that are engaged in safeguarding the rights and interests of children, on the condition that they be produced when needed.²⁴ However, in the case of child accused of non-bailable offences as well, if the court believes that, considering the physical and mental state and age of the accused child or the circumstances in which the offence was committed, it would not be appropriate to keep such a child in a child correction home, nothing shall prevent it from entrusting the child to the care of her/his father, mother, other family members or guardian and, to an organization or person that is engaged in safeguarding the rights and interests of children by stipulating conditions²⁵ and child should be clearly informed about such conditions as well as the consequences to be borne by child in case stipulated conditions are breached.²⁶ In case, the stipulated conditions are breached by accused child, he/she may be referred to Juvenile Correction Home for the purpose of trial.²⁷ Hence under the Children's Act, 2018, it is obligatory upon the child court to release the juvenile on bail except in certain prescribed instances. In both bailable and non-bailable offences, the court has

²² Ibid Sec. 24(1).

²³ Ibid Sec. 24(2).

²⁴ Ibid Sec. 24(3).

²⁵ Ibid Sec. 24(3).

²⁶ Ibid Sec. 24(4).

²⁷ Ibid Sec. 24(5).

discretionary power to release the accused child imposing the prescribed conditions.

6. Diversion

Children who are alleged to have, or accused of, or recognized as having infringed the penal law can be dealt with without resorting to judicial proceedings, wherever, appropriate and desirable, provided that human rights and legal safeguards are fully respected.²⁸ The use of this alternative measure is commonly referred as “diversion.” Diversion can be initiated any time from the apprehension of a child by police or other relevant authorities, through to any stage of judicial proceeding before the final disposition of the hearing (an admission or finding of guilt following a trial). Ideally, diversion should take place at the earliest opportunity, to minimise a child’s contact with the formal justice system, and the harm it causes. Diversion attempts to minimize the effects of labelling associated with offending and limit the opportunities youths have to associate with antisocial peers by reducing their contact and exposure to the juvenile justice system. Diversion does not mean that the offending behaviour of the child is ignored. Rather, it ‘allows steps to be taken to identify the needs of the child and tackle the root causes of the child’s behaviour in order to prevent further offending.’²⁹ Diversion from formal criminal justice proceedings allows rehabilitative work with the child to begin much sooner, without being subject to the delays of what can often be a lengthy trial process.

The Children’s Act, 2018 allows the police, prosecutors and/or court to issue warning, promote reconciliation, or refer the child to a diversion programme, depending on the nature and circumstances of the offence.³⁰ However, children liable on conviction to an imprisonment of three years or above cannot be diverted from formal justice system.³¹ The Act provides that diversion should only be used subject to certain conditions and safeguards being met, which include: (a) a child should voluntarily admit to committing an offence; (b) the child and/or the child’s parent(s)/guardian(s) must consent to the diversion measure; (c) consent of the victim on the basis that victim is rehabilitated to the extent possible, (d) nature of the offensive act and the circumstances in

²⁸ CRC, 1989. Article 40(3)(b) and Beijing Rules, 1985. Rules 6 and 11.

²⁹ UNICEF and Children’s Legal Centre. (2011). *Guidance for Legislative Reform of Juvenile Justice Systems*. Available at http://www.unicef.org/policyanalysis/files/Juvenile_justice_16052011_final.pdf (Accessed on 1 April, 2019).

³⁰ *Ibid*, Sec. 27.

³¹ *Ibid*, Sec. 27(2).

which the offense was committed, gravity of incident, child's age, maturity and cognitive level and familial environment, loss afflicted to the victim and her/his rehabilitation.³²

Diversion programs are alternatives to initial or continued formal processing of child in the juvenile justice system. Juveniles may be diverted by law enforcement authorities before arrest, during court intake, or even after adjudication but before disposition. Depending on the point at which children are diverted, a diversion program may involve outright release with minimal services, referral to a community agency, or direct provision of services.³³ The Children's Act, 2018 sets out process while diverting the child, considering, among other factors, the child's wish: this includes (a) reach compromise or understanding between the child and the victim, (b) make the child realize her/his wrongdoing, (c) provide necessary counselling to the child and her/his family, (d) refer the child for community services, (e) refer the child to an organization for care and protection, (f) release the child under the supervision and guidance of a child welfare authority, (g) entrust the child to the care of her/his father, mother, other family members or guardian, (h) involve the child in a training or educational programme.³⁴

Well-designed diversion programs can hold juveniles accountable more effectively and in a timely manner than formal processing. Models such as victim-offender mediation, family group conferencing and restitution programs assure that the youth understands the seriousness of their actions and the effects that their behaviours may have on the victim(s), community, their family, etc., without formal adjudication.

7. Courts and Trial Proceedings

The Constitution of Nepal, (2015) under Article 38(8) explicitly states that "every child shall have the right to child friendly justice³⁵ as a fundamental right. The aim of child-friendly justice is to provide a range of strategies that can be adopted in legal proceeding involving children, specially child victim of crime, children in conflict with the law, children as a witnesses as well as children as complainants. Child friendly justice for child offender requires at least following conditions:

³² Ibid, Sec. 28.

³³ Holly A. Wilson & Robert D. Hoge. "The Effect of Youth Diversion Programs on Recidivism: A Meta-Analytic Review." *Criminal Justice and Behavior*, Vol. 40, No. 5, at 497-518. (May 2013).

³⁴ Children's Act, Sec. 2, (2018).

³⁵ CONSTITUTION OF NEPAL, Art. 38(8), (2015)

- Any child apprehended by the police and suspected of wrongdoing should be given an immediate opportunity to contact a parent, guardian or trusted person and provided with access to a lawyer free of charge.
- Police Officers should explain to children why they have been apprehended in a way that they can understand, and should not question children about their potentially offending behaviour until a parent, guardian, trusted person or lawyer has arrived.
- Children should only be detained in exceptional circumstances and, where this is necessary, should never be detained alongside adults.
- Trained Social Workers should conduct case management, prepare Social Inquiry Report (SIR), monitor if offender is granted conditional release and provide assistance to ensure their compliance with the conditions and terms of release.
- Trained Child Psychologists should provide emotional and psychosocial support to child offender.³⁶

In order to promote specialised handling of children in conflict with the law, case should be tried by a specialised child court. The juvenile delinquency cases should be disposed without undue delay after the child's first appearance before the court. The Children's Act has provision for establishment of specialised courts with exclusive jurisdiction to handle children in conflict with the law.³⁷ The Act has provisioned for collective hearing of such cases by specialised court comprising a Judge, Social Worker and other Child Specialists.³⁸ The specialised child courts are required to conduct children's proceedings *in camera*³⁹ and if a child commits any offensive act in association with adult, the case of child should be separately tried in a child court.⁴⁰ The Act also requires that hearings be conducted in a child-friendly environment, and also require proceedings to be conducted informally to encourage maximum participation of the child and should provide the opportunity to express their views freely.⁴¹ Participation of the child in the child court contributes both to the quality of decision-making and the quality of interpersonal treatment. Moreover, it contributes to the perceived legitimacy

³⁶ Rom Thapa, "Serving the Best Interest of the Child? Judicial Decision Making Regarding Application of Pre-trial Detention in Nepalese Juvenile Justice System" NEPAL BAR COUNCIL LAW JOURNAL 299-310, (2016)

³⁷ Children's Act, Sec. 30(1) and (2), (2018)

³⁸ *Ibid.* Sec. 30(4).

³⁹ *Ibid.* Sec. 35.

⁴⁰ *Ibid.* Sec. 30(6).

⁴¹ *Ibid.* Sec. 34(2).

of the juvenile justice system and juveniles' acceptance of the final decision by the judge. For the purpose of conducting investigation, prosecution, proceedings, hearing or disposal of charges against children in conflict with law, individual psychosocial and psychological analysis reports required to be prepared by a welfare officer or probation officer should be taken into account by the court.⁴² To ensure speedy justice, the Act also stipulates a time-frame to dispose the delinquency cases within 120 days of the case being registered in the courts.⁴³

8. Sentencing

Sentencing is one of the key areas where the approach to children should be fundamentally different from adults. Any response to child offending must be appropriate to their well-being and proportionate to their circumstances and the offence. Sentencing, in case of juveniles, must emphasis on child's rehabilitation and promoting the child's reintegration into family and society. There should be measures to ensure that children released from detention have support for their reintegration into the community.

As per the Children's Act, a child under ten years of age at the time the offence was committed is immune from criminal liability, i.e, no case shall be instituted and no punishment shall be sentenced against her/him.⁴⁴ In the case of a child above ten years and under fourteen years of age, the child shall be admonished explaining the gravity and consequences of their acts and released if the offensive act committed by the child is liable to a fine upon adjudication; and, varying on the nature of the offense, the child shall be sentenced to imprisonment of up to six months or placed in a child correction home for a period not exceeding one year without imprisoning the child if such act is liable to punishment of imprisonment upon adjudication.⁴⁵ Similarly, a child who is above fourteen years but below sixteen years of age commits any offensive act, such child shall be liable to half the punishment applicable for a person who has attained majority.⁴⁶ A child who is above sixteen years but below eighteen years of age commits any offensive act, such child shall be liable to two-thirds of the punishment applicable for a person who has attained majority.⁴⁷

⁴² Ibid. Sec. 45.

⁴³ Ibid. Sec. 37.

⁴⁴ Ibid. Sec. 36(1). Vide Muluki Criminal Code, Sec. 45(1), (2017)

⁴⁵ Ibid, Sec. 36(2). Ibid, Sec. 45(2).

⁴⁶ Ibid. Sec. 36(3). Ibid, Sec. 45(3).

⁴⁷ Ibid Sec. 36(4). Ibid. Sec. 45(4).

The Children's Act has provided a relatively broad range of sentencing options. The child court may order for suspension of sentence or may take any appropriate decision of sentencing options considering factors such as age, gender, maturity, nature of offensive act and circumstances in which such act was committed. Such options include (a) having any member of the family or guardian teach and explain good human behavior to the child, (b) having a service-providing organization or person provide orientation to the child, (c) provide single, group or familial psychosocial counseling service, (d) assign the child to the oversight and care of a member of the family, guardian, school, service-providing person or organization for certain duration and on the condition of compliance of conditions, (e) refer the child to community service appropriate to her/his age by specifying the nature and duration of service, (f) refer the child to a child correction home for a period not exceeding the duration of punishment she/he is liable to.⁴⁸ The Act prohibits imprisonment of children under the age of 16 unless they have committed a heinous or grave crime, but there are no restrictions on imprisonment of children above 16 to below 18 years, or on the use of other custodial orders.⁴⁹ Capital punishment is not a lawful sentence in Nepal.

The Children's Act generally does not include comprehensive guidance on principles or criteria to consider when sentencing a child. In Nepal, the courts are required to consider the best interest of the child.⁵⁰ The Criminal Offences (Sentencing and Execution) Act, 2017 provides a relatively comprehensive guiding principles and matters to be taken into account while sentencing the child, with an emphasis on promoting best interest of the child, gravity of the offence and the degree of culpability, his or her personal circumstances, compensation offered to the victim, remorse shown towards the offence and desire for living a good and useful life.⁵¹

The Children's Act provides for establishment of child corrections homes by the government and/or any organization operated as child correction homes after obtaining the permission of the Government of Nepal.⁵² For the purpose of correction and rehabilitation of children in conflict with the law, the law explicitly mandates the court to send juveniles to Juvenile Correction Home,

⁴⁸ Ibid. Sec. 36(5).

⁴⁹ Ibid, Sec. 36(7). Criminal Offences (Sentencing and Execution) Act, Sec. 16(2), (2017).

⁵⁰ Criminal Offences (Sentencing and Execution) Act, Sec. 16(a), (2017)

⁵¹ Ibid. Sec. 16.

⁵² Children's Act, Sec. 43(2), (2018).

rather than prison. It also states that juvenile convictions will not be considered in determining sentence for any subsequent or repeated offence.⁵³

10. Records and Privacy

In order to prevent stigmatisation and further victimization, children in conflict with the law should be guaranteed the right to have their privacy protected at all stages of the proceedings and the publication of any information that might lead to the identification of the child should be prohibited. In addition, the records of children in conflict with the law must be kept strictly confidential and closed to third parties, except for those directly involved in the investigation, adjudication and disposition of the case. The use of a child's criminal record in subsequent criminal proceedings should be prohibited once the child is an adult,⁵⁴ and the law should provide for automatic removal of a child's name from the criminal records upon reaching the age of 18.⁵⁵ The Act prohibits publication of a child's name or identifying information to ensure confidentiality of children in conflict with the law.⁵⁶ However, it also provides the courts broad discretion to permit the publication of a child's identity.

11. Role of Probation Officer

Reformation and rehabilitation of the juvenile is the ultimate end goal of juvenile justice system. Reformation is founded in the belief that a juvenile is capable of changing his/her attitudes by acknowledging the wrong done. Rehabilitation constitutes the belief that circumstances resulted in the juvenile committing the crime, therefore the concentration is on setting right these unfavourable circumstances. The focus is entirely on the juvenile and the circumstances. This calls for concerted attention towards individual juvenile and his/her existing familial and social environment. Therefore, as per the principle of proportionality, the reaction to any case of delinquent act and to the offender should be dictated not only by the gravity of the offence but also the circumstances of the offender and condition in which offence was committed by child.

Probation is an alternative to institutionalisation and most often utilized in sentencing options for juveniles. The Children's Act has provision to appoint Probation Officer for multipurpose tasks, for instance investigation into the case concerned, inspection of observation room in police office, diversion, and preparation of reports on the status of implementation of the child court's

⁵³ Ibid, Sec. 41.

⁵⁴ Beijing Rules, 1985. Rule 21.2.

⁵⁵ UN CRC Committee General Comment No. 10. Para 67.

⁵⁶ Children's Act, Sec. 78, (2018).

order, in close contact with the children accused of offensive act.⁵⁷ Probation Officers are mandated to supervise juvenile offenders in their community settings. They track offenders to ensure they follow court orders and report problems and progress to the courts.

12. Conclusion

Juvenile justice is a broader concept that includes not only the treatment of children in conflict with the law, but also addresses root causes of juvenile offending behaviour and measures to prevent such behaviour. Dealing with children in conflict with the law has two major standards: prevention and protection. Prevention aims to ensure that children do not come into conflict with the law in the first place and therefore do not come into contact with the formal criminal justice system. At the same time, measures are needed to protect children who are already in conflict with the law, in order to deter them from reoffending and to promote their rehabilitation and smooth their reintegration back into society.⁵⁸ Hence, within this broader concept of juvenile justice, the Children's Act, 2018 mostly focuses on the treatment of juvenile offender in justice system. It has incorporated more progressive provisions on providing non-custodial options to juvenile offenders. Introducing "diversion" concept in the Act is a remarkable progress in juvenile justice system of Nepal. However, it has not adequately incorporated the key procedural safeguards, in particular the requirement that the child freely accepts responsibility for the offence, agrees to diversion conditions, and that completion of the diversion agreement results in conclusive closure of the case.

The Children's Act provides a broader range of sentencing options for children and includes some restrictions on imprisonment of children. However, there is generally a lack of guiding principles for sentencing to ensure primacy of rehabilitation and reintegration, proportionality, and use of custodial measures as the last resort and for the shortest appropriate period. The Act also desires to achieve linkage between welfare and justice to some extent, contingent on a number of factors including availability of appropriate services and programs for young people who have committed an offence. The Children's Act is a progressive piece of legislation with its heart in the right place. The progressive steps envisioned in the legislation can only be achieved through its effective implementation.



⁵⁷ Ibid, Sec. 79(1).

⁵⁸ Save the Children UK. (2004), *Modern Concepts of Working with Children in Conflict with the Law*, 12.