



Government of Papua New Guinea

FINAL REPORT

**DEEP DIVE STUDY:**

# DIVERSION AND ALTERNATIVE SENTENCING OF CHILDREN IN CONFLICT WITH THE LAW IN PAPUA NEW GUINEA



**PNGAus Partnership**



bilong olgeta pikinini

**Prepared for UNICEF Papua New Guinea Country Office by:**

Coram International at Coram Children’s Legal Centre  
41 Brunswick Square London, WC1N 1AZ United Kingdom



Permission to copy, disseminate or otherwise use information from this publication is granted so long as appropriate acknowledgement is given.

**Papua New Guinea Country Office**

United Nations Children’s Fund  
Level 5, Kina Bank Haus  
Douglas Street  
Port Moresby, Papua New Guinea

**Suggested citation of the report:**

Kirsten Anderson, Catherine Burke, and Ramyah Harrichandiran (2024). Deep Dive Study: Diversion and alternative sentencing of children in conflict with the law in Papua New Guinea

Cover photo: UNICEF Papua New Guinea

# TABLE OF CONTENTS

<b>Acknowledgements .....</b>	<b>5</b>
<b>Acronyms.....</b>	<b>6</b>
<b>1. Executive Summary .....</b>	<b>8</b>
<b>2. Introduction .....</b>	<b>14</b>
2.1 Purpose .....	14
2.3 Scope and definitions .....	15
<b>3. Methodology .....</b>	<b>18</b>
3.1 Overall methodological approach .....	18
3.2 Research Questions .....	18
3.3.1 Desk review .....	19
3.3.2 Key Informant Interviews .....	19
3.3.3 Community Focus Group Discussions (FGDs) .....	19
3.3.5 Administrative data collection .....	20
3.4 Sampling.....	21
3.5 Analysis Methods .....	22
3.6 Validation, governance and oversight .....	23
3.7 Ethics.....	23
3.8 Limitations and Constraints .....	23
<b>4. Background and Context .....</b>	<b>25</b>
4.1 Legal framework for child justice .....	25
4.1.1 Juvenile Justice Act .....	25
4.1.2 Customary law.....	27
4.1.3 Policies and implementation plans .....	27
4.2 Governance and institutional framework .....	28
<b>5. Findings .....</b>	<b>31</b>
5. 1 Profile of children in conflict with the law .....	31
5.2 Diversion and alternative sentencing measures and Processes.....	33
5.2.1 Community Facilitated Diversion.....	34
5.2.2 Village Court Diversion.....	37
5.2.3 Police Diversion .....	45
5.2.4 Alternative sentencing .....	60
5.3 Outcomes of Diversion and Alternative Sentencing Measures .....	70
5.3.1 Outcomes for the Children in Conflict with the Law .....	71
5.3.2 Outcomes for the Efficiency of the Justice System .....	72
5.4 Access to Diversion and Alternative Sentencing Measures .....	72
5.4.1 Gender dynamics in the use and experience of diversion and alternative sentencing .....	73

5.4.2 Children with disabilities and access to diversion and alternative sentencing.....	74
5.5 Enabling Environment Analysis.....	75
5.5.1 Law and Policy Framework.....	75
5.5.2 Governance Structures.....	77
National level coordination.....	77
5.3.3 Capacity and Resources of Duty Bearers.....	80
5.5.4 Community Beliefs and Practices.....	84
5.5.5 Availability of Services and Service Providers.....	87
5.5.6 Availability of Legal Representation.....	91
5.5.7 Information Management, Data, and Reporting.....	92
<b>6. Conclusion and Recommendations.....</b>	<b>100</b>
<b>7. Annexes.....</b>	<b>104</b>

# TABLE OF FIGURES

Figure 1: Number of children arrested and charged by police in eight provinces in PNG (2019 – 2023) .....	31
Figure 2: Number of children arrested and charged by police in eight provinces in PNG by type of offence (2021) .....	32
Figure 3: Number of children arrested and charged by police in eight provinces in PNG by type of offence (2022) .....	32
Figure 4: Criminal cases heard at the Village Court, by offence and gender .....	33
Figure 5: Number of cases involving child defendants at the Village Courts, 2020-2023 .....	41
Figure 6: Number of Village Courts per province (2023) .....	42
Figure 7: Process for handling cases of children in conflict with the law .....	46
Figure 8: Prevalence of police and court-based diversion for children in conflict with the law in 15 provinces (2019)....	51
Figure 10: Type of Court where juvenile cases were heard in sampled research locations.....	54
Figure 11: Picture of NCD Court Room where Juvenile Court took place.....	54
Figure 12: Process of community-based processing conferencing .....	56
Figure 13: Reported court diversion in NCD (2019-2023).....	58
Figure 14: Pre-sentence reports for children in conflict with the law (2019-2023) .....	61
Figure 16: Number of children placed on probation, police diversion and court diversion, 2019-2023.....	66
Figure 17: Children detained in Correctional Institutions, both convicted and remand (2018-2023) .....	67
Figure 18: Village Court magistrates and court clerks, per province .....	81
Figure 19: Victim-centred services and programmes available in PNG .....	88
Figure 20: Percentage of Papua New Guinean provinces providing data to DJAG on the number of cases of CICL diverted by police (2019-2023) .....	92
Figure 20: DJAG Forms for JJO Reporting (2017) .....	92
Figure 21: Example page of Juvenile Occurrence Book at Police Station in Goroka (names redacted to protect anonymity) .....	97

## ACKNOWLEDGEMENTS

Research for this report was carried out by Kirsten Anderson, Catherine Burke, Ramyah Harrichandiran, Dr. Elizabeth Kopel, Sarah Kaut Nasengom, and Ume Wainetti, all of Coram International, and was supported by Mr. Justin Tukuliya, Department of Justice and Attorney General, Madison Charlton and Jessy Gong. The research project was managed by UNICEF Papua New Guinea. The authors would like to thank Ms. Ndangariro Moyo, Child Protection Specialist at UNICEF Papua New Guinea and Ms Paula Vargas, Chief of Child Protection, for all of their helpful and enthusiastic support and guidance throughout the process. The research team also expresses its sincere thanks for the helpful guidance and support of Mr. Collin Sakap, Director Juvenile Justice Service in Department of Justice and Attorney General, Inspector Eko Mangere, Deputy Chair of the National Juvenile Justice Committee and Chair of the Technical Advisory Group for the study. The team is grateful to all the other members of the Technical Advisory Group, including: the Secretariat, Mr. Collin Sakap (Juvenile Justice Service) and members: Ms. Michelle Taumpson (Constitutional and Law Reform Commission), Ms. Linda Dentana (Probation Services), Mr Simon Yanis and Mr. Otto Trur (National Office of Child and Family Services), Mr. Joe Saferius (Director, Social Law and Order Sector and Law and Justice Secretariate LJS, DJAG), Mr. Mathew Nelson (National Narcotics Bureau, NNB), Ms. Paula Vargas (UNICEF) and Ms. Ndangariro Moyo ( UNICEF).

Finally, the team would like to express its gratitude for all of the key informants, experts, service providers and children, families and community members who generously gave their time and insights to the team.

## ACRONYMS

BO	Community Based Organisation
CICL	Children in Conflict with the Law
CID	Criminal Investigation Department
CRC	UN Convention on the Rights of the Child
CSO	Community Service Organisation
DCD	Department for Community Development
DFAT	Australian Department of Foreign Affairs and Trade
DJAG	Department of Justice and Attorney-General
FBO	Faith Based Organisation
FGD	Focus Group Discussion
JJA	Juvenile Justice Act
JJO	Juvenile Justice Officer
JSS4D	Justice Services and Stability for Development Program
KII	Key Informant Interview
NJJC	National Juvenile Justice Committee
NEC	National Executive Council
NGO	Non-Government organisation
OCFS	Office of Child and Family Services
PJJC	Provincial Juvenile Justice Committee
PNG	Papua New Guinea
PSO	Office of the Public Solicitor
RPNGC	Royal Papua New Guinea Constabulary
TAG	Technical Advisory Group
UN	United Nations
UNICEF	United Nations Children's Fund
VAC	Violence against Children
VAW	Violence against Women
VAWG	Violence against Women and Girls
VJJO	Volunteer Juvenile Justice Officer
CICL	Children in Conflict with the Law
CID	Criminal Investigation Department
CRC	UN Convention on the Rights of the Child
CSO	Community Service Organisation
DCD	Department for Community Development
DFAT	Australian Department of Foreign Affairs and Trade
DJAG	Department of Justice and Attorney-General
FBO	Faith Based Organisation
FGD	Focus Group Discussion
JJA	Juvenile Justice Act
JJO	Juvenile Justice Officer
JSS4D	Justice Services and Stability for Development Program
KII	Key Informant Interview
NJJC	National Juvenile Justice Committee
NEC	National Executive Council
NGO	Non-Government organisation
OCFS	Office of Child and Family Services
PJJC	Provincial Juvenile Justice Committee
PNG	Papua New Guinea
PSO	Office of the Public Solicitor
RPNGC	Royal Papua New Guinea Constabulary
TAG	Technical Advisory Group

UN	United Nations
UNICEF	United Nations Children's Fund
VAC	Violence against Children
VAW	Violence against Women
VAWG	Violence against Women and Girls
VJJO	Volunteer Juvenile Justice Office



# 1. EXECUTIVE SUMMARY

This report contains key findings from a deep dive study on the use of diversion and alternative sentencing of children in conflict with the law in Papua New Guinea (PNG). The study was commissioned and led by the National Juvenile Justice Committee (NJJC) with the support of UNICEF. The research aimed to assess the use of diversion and alternative measures for children in conflict with the law in PNG and to explore the extent to which diversion is offered across the country, what those measures consist of and the effectiveness of such efforts. The purpose of the study was to provide specific recommendations for the Government of PNG on the development of laws, policies, capacities and quality alternatives to judicial proceedings and deprivation of liberty and practical guidance to implementers of diversion programmes.

## *Methodology*

The study was primarily qualitative and data collection methods included:

- **A Desk review** of laws and policies, and available research reports;
- **Key Informant Interviews** at both the national (n = 11) and sub-national level (n = 48) with key justice and child protection professionals;
- **File reviews** of cases involving children in conflict with the law (n = 16);
- **Community Focus Group Discussions** with a diverse range of community members (n = 8);
- **In-depth interviews with children (10 – 18 years)** with experience of the justice system and their parents/caregivers (n = 17);
- **Observational visits at Courts, Police Stations and Correctional institutions** (n = 9); and
- **Administrative data** on the profile and nature of child offending and the process of children through the justice system.

Research was carried out across four provinces: the National Capital District (Southern); Western Province (Southern); Autonomous Region of Bougainville (Islands); West Sepik Province (Momase); and Eastern Highlands Province (Highlands), along with the Autonomous Region of Bougainville.

## *Key Findings*

### **Diversion and alternative sentencing measures**

Diversion and alternative sentencing measures in PNG can occur under powers set out in statutory law or (more commonly) according to customary law, which varies widely and is practiced throughout PNG. According to the research, diversion options for children in conflict with the law include community-facilitated mediation; village court mediation; several forms of police diversion; and court diversion. There were very limited services in place to provide more comprehensive responses to children in conflict with the law who are diverted or given an alternative sentence.

**Community-facilitated diversion** typically involves mediations/communal gatherings, which aim to foster constructive dialogue between the child in conflict with the law, their families, the victim, and various other stakeholders within the community. Typically, only minor offences are settled at the community level, which include but are not limited to stealing, fighting and anti-social behaviour. The process of mediation is guided by Melanesian tradition, though the different provinces and communities have their own customs, meaning that practices differ in each location. However, in general, mediation involves the accused and their family coming together with the victim and their family to discuss the offence and what can be done to reach a resolution. Mediations end with an agreement for restitution or

cash-based compensation to be paid. In rural settings, items may also be given, such as farm animals, food items or tools.<sup>1</sup> For cases involving children in conflict with the law, parents/family members shoulder this payment on behalf of their child.<sup>2</sup>

There are currently 1,680 Village Courts across PNG, making them very accessible across the country, including in more remote locations. Data from a small proportion of Village Courts [Data were available from around 20 per cent of Village Courts.]<sup>3</sup> found that between 2020 and 2023, 184 cases involving child defendants were heard, and 75 per cent were criminal matters. In addition, Village Courts enjoy high levels of confidence by the communities they serve and are typically seen as systems of accountability within communities, and as providing a relatively quick resolution to conflicts, making them highly valuable to maintaining order and peace. However, some challenges were found in the use of Village Courts to address children in conflict with the law. There is limited knowledge and training among Village Court Officials in regard to juvenile justice, hampering their ability to carry out their duties in line with the *Juvenile Justice Act 2014* and the *Lukautim Pikinini Act 2015*. In some cases, such a lack of training has led to Village Courts hearing cases beyond their jurisdiction. Further, throughout PNG Village Courts reported being under resourced to carry out their role effectively, with limited resources and physical infrastructure in some locations.

**Police diversion** is provided for under Sections 41 and 42 of the *Juvenile Justice Act 2014*, and is the most common recorded form of diversion used in Papua New Guinea. Children in conflict with the law are eligible for police diversion in cases where the offence is triable summarily. This includes offences such as drunk and disorderly; assault; breach of the peace; fighting; carrying or using weapons; possession of stolen property. Cases are typically brought to the attention of police when they are considered to be “more serious” by community members or in circumstances where there are no Village Courts or other community based mechanisms for handling cases. According to the most recent data available from DJAG (from a limited number of locations), 67 cases of children in conflict with the law were diverted by police in 2023. Data also shows a sharp increase in police diversion: rising from 57 per cent of recorded cases of children who are arrested and charged in 2019, to 93 per cent of cases in 2023.

Options for police diversion include warnings, police bail, police-led diversion and the option for police to refer cases back down to Village Courts or to community-based mechanisms. This involves Police Station Commanders inviting the parties, i.e. the child in conflict with the law, the victim(s) and the child and victim’s their parents/guardians and members of their extended family and community, the victim(s) and members of their extended family and community, community leaders and juvenile justice officers, to come to the police station in order to discuss what happened and how the dispute can be solved. Police also have the power to refer children in conflict with the law to a community-based conference. The use of this method by Police was however found to be limited, with the only examples found in the National Capital District. Police Officers will permit, and in some cases encourage, cases reported to Police to be sent back to Village Courts or to be handled through community-based diversion.

**Court-based diversion** is also available for cases considered unfit for Police-led diversion, under Section 62 of the *Juvenile Justice Act 2014*. There are three types of Courts which hear children’s cases in Papua New Guinea: Juvenile Courts, District Courts (in areas where no Juvenile Court has been established) and the National Court. Data shows that the majority of cases which end up at Juvenile or District Courts are diverted. Typically, only the most serious cases (i.e. drug trafficking) or those perpetrated by repeat offenders are considered ineligible for Court-based diversion.

**Community based** conferences are the cornerstone of Court-ordered diversion. However quantitative data is limited on the number of such conferences which take place. In practice, District or Juvenile Court Magistrates refer cases to JJOs or VJJOs who are tasked preparing and conducting the conference. Agreements reached through community-based conferencing commonly include obligations, i.e. that

<sup>1</sup> KII, Inspector and Coordinator of detainee rehabilitation programmes and prison industries and Deputy Chair of NJJC, Department of PNG Correctional Service, Port Moresby, 9 October 2023

<sup>2</sup> KII, Director of Human Rights, DJAG, Port Moresby, 16 October 2023

<sup>3</sup> Data were available from around 20 per cent of Village Courts.

the child in conflict with the law must apologise, the victim(s) must forgive the child, the parents/guardians of the child in conflict with the law have to compensate and the sharing of a joint meal following the conference. Limited access to support and diversion services often means opportunities such as counselling for children in conflict with the law are unavailable.

A wide range of **alternative sentencing** measures for children in conflict are set out in the *Juvenile Justice Act 2014*, including community service, compensation, fines, good behaviour bonds, probation, reprimand, restitution, supervision and suspended imprisonment sentence. The JJO and the Probation Officer play a leading role in the administration and oversight of alternative sentences, along with Probation Officers at the Community-Based Correctional Services, who assume responsibility for children placed on probation, including the development of pre-sentence reports for courts, supervising probationers and addressing any breaches of probation orders. However, the limited number of justice professionals at the local level and the inadequate resources available to them means they have limited capacity to carry out their supervision duties.

In practice, the types of cases that receive alternative sentences include: assault, stealing item(s) below the value of 500 Kina, verbal harassment, threatening behaviour, sexual touching or other sexual offences. Cases that would not receive alternative measures are serious offences, including drug smuggling, violent rape and wilful murder. The background of the child and the circumstances of offence committed also appear to be very influential as to whether a child is given a non-custodial sentence, and the data indicates that presentence reports are becoming an established process and are utilised in determining an appropriate sentence for children in conflict with the law.

### **Outcomes of Diversion and Alternative Sentencing Measures**

Limited data on the progress of children through the justice system makes it difficult to have a comprehensive picture of outcomes for children in conflict with the law who undergo diversion/alternative sentencing. However, qualitative data suggests that the use of diversion is resulting in a reduction in the numbers of children coming into conflict with the law repeatedly. However, other stakeholders did not believe the impact of diversion to be so positive, and noted that reoffending behaviour persisted for such children, with children either committing lower level offences or committing offences after the age of 18 which were then handled by the adult criminal justice system. One reason for this was the limited support services for children and their families which mean children are unable to address the root causes of their offending behaviours.

Whilst data is limited, it does appear likely that, following the passage of the *Juvenile Justice Act 2014*, fewer children's cases are progressing through the criminal justice system, leading to a reduction of the number of children who are charged, and sentenced.

### **Access to Diversion and Alternative Sentencing Measures**

The study found that the gender of the child in conflict with the law likely has an impact on the use of diversion in PNG. Where girls do come into conflict with the law, it appears that these cases are diverted (or otherwise disposed of) quickly, over concerns that they are vulnerable to violence or abuse from inmates and police officers should they need to be placed in police detention. However, where girls are diverted or receive an alternative sentence, it appears that available services do not cater adequately to their needs. The data indicates that the needs of children with disabilities who come into conflict with the law are not routinely considered or accommodated. Most justice stakeholders reported that they had not received any cases involving children with disabilities.

## Enabling Environment for diversion and alternative sentencing

The study involved an analysis of the capability of the child justice system to support the effective use of diversion and alternative sentencing. The analysis found a number of gaps and barriers, as well as opportunities for the effective use of diversion and alternative sentencing within the wider child justice system in PNG.

**Law and Policy Framework:** PNG has a comprehensive legal framework which supports the use of diversion and alternative sentencing for children in conflict with the law. Part III the *Juvenile Justice Act 2014* provides a comprehensive and enabling legal framework for the application of diversion to many cases of children who come in conflict with the law. The *Juvenile Justice Act 2014* also provides for the establishment of a distinct, specialized justice system for children, which is crucial for supporting the use of diversion and alternative sentencing. PNG's system of customary law (under which diversion frequently occurs) also supports diversion. While customary laws vary substantially across the country, in general, they take a restorative approach, favoring community-based resolution practices.

Unfortunately though, operational challenges have hampered the ability for this strong legal and policy framework to be effectively implemented. Insufficient resourcing, limited human resources, challenges in coordination and limited accountability through monitoring and oversight and a lack of robust information management and reporting systems have all acted as barriers to their implementation. A low level of knowledge of the *Juvenile Justice Act 2014* also undermines the strength of the protective legal framework.

**Governance Structures:** At the national level, the National Juvenile Justice Committee (NJJC), formed in 2003, provides a structure for coordination of child justice and related agencies. However, limited engagement from several key agencies on the NJJC (most notably, the Police) has somewhat undermined this mandate. At the sub-national level, Article 26 of the *Juvenile Justice Act 2014* allows for Provincial Juvenile Justice Committees (PJJCs) to be established.[ Section 26 (a), *Juvenile Justice Act 2014*.]<sup>4</sup> However, research showed that in practice, the number of fully functional PJJCs was limited. Where PJJCs were in place in research locations, key stakeholders appeared to value their role in coordinating the different agencies and service providers.

However, overall, the data indicates that siloed working, exacerbated, at times, by unclear mandates and limited resources hampers coordination, negatively impacting children in conflict with the law. A critical gap that was identified was the limited coordination between the child protection and child justice sectors, with the two systems appearing to operate in silos. There are no detailed guidelines on how the two systems should operate at the case level and how the role of the JJOs and the Child Protection Officers, in particular, should coordinate in delivering services to children in conflict with the law. This has led to inconsistencies across the country in how the two systems work together.

**Capacity and resources of duty bearers:** Justice professionals have highlighted significant challenges in executing juvenile justice work and diversion practices due to limited human, technical, and financial capacity. A critical issue is the shortage of justice professionals at local and provincial levels, compelling existing staff to undertake multiple roles beyond their designated responsibilities. Justice professionals also acknowledged their limited training in the field of juvenile justice as a barrier. Training opportunities which do exist remain ad hoc in nature. A lack of essential technical resources (basic stationery, technology tools, transport and adequate office space) was also noted as a challenge. NGOs and CBOs primarily rely on international donors, impacting their ability to deliver effective and sustainable programmes.

**Community beliefs and practices:** PNG has a long tradition of restorative justice and communities across PNG have a complex set of customary laws and distinct practices for dealing with violations of these shared norms. Community-based approaches are particularly common in cases involving children

4 Section 26 (a), *Juvenile Justice Act 2014*.

in conflict with the law, given that in many communities, children are viewed as an extension of their families. Despite this, the research also identified conflicting community beliefs and attitudes to child offending that were much more retributive. Punitive attitudes to offending have an adverse impact on the use of diversion measures, as victims and their wider communities are keen to see higher penalties imposed on offenders, including lengthy periods in detention.

**Availability of services and service providers:** Despite the various types of services for both children in conflict with the law as well as victims, there are not enough available services across PNG to respond to their various needs. Services and programs are primarily concentrated in urban areas, posing significant accessibility issues. Service providers also face significant funding challenges, hindering their delivery of services. Examples of good practice were however evident, such as the availability of services for victims and ‘one-stop-shops’ which provide multiple services for children in a single location.

**Availability of legal representation:** There are considerable barriers to children in conflict with the law accessing legal representation in PNG. While children receive legal representation from the Public Solicitor if their case reaches the National Court, cases that are heard at the district or juvenile courts, or even at the police station during a child’s arrest and charge, receive no formal legal advice. Various reasons were cited for this, including legal representation being too costly for families to view it as worthwhile at the lower courts, as well as the limited number of and large case load of public solicitors (who are mandated to provide legal aid and assistance), limiting their capacity to handle less serious cases.

**Information Management, Data, and Reporting:** The absence of a clear data management system across the various actors involved in the juvenile justice sector means there is limited data available on the number of children in conflict with the law and their progress through the juvenile justice system. Where data does exist it is often incomplete, delayed or is not disaggregated sufficiently to allow for a detailed understanding of the needs of different groups of children within the juvenile justice system. No data is held on children’s outcomes following diversion.

Government agencies do not appear to keep records of diversion, as they are not required to do so under the *Juvenile Justice Act 2014*. No records exist of community-based diversion efforts. Limited numbers of Village Court Clerks coupled with a limited understanding of reporting responsibilities often means that Village Court data is severely limited. One central challenge to information management is the lack of a unified case management system or established process for sharing information within and between Government Departments. Whilst the NJJC is mandated to share information and to develop national plans, there are currently no regulations or protocols for information sharing between departments.

## Conclusion

PNG has a comprehensive legal framework and basic system for the implementation of various diversion methods and alternative sentencing. The Government has shown strong commitment to the implementation of diversion and alternative sentencing for children in conflict with the law, and existing community practices and customary law systems support a restorative approach to justice. The study found that various forms of diversion and alternative sentencing are being utilised across the research locations. A notable gap, however, is the limited availability of more rehabilitative or intensive programmes for children in conflict with the law who are vulnerable or at risk of reoffending.

The enabling environment for diversion and alternative sentencing contains some gaps and barriers, as well as opportunities. Despite a robust legal framework and rehabilitation policies, implementation challenges and a lack of awareness among professionals underscore the need for improved knowledge dissemination and training. The varied application of customary law in diversion practice may lead to inconsistencies with the child’s best interests, highlighting the ongoing need to codify customary laws. Whilst existing national coordination structures support multi-agency collaboration, challenges persist

at the sub-national level, including the absence of established referral pathways and limited linkage with child protection services. The research also found that not only do children have limited access to legal representation in PNG, but juvenile justice services across the board possess limited human, technical and financial capacity, revealing a need to strengthen capacity across the system. Moreover, the country-wide lack of data has been an impediment to understanding the true picture of diversion and alternative sentencing in PNG. This underscores the need to better build data systems which can be used to inform more targeted interventions and responses.

## 2. INTRODUCTION

### 2.1 Purpose

Diversion and alternative sentencing for children in conflict with the law are key components of a right-compliant and child-friendly justice system. Diversion involves the referral of children in conflict with the law out of the formal justice system, typically into family-based / community-based programmes and activities. In particular, diversion programmes that support children within their families, including through building the capacities of parents and family members, can help support children and prevent reoffending. The effective use of diversion has the advantage of avoiding stigmatisation and criminal records, which yields good results for children while also being consistent with public safety and the reduction of recidivism. Diversion has also been shown to be a cost-effective way for responding to children in conflict with the law.<sup>5</sup> Alternative sentencing, which is the use of family and/or community-based sentencing measures for children in conflict with the law, has the important advantage of preventing the long-lasting negative impact of detention on children's physical, mental, and emotional health and development, including the increased chance of reoffending due to deprivation of liberty.

The Government of Papua New Guinea has demonstrated a strong commitment to promoting diversion and alternative sentencing measures for children, with a relatively comprehensive legal framework and recent policies, such as the Juvenile Rehabilitation and Reintegration Policy 2021 – 2031 which provides a framework for the operationalisation of diversion and alternative sentencing. However, there has been limited research on the implementation of PNG's child justice legal and policy framework, especially on the lived experiences of children in conflict with the law, with limited understanding on how diversion and alternative sentencing is used in practice.

It is for this reason that UNICEF Papua New Guinea engaged Coram International to carry out a 'deep dive' study on the use of diversion and alternative sentencing for children in conflict with the law in Papua New Guinea (PNG). The study, which was initiated by the National Juvenile Justice Committee (NJJC), was conducted under the overall leadership of the NJJC and UNICEF PNG. The primary purpose of the research is to assess the use of diversion and alternative measures for children in conflict with the law in PNG and to explore the extent to which diversion is offered across the country, what those measures consist of and the effectiveness of such efforts.

### 2.2 Specific objectives

The primary objective of this study is to assess the compliance of PNG's diversion and alternative sentencing measures for children in conflict with the law in accordance with the country's national legal framework and international standards. This study will also generate evidence on the barriers, bottlenecks and enablers to using diversion and other alternatives to detention in PNG as well as good practices and strategies, including for scaling up diversion.

This study also provides specific recommendations for the Government of PNG on the development of laws, policies, capacities and quality alternatives to judicial proceedings and deprivation of liberty, as well as providing practical guidance to implementers of diversion programmes from community-based organizations, local non-government organizations and faith-based organizations, and provincial governments.

In particular, the specific objectives of the research are to:

1. Identify existing opportunities for diversion;
2. Analyse the eligibility criteria for these existing diversion opportunities and how often the available options are utilized, by whom/at what point in the justice process, in what types of

<sup>5</sup> UN Committee on the Rights of the Child, General Comment No. 24 on children's rights in the justice system, CRC/C/CG/24, 18 September 2019, para. 13.

- cases and for which children, protocols utilized at each point in the process, and reasons and conditions for non-utilization;
3. Examine and compare how the existing process and opportunities for diversion and other alternatives to detention align with the national legal framework in PNG and international standards;
  4. Describe the perceptions of juvenile justice actors, service providers and children themselves on the effectiveness of the juvenile justice system in preventing and responding to cases of children in conflict with the law, including time spent in the system and experiences while in the system;
  5. Identify gaps, barriers and bottlenecks within the existing juvenile justice system and solutions for overcoming these;
  6. Conduct a gender analysis on how the child justice system and related institutions and practices are impacted by gender roles and/or expectations of boys and girls in conflict with the law and the difference in experiences between boys and girls in the system;
  7. Understand the process and experiences of children who are in conflict with the law and how this influences outcomes regarding institutionalization and justice for children more broadly; and
  8. Assess how activities taken by the Government of Papua New Guinea, including with support from UNICEF, have improved access to diversion and other alternatives to detention for children in PNG.

### 2.3 Scope and definitions

The in-depth study focuses primarily on diversion practices and processes for children in conflict with the law. However, it also examines alternatives to detention for children who have been charged (alternatives to pre-trial detention) and convicted (alternative sentencing measures) of a criminal offence. For the purposes of the study, the following definitions are used:

**“Child in conflict with the law”** includes any child (under 18 years) who comes into contact with law enforcement authorities because they are alleged as, accused of, or recognised as having infringed criminal law.<sup>6</sup> A child may lawfully be recognised as having infringed criminal law if they are over the minimum age of criminal responsibility (the lowest age at which the criminal justice system deems that a child can be held responsible for their own behaviour and can therefore be found guilty in court; a child below this age is considered not to have the capacity to be able to infringe penal law).<sup>7</sup> In PNG, the minimum age of criminal responsibility is 10 years.<sup>8</sup> This is contrary to General Comment 24 of the UN Committee on the Rights of the Child, which in 2019 concluded that states should be encouraged to increase their minimum age to at least 14 years of age.<sup>9</sup>

**“Diversion”** is the channelling of children in conflict with the law away from the formal court system through the development and implementation of procedures, structures and programmes that enable most children to be dealt with by non-judicial bodies, thereby avoiding the negative effects of formal judicial proceedings.<sup>10</sup> Diversion can only be applied to children who are in conflict with the law. Diversion cannot be applied to children who are below the minimum age of criminal responsibility, as the child will be deemed incapable of committing a criminal offence, and therefore a criminal intervention will be unlawful. Diversion also does not apply to a child where their case has been dismissed or discontinued (e.g., due to insufficient evidence or on prosecutorial public interest grounds). In these cases, a charge

6 UN Committee on the Rights of the Child, General Comment No. 10 on Children's Rights in Juvenile Justice, 2010.

7 UN Committee on the Rights of the Child, General Comment No. 10 on Children's Rights in Juvenile Justice, 2010.

8 Section 3, Juvenile Justice Act 2014.

9 UN CRC Committee, General Comment No. 24 on children's rights in the child justice system, 2019, paras. 20–27.

10 UN Committee on the Rights of the Child, General Comment No. 10 on Children's Rights in Juvenile Justice, 2010.



has not been substantiated and there is therefore no need for a criminal justice intervention.

**“Alternative sentencing measures”** are non-custodial dispositions of a case following a child being formally processed through the justice system (i.e., following a trial and finding of guilt or the entering of a guilty plea). Alternative sentencing measures provide family-based and community-based options for the reintegration, rehabilitation and supervision of children, rather than sentencing them to any form of detention centre or closed care, treatment or re-education institution.<sup>11</sup> Alternative sentencing measures differ from diversion as diversion occurs any time up until the completion of a trial. Also, diversion must only be applied where a child’s consent is obtained, whereas an alternative sentence is imposed and does not require the child’s consent.<sup>12</sup>

**“Restorative justice”** is an approach and form of community-based justice, in which the victim(s) and offender(s), and in some cases other persons affected by a crime, participate actively together in the resolution of matters arising from the crime, generally with the help of a facilitator.<sup>13</sup>

The study examined the full range of diversion measures and alternative sentencing. This include both formal/ state and less formal/non-state systems, including customary and traditional justice structures and mechanisms. **Traditional justice systems** in PNG are multiple, varied, non-static and derived from the local societies they are practiced in. Their main role is *“to maintain peace and harmony in local – usually village – communities. In practice, they often exhibit a distinctly restorative character in the management of disputes and conflict on the basis that parties will have to continue to live together in relatively tight-knit and interdependent social settings. They may also exhibit distinctly retributive characteristics and operate in a harsh and discriminatory manner against certain groups, including women and children.”*<sup>14</sup>

### Summary of international standards on child justice, diversion and alternative sentencing

International law contains a well-elaborated series of standards and guidance that relate to children in conflict with the law. In particular, the UN Convention on the Rights of the Child (CRC) contains a number of key provisions. Article 40 provides that States Parties must recognise *“the right of every child alleged as, accused of, or recognized as having infringed the penal law to 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 freedoms of others and 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.”*<sup>15</sup> The rights of children in conflict with the law have been elaborated in the CRC Committee’s recent General Comment No. 24 on Children’s rights in the justice system, and are set out in a number of ‘soft laws’, including, among others, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) 1985.

According to these international standards, States must promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged, accused of, or recognised as having infringed on the criminal law. This system should take a differentiated and individualised approach that takes into account the damaging results of children being exposed to the adult criminal justice system.<sup>16</sup> While public safety is *“a legitimate aim of the justice system,”* States must serve this aim in a way that centres the principles of child justice, including that every child must be *“treated in a manner consistent with the promotion of the child’s sense of dignity and worth.”*<sup>17</sup> In particular, children in conflict with the law must be dealt with without resorting to judicial proceedings, ensuring that human rights standards and legal safeguards are

11 UNICEF East Asia and Pacific Regional Office, *Diversion not detention: A study on diversion and other alternative measures for children in conflict with the law in East Asia and the Pacific*, 2018.

12 UN CRC Committee, *General Comment No. 24 on children’s rights in the child justice system*, 2019, para. 18(b).

13 UNICEF East Asia and Pacific Regional Office, *Diversion not detention: A study on diversion and other alternative measures for children in conflict with the law in East Asia and the Pacific*, 2018.

14 UNICEF PNG, in UNICEF East Asia and Pacific Regional Office, *Diversion not detention: A study on diversion and other alternative measures for children in conflict with the law in East Asia and the Pacific*, 2018.

15 Article 40(1), CRC.

16 UN Committee on the Rights of the Child, *General Comment No. 24 on children’s rights in the justice system*, CRC/C/CG/24, 18 September 2019, Section 1.2

17 Article 40(4), CRC.

protected and provided, where appropriate. States must also ensure that children must only be deprived of their liberty as a last resort and that a range of non-custodial sentencing dispositions must be available to children in conflict with the law, including *“care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care.”*<sup>18</sup>

*In accordance with these core principles, the CRC requires States to “promote the establishment of measures for dealing with children without resorting to judicial proceedings, wherever appropriate.”*<sup>19</sup> This includes the use of two categories of measures:

1. *Measures referring children away from the judicial system, any time prior to, or during the relevant proceedings (diversion); and*

2. *Measures in the context of judicial proceedings.*

*Diversion and alternative options should include only community and family-based measures and must not involve deprivation of liberty in any form, for example, in remand homes, reformatories, prisons, closed psychiatric hospitals, closed drug treatment facilities, or placement in an open or semi-open/closed care institution, re-education institution, treatment institution or diagnostic centre.*

<sup>18</sup> UN Committee on the Rights of the Child, General Comment No. 24 on children's rights in the justice system, CRC/C/CG/24, 18 September 2019, para. 13.

<sup>19</sup> UN Committee on the Rights of the Child, General Comment No. 24 on children's rights in the justice system, CRC/C/CG/24, 18 September 2019, para. 13.

## 3. METHODOLOGY

### 3.1 Overall methodological approach

A **rights-based approach** was adopted to examine diversion and alternative sentencing in PNG, utilising international human rights standards and guidance as benchmarks for assessing diversion and alternative sentencing processes, practices and programmes, as summarised in the information box above.

The research was also carried out within a **systems framework**, which considered the effective use of diversion and alternative sentencing within the child justice system. The research utilised a **systems framework** which embedded the analysis of gaps, barriers, bottlenecks and opportunities for diversion and alternative sentencing within the child justice system. The child justice system is comprised of the following elements: law and policy framework; governance and institutional framework; sufficient human and financial resources; comprehensive services; and effective service providers. The effective and coordinated functioning of these system components is necessary for the effective functioning of diversion and alternative sentencing.

The team adopted an **equity and gender-sensitive approach**, examining differences in access to and experiences of diversion and alternative sentencing according to gender and other categories (e.g., disability; age; socio-economic context; care status etc.). The analysis focused on understanding and addressing these inequalities, and sheds a light on the experiences of marginalized populations within the juvenile justice system where possible (i.e., owing to data availability), including children from rural communities, children with disabilities, girls and children from lower socio-economic backgrounds.

A **primarily qualitative approach** was used to allow for the generation of in-depth and deeply contextualised data and findings. However, where available, administrative (quantitative) data was used to present a broader and objective profile of children in conflict with the law and the disposition of cases.

### 3.2 Research Questions

The team, in collaboration with UNICEF PNG and the Technical Advisory Group for the study, developed the following key research questions (a detailed list of questions and sub-questions is attached as Annex A):

1. To what extent and how are diversion and alternative (non-custodial) sentences utilized for children in conflict with the law in PNG?
2. What is the process for diversion and how consistent is this process with national law and international standards?
3. What options exist for diverting children in conflict with the law and how effective are these options?
4. What are the barriers and bottlenecks to the use of diversion and alternative sentences for children in conflict with the law?
5. What opportunities exist for increasing the use and effectiveness of diversion for children in conflict with the law?
6. How accessible are diversion options for girls and marginalized groups of children, including children with disabilities?
7. How has diversion impacted more generally on the functioning of the (child) justice system?

An additional overarching question was included for the purpose of informing policy and programming recommendations: How have the activities taken by the Government of PNG, including with the support of UNICEF, improved access to diversion for children?

### **3.3 Data Collection Methods**

A range of data sources and data collection methods were used to ensure the reliability of results, promote impartiality, reduce bias and ensure that the study is based on comprehensive and relevant information.

#### **3.3.1 Desk review**

The research team conducted a comprehensive desk review of available literature, including laws and policies, Government, NGO and INGO reports, UNICEF programme documentation, published studies and publicly available secondary data. While the desk review analysis was used as a method of data collection, its purpose was also to inform the development of the methodology, finalise the research questions, provide the basis for a comprehensive stakeholder mapping, and develop the data collection tools and analytical framework for the study.

Following this, the research team undertook a stakeholder mapping (see Annex B). This exercise aimed to identify key implementing partners/stakeholders at the national and provincial levels who have accountabilities for juvenile justice, including the delivery of diversion programmes, in order to inform the methodology and in particular, the sampling strategy.

#### **3.3.2 Key Informant Interviews**

Data collection primarily involved in-person key informant interviews (KIIs) of stakeholders at both national and sub-national levels. These interviews aimed to collect detailed information from experts and key informants who have in-depth knowledge in a particular area(s) relevant to the research.

A semi-standardised approach guided by a structured tool (Annex A) was used, allowing for a participant and response-directed interaction. The selection process for key informants is set out below (Section 2.4) and was informed by a comprehensive stakeholder analysis (see Annex B). Interviews were carried out one-to-one to provide an environment conducive to sharing authentic information; however, group interviews were held in some cases involving a small number of participants from the same department/institution, where this appeared to increase the comfort of respondents and where it would not introduce additional bias into the data collection (e.g. through interviewing a participant who is in a management/supervisory role and their direct reports together).

#### **File reviews/case studies**

During interviews with Juvenile Justice Officers (JJOs) at the sub-national level, participants were requested to bring with them to the interview three case files of children who have most recently completed diversion. During the interview, researchers then asked officers to walk them through each of the cases step by step, aiming to gain an applied and concrete understanding of the processes employed in diverting children in conflict with the law.

#### **3.3.3 Community Focus Group Discussions (FGDs)**

At the sub-national level in each province, FGDs were conducted with adult community members to understand their perceptions of juvenile justice actors and service providers and on the effectiveness of the juvenile justice system in preventing and responding to cases of children in conflict with

the law. This method was valuable in supporting an understanding of traditional and community methods for responding to cases of children in conflict with the law and parents and caregivers' broader perceptions of the criminal justice system and knowledge of diversion practices.

### 3.3.4 In-depth interviews with children, young people and parents/caregivers

Researchers conducted in-depth interviews at the sub-national level with children and young people aged 10-18 who had experience of the juvenile justice system (those with specific experience of diversion, alternative sentencing and detention<sup>20</sup> in Papua New Guinea).

These interviews adopted a life history approach, aiming to understand the process and experiences of children in conflict with the law. To better understand the full range of diversionary measures, researchers interviewed participants with differing experiences of the juvenile justice system (i.e., cases that were handled informally, diverted by police, diverted by Village court, Juvenile Court or Magistrates Court etc., and in rare instances, those who had not been diverted).

Additionally, the team conducted in-depth interviews with parents / caregivers of children in conflict with the law. Similar to the children's in-depth interviews, researchers sought to understand the views and experiences of parents with differing experiences of the juvenile justice system.

### 3.3.5 Administrative data collection

Administrative data was requested from all major agencies/Departments responsible for child justice, including:

- Department of Justice and Attorney General's Office, both the Juvenile Justice Service and the Village Courts and Land Mediation Secretariat;
- Magisterial Services;
- Correctional Services; and
- Royal Papua New Guinea Constabulary.

Data was received from the Juvenile Justice Service (DJAG) on:

- The number of children in conflict with the law who had been referred to police stations, by type of offence (2021, 2022);
- The number of children in conflict with the law who had undergone police and court-led diversion (2019 – 2023);
- The number of pre-sentence reports prepared in relation to children in conflict with the law (2019 – 2023); and
- The number of children in conflict with the law who were placed on probation ((2019 – 2023).

Data above were disaggregated by region and province.

Data was also provided by the Correctional Service on the number of children placed in correctional facilities on remand and following sentencing, disaggregated by region, province (2018 – 2023); and by the Village Courts Secretariat on the number of cases involving children heard by the village courts, disaggregated by province, region and type of case (2020 – 2023).

<sup>20</sup> A small number of interviews were carried out with children in detention to understand, more broadly, the functioning of the different components of the child justice system at the local level and to examine the circumstances of non-utilisation of diversion and alternative sentencing.

However, it should be noted that data provided was only partially complete and in many cases. This was often owing to limited reporting at the local levels. These are particular limitations of the research and are discussed in further detail in Section 2.8 below.

Researchers were also able to collect data whilst in country, requesting research participants at the subnational level to share any information collated in physical record books and files where possible. Data was nominally collected from police stations and community-based organizations providing relevant services.

### 3.3.6 Observational visits

The researchers also conducted observational visits to Courts that handle children's cases (including Juvenile Courts, Village Courts and other Courts handling children's cases) and police stations.

The researchers also observed a small number of cases involving Village Court and Juvenile Court proceedings, which was guided by an observational tool that enabled researchers to assess diversion practices and processes in a concrete way at the level of individual cases.

## 3.4 Sampling

Research was conducted in four provinces and the Autonomous Region of Bougainville at the provincial, district and village level in order to better understand the current operation of diversion and alternatives to detention. To ensure diversity was captured in the research, the selection of research locations included each of the main regions in PNG. The sites were also selected to include several locations where juvenile detention facilities are functioning to allow researchers to understand the impact of the presence of juvenile detention facilities on the use of diversion measures in those provinces. Additionally, the selection included locations in which Juvenile Courts were active and some where they were not to ensure the research captured a diverse spectrum of diversion practices in varying contexts.

Following discussion with the Technical Advisory Group, the following provinces were selected: National Capital District (Southern); Western Province (Southern); Autonomous Region of Bougainville (Islands); West Sepik Province (Momase); and Eastern Highlands Province (Highlands).

All research participants were selected purposively.<sup>21</sup> In total, national level data collection included:

Data collection method	Number (approx.)	Description of participants
<b>Key Informant Interviews</b>	11 KIIs	Government Departments, judiciary, prosecutors, police, I/NGOs, UN partner agencies, academics, NGOs.
<b>Consultative meeting with Technical Advisory Group / National Juvenile Justice Council</b>	1 workshop	Technical Advisory Group Members (including Department of Justice and Attorney General, Office of the Attorney General, Correctional Service, UNICEF etc).

<sup>21</sup> Purposive sampling is a qualitative method of sampling where the researcher begins with specific perspectives in mind that he or she wishes to examine, and then seeks out research participants who cover that full range of perspectives.

At the sub-national level, data collection included:

<b>Key Informant Interviews</b>	48	Provincial justice, child protection and welfare authorities, Police, District Courts, Juvenile Courts, Magistrates Courts and Village Courts, Authorised Facilitators (Community Conferences), managers of detention facilities, NGOs and community leaders.
<b>In-depth interviews</b>	17	Children and young people with experiences of diversion and alternative sentencing and their parents/caregivers.
<b>Focus Group Discussions with community members</b>	8	Members of the communities in which diversion and alternative sentencing measures are utilised.
<b>Observational visits</b>	9	Courts which handle children's cases, police cells and diversion and rehabilitation programmes. Observation of cases involving community conferencing; Juvenile Court, Village Court and District Court proceedings.
<b>Case file review</b>	14	Case files containing details of cases of children who have experienced diversion at some stage of the juvenile justice process

**A detailed list of participants is attached an Annex C.**

Interviews took place in either English or Tok Pisin, with international researchers utilising local interpreters versed in Tok Pisin and the local dialect when necessary. All interviews were transcribed by the researcher undertaking the interview in English, and were stored anonymously to protect the confidentiality of participants.

### 3.5 Analysis Methods

#### Analysis of qualitative data

Qualitative data was uploaded into MAXQDA software and thematically analysed to identify key themes, connections and explanations relevant to the research questions. The analysis sought to draw out specific findings related to gender dynamics and equity issues, and the differing experiences of boys and girls and children in vulnerable situations in conflict with the law.

#### Analysis of quantitative data

The research team also collated and analysed the quantitative administrative data obtained at the national provincial levels in Excel. The analysis of provincial and national level data aimed to provide comprehensive, descriptive and objective information on cases in the juvenile justice system, including diversion rates, utilisation of pre-sentencing reports and probation and imposed sentences for children in conflict with the law. Due to the limited disaggregation in the administrative data obtained, it was not always possible to examine demographic characteristics of children in conflict with the law, including gender and age.

## Triangulation and verification

Different types of data and different data sources were triangulated to identify any inconsistencies in information, helping to ensure the accuracy of findings, analysis and interpretation. Drawing upon different methods helped researchers overcome any biases or weaknesses associated with a particular method, and provided a multi-dimensional picture of the extent to which diversion and alternatives measures to detention for children in conflict with the law were offered and the effectiveness of those measures.

### 3.6 Validation, governance and oversight

The research was overseen by a Technical Advisory Group, chaired by the Chair of the National Juvenile Justice Committee. As part of data collection, researchers held an in-person consultative meeting with members of the Technical Advisory Group in Port Moresby to better understand the current use of diversion. The Technical Advisory Group was responsible for providing oversight and guidance to the research team, approving key deliverables and endorsing the completion of the different phases of the project. The Terms of Reference for the Technical Advisory Group are attached (Annex D).

### 3.7 Ethics

A tailored ethical protocol in line with UNEG Ethical Guidelines, Coram International's own Ethical Guidelines, as well as UNICEF's Ethical Standards in Research, Evaluation Data Collection and Analysis was developed to guide the implementation of the study (Annex E). The research and its ethical protocol and tools underwent an ethical review by an independent ethical review board (Coram's Research Ethics Committee), and approval from the Research Ethics Committee was received before the commencement of data collection.

### 3.8 Limitations and Constraints

Listed below are the limitations and constraints faced when designing and implementing the study, and the mitigation strategies employed to reduce the effect of these matters.

**Cultural contextualisation and representation:** Data collection took place in a limited number of selected locations. Papua New Guinea is an incredibly diverse country, and it is possible that findings generated in one context will not apply easily to other contexts within the country. To allow for this, the team selected locations that were contextually diverse and represented different geographical areas within the country and the presence different justice institutions. This helped the team to examine the functioning of diversion and alternative sentencing in diverse contexts and draw out key, context-specific findings. The team included experienced researchers from Papua New Guinea who were able to assist in interpreting cultural and social contexts impacting on the research topics in each location.

**Access to respondents:** Data collection relied on the participation of a large number of stakeholders. While the team was able to secure the participation of many identified stakeholders, they were not able to secure the participation of several key informants, including the PNG Royal Constabulary at the national level and the Office of the Public Solicitor representatives at national and local levels. This was somewhat mitigated through the inclusion of police officers at the local level and through analysing the functioning of these institutions within the system as a whole through interviewing other, related stakeholders.

**Reporting bias:** The research addressed sensitive issues and also involved examining the extent to which juvenile justice professionals implement the law in practice. Given these sensitivities, it is likely that the evidence gathered may have been affected by a degree of reporting bias. Respondents may have been reluctant or unwilling to share sensitive and personal information either about traumatic events in



their lives (children and adults) or about aspects of their professional experience which they may have feared might reflect badly either on them or their employer. However, to mitigate against reporting bias, researchers carefully explained to all respondents that this is a learning-based exercise, and explained that their anonymity will be protected, and no negative personal or professional consequences will result from the information they share. It was also communicated that participants did not have to answer questions if they did not feel comfortable doing so.

**Limited quantitative data:** The limitations of existing quantitative data and the fragmented nature of the juvenile justice system presented a challenge in collecting data regarding diversion and alternative sentencing measures. Of the limited data available, even less was disaggregated by age and disability and Village Court data did not distinguish between children in conflict with the law and child victims and witnesses, making it difficult for researchers to make informed assessments on equity considerations. In addition, there were significant gaps in the data provided by DJAG, with only one province (the National Capitol District) reporting data on police and court diversion levels for the last five years. In addition, there were concerns that even where data were provided it did not paint an accurate or comprehensive picture of the scale of diversion given the high prevalence of community-facilitated diversion and the complex challenges in reporting data from the provincial level to the national level. Where possible, researchers followed up directly, both via email and in-person, with departments to obtain greater clarity on the data provided to establish reasons for any gaps. There has consequently been a greater reliance on qualitative data collected from stakeholders, which has enabled the research team to glean insightful perspectives on the juvenile justice system in PNG.

Challenges with administrative data collection and reporting systems are detailed in Section 4.5.7 of this report.

## 4. BACKGROUND AND CONTEXT

### 4.1 Legal framework for child justice

PNG has a plural<sup>22</sup> or mixed legal system, with co-existing ‘written’ (statutory), common and customary sources of law. While customary law pre-existed and did not evolve from post-colonial written law, customary law is formally recognised in *PNG’s Constitution (Constitution of the Independent State of Papua New Guinea 1975) and the Underlying Law Act 2000*. The Constitution (section 9) provides that the sources of law are: the Constitution and the Organic Law (which are the supreme law); Acts of Parliament; Emergency regulations; Provincial laws; Laws made or adopted by or under the Constitution or any laws (including subordinate legislation); and the *Underlying Law Act 2000*.<sup>23</sup> Customary law is defined as “customs and usages of the indigenous inhabitants of the country existing in relation to the matter in question at the time when and the place in relation to which the matter arises, regardless of whether or not the custom or usage has existed from time immemorial.”<sup>24</sup>

The use of diversion and alternative sentencing has developed over the years in PNG, moving from a Melanesian community-based approach to a system that is more embedded into the state justice system (though the customary system of law remains and is co-existing with the state system – see section 3.1.2, below). The first national framework for diversion in PNG was the National Law and Justice Policy 2000,<sup>25</sup> which for the first time recognised that diversion provides a form of rehabilitation for children in conflict with the law by focusing on community participation and mediation. This policy was implemented through Community Corrections and Rehabilitation Committees whose role was to work alongside Parole Boards to maintain non-custodial sentences.<sup>26</sup> It is only recently that diversion was given legal standing in PNG through the enactment of the Juvenile Justice Act 2014.<sup>27</sup>

#### 4.1.1 Juvenile Justice Act

PNG’s Juvenile Justice Act 2014 contains the country’s framework for a specialised system for child justice. The Act aims to “establish the basis for the administration of a comprehensive and separate juvenile justice system based on the principles of restorative justice, Melanesian tradition and contemporary juvenile justice practices.” In line with the CRC, Section 6A(i) of the Act states that at all stages of the process, the criminal justice system for juveniles (i.e. those aged under 18 years of age) must be separate from that of adults. General Principles of the Juvenile Justice Act 2014 (Section 6) state that children’s best interests shall be the primary consideration in matters affecting them, and accountability is to be viewed with an emphasis on the need for the child’s rehabilitation and reintegration into society.

Part III of the Juvenile Justice Act 2014 contains a comprehensive set of provisions that permit and regulate diversion by police or courts, along with procedural rights and safeguards. According to section 27, the purpose of diversion is to: (a) provide an effective and timely response to the offending behaviour of the child; (b) hold the child accountable for their actions; (c) encourage the child to acknowledge and repair the harm caused to the victim and community; (d) promote reconciliation between the child and the person/s and community affected by the offending; (e) allow the victim to participate in decision-making; (f) encourage the child’s parents and other family members, as well as community members, to be directly involved in holding the child accountable, supporting the victim and providing the child with opportunities to correct their offending behaviour; (g) prevent stigmatising the child and prevent adverse consequences flowing from the child being subject to the

<sup>22</sup> It should be noted that different theories of legal pluralism exist, including ‘juristic approaches’ which focus on the sources of law formally recognized by the state, and ‘descriptive approaches’ which rely on empirical observation of human behaviour: see Paton, M., ‘Decolonising human rights: Customary justice and child protection in Papua New Guinea’, 25 *International Journal of Children’s Rights* (2017), 622 – 657.

<sup>23</sup> Section 4 of the Underlying Law Act 2000 stipulates that written law has precedence over customary law and common law, and customary law has precedence over common law. Therefore, Courts must apply statutory law above customary and common law. While written law has precedence over customary law, customary law is applied by PNG’s many Village Courts, which are established and governed by the Organic Law.

<sup>24</sup> Schedule 1.2.2(1) of the Constitution; section 1 of the Underlying Law Act 2000.

<sup>25</sup> Papua New Guinea, The National Law and Justice Policy 2000, Section 5.1.

<sup>26</sup> Papua New Guinea, The National Law and Justice Policy 2000, Section, 5.4.2 and 5.6.

<sup>27</sup> Papua New Guinea Juvenile Justice Act 2014.

formal criminal justice system; and prevent the child from having a criminal record.<sup>28</sup>

This provides for both police (section 40) and court-ordered (section 62) diversion (see sections 4.3 and 4.4 for further details).

A non-exhaustive list of diversion options are set out for children in conflict with the law under Section 29(1) of the Juvenile Justice Act 2014. These measures include: unconditional measures (a warning<sup>29</sup>); the imposition of certain requirements or conditions, including compulsory school attendance for a period of time,<sup>30</sup> compliance with certain behaviour standards, including e.g. a specified number of hours that must be spent with family,<sup>31</sup> and/or a requirement that the child report to a specified person at specified times to supervise, monitor and guide the child;<sup>32</sup> restorative measures, including an oral or written formal apology;<sup>33</sup> the payment of compensation;<sup>34</sup> restitution, including the return of items that were taken or repair of damage done;<sup>35</sup> provision of a specified service to the victim (with their consent);<sup>36</sup> the performance of community service work<sup>37</sup> (provided the community service work takes account of the child's age and capacity, does not interfere with schooling or work, does not stigmatise or subject the child to public ridicule or to hazards to the child's health or physical development, and does not exceed four hours a day for five days a week<sup>38</sup>; more comprehensive measures which aim to tackle the root causes of a child's behaviour in order to prevent further offending, including: counselling by a specified person or organisation;<sup>39</sup> or referral to an approved non-residential training or rehabilitation programme;<sup>40</sup> and referral to a community based conference.<sup>41</sup>

For children who proceed through the formal criminal justice system, Part VII of the Juvenile Justice Act 2014 contains provisions applicable to the sentencing of a child. A wide range of non-custodial sentences are set out in Section 80 of the Act, and include a reprimand; a good behaviour bond; counselling and supervision order; attendance at vocational or rehabilitation programme; restitution; compensation; payment of a fine; community service; or a probation order. According to Section 78, sentencing should be guided by the purposes of encouraging the child to understand the consequences of and be accountable for the harm caused by their actions; promote an individual response which is appropriate to the child's circumstances and proportionate to the offence; promote rehabilitation and reintegration of the child; and ensure the protection of the public.<sup>42</sup> The Court must also ensure that the sentencing meets the Act's core principles in section 6 and that the least restrictive sentencing capable of meeting these principles and goals be imposed.<sup>43</sup> The sentence must also have regard to the child's age and limited capacity to appreciate the consequences of their actions.<sup>44</sup> It also provides that, wherever possible, the child must remain in their own community, with deprivation of liberty being a last resort measure and only for the shortest period necessary.<sup>45</sup>

The *Juvenile Justice Act 2014* allows for the imprisonment of a child over the age of 14 years old only as a last resort and under specified conditions.<sup>46</sup> In order for this sentence to be imposed, the child must have committed a "serious indictable offence" and, under Section 81(1) of the *Juvenile Justice Act 2014*, there must be no reasonable alternative or combination of alternatives to detention. Life imprisonment of children is prohibited under Section 85(1)(c) of the *Juvenile Justice Act 2014*.<sup>47</sup> PNG law also contains a prohibition on the corporal punishment of children in Section 85 (1)(a) of the

28 Section 27, Juvenile Justice Act 2014.

29 Section 29(1)(a), Juvenile Justice Act 2014.

30 Section 29(1)(c), Juvenile Justice Act 2014.

31 Section 29(1)(d), Juvenile Justice Act 2014.

32 Section 29(1)(e), Juvenile Justice Act 2014.

33 Section 29(1)(b), Juvenile Justice Act 2014.

34 Section 29(1)(j), Juvenile Justice Act 2014.

35 Section 29(1)(h), Juvenile Justice Act 2014.

36 Section 29(1)(i), Juvenile Justice Act 2014.

37 Section 29(1)(k), Juvenile Justice Act 2014.

38 Section 82, Juvenile Justice Act 2014.

39 Section 29(1)(e), Juvenile Justice Act 2014.

40 Section 29(1)(g), Juvenile Justice Act 2014.

41 Section 29(1)(l), Juvenile Justice Act 2014.

42 Section 76(1), Juvenile Justice Act 2014.

43 Section 76(2), Juvenile Justice Act 2014.

44 Section 76(2)(c), Juvenile Justice Act 2014.

45 Section 76(2)(e) and (f), Juvenile Justice Act 2014.

46 Juvenile Justice Act, Section 82 (2)(a)(i)

47 Article 37(1) CRC.

*Juvenile Justice Act 2014*, and on the use of the death penalty in its *Criminal Code Act 1974*.

Several regulations and guidance have been developed to support the implementation of the *Juvenile Justice Act 2014*, including the *Royal PNG Constabulary Juvenile Justice Policy and Protocols*, which provides guidance to police officers on implementation of the *Juvenile Justice Act 2014*; the *Minimum Standards for Juvenile Institutions* and *Juveniles in Detention 2020*, which sets out guidance for the administration of juvenile institutions and remand centres and standards on the treatment of children in custody, and the *Juvenile Justice Regulation 2024* (yet to be gazetted), which sets out additional procedures to the Act relating to the treatment of processing of children in conflict with the law, along with necessary forms.

#### 4.1.2 Customary law

PNG's plural legal system includes a range of customary dispute resolution practices, such as moots, mediation, and compensation processes, which produce outcomes based on custom.<sup>48</sup> PNG's customary law has been recognised as *"less a system of an application of rules to a given fact situation than a system of enduring a just solution through compromise."*<sup>49</sup> Customary law differs considerably from state justice in other ways: in customary law, *"there is no distinction between criminal and civil law; responsibility is not distinguished from moral responsibility; clan members are responsible for an individual's wrongdoing; and a victim's clan is just as wronged as the individual victim."*<sup>50</sup> As set out in the recent *Juvenile Reintegration and Rehabilitation Policy 2021 – 2031*, *"the society of Papua New Guinea has developed and lived for thousands of years dealing with deviant and criminal behaviour in a restorative way, by placing the cohesion of families, tribes and communities at the heart of its response. While this has also led to some power imbalances and breaches of human rights, especially against women, girls and persons with disabilities, the Melanesian tradition of justice sets the restoration of relationships, the reparation of the harm caused, and the rehabilitation of offenders as priorities over mere punishment."*

Customary justice systems offer restorative justice processes that allow for alternative resolutions to the formal justice system for children in conflict with the law. Restorative justice practices involve family and wider community members and focus on mending broken relationships rather than focusing on retribution and can thereby promote children's *"recovery, social reintegration and protection from further harm."*<sup>51</sup> In addition, Village Courts are recognised by the state but apply customary laws, representing a hybrid state-customary model.<sup>52</sup> The primary role of Village courts is to ensure peace and harmony in the communities in which they operate. They are obliged to attempt the resolution of disputes first by way of mediation, which is a mandatory requirement under the *Village Courts Act 1989*. Mediation is *"a negotiation or intervention done to bring two parties who are in a dispute together to reach an agreement regarding the issue that they are arguing about."*<sup>53</sup> Amendments to the *Village Courts Act* have clarified that the Courts can hear matters 'involving a child' in which the primary consideration shall be the best interests of the child. The Village Court Magistrate may refer a dispute to a Juvenile Court if it is 'particularly complex or serious' or if this would be in the child's best interests.<sup>54</sup>

#### 4.1.3 Policies and implementation plans

In recent years, the implementation of diversion and alternative sentencing has become a core priority of the Government. The recent *Juvenile Justice National Plan 2018 – 2022* aims to promote the rehabilitation of juvenile offenders and reduce pre-trial detention time. It also encourages the exploration of 'good models of diversion' to institutionally strengthen the diversion framework and

48 Paton, M., 'Decolonising human rights: Customary justice and child protection in Papua New Guinea', 25 *International Journal of Children's Rights* (2017), 622 – 657.

49 Orr (1986) in Paton, M., 'Decolonising human rights: Customary justice and child protection in Papua New Guinea', 25 *International Journal of Children's Rights* (2017), 622 – 657.

50 LRC (1980) in Paton, M., 'Decolonising human rights: Customary justice and child protection in Papua New Guinea', 25 *International Journal of Children's Rights* (2017), 622 – 657.

51 Paton, M., 'Decolonising human rights: Customary justice and child protection in Papua New Guinea', 25 *International Journal of Children's Rights* (2017), 622 – 657.

52 Paton, M., 'Decolonising human rights: Customary justice and child protection in Papua New Guinea', 25 *International Journal of Children's Rights* (2017), 622 – 657.

53 Section 53(3), *Village Courts Act 1989* (as amended in 2013).

54 Section 40A, *Village Courts Act 1989* (as amended in 2013).

‘promote diversion’ in the form of ‘non-custodial measures.’<sup>55</sup> These aims are in line with current ongoing practices such as completing diversion training for police officers at the Police Training

Institute (Bomana)<sup>56</sup> These developments are necessary to support the implementation of diversion in practice.

The Juvenile Reintegration and Rehabilitation Policy 2021 – 2031 provides a framework for the operationalisation of rehabilitation and reintegration programmes for children in conflict with the law in custodial and non-custodial settings. One of the overarching principles of the Policy is the “*diversion of juveniles away from formal justice processes*”<sup>57</sup> and the use of detention as a last resort, and the prioritisation of non-custodial measures which “*allow the juvenile to remain in his or her community and family environment and to attend school while serving a community-based sentence.*”<sup>58</sup> The use of restorative justice as one of the main aims of the PNG justice system is also a key principle of the Policy, in particular the use of community based conferences as a diversion measure. The Policy sets out goals and actions for the strengthening of rehabilitation measures for children in conflict with the law, along with a comprehensive management and operational plan.

## 4.2 Governance and institutional framework

The *Juvenile Justice Act* establishes the governance and implementation framework for a specialist child justice system. The **Department of Justice and Attorney General (DJAG)** is the lead agency for child justice, and responsible for justice administration services, under which the Juvenile Justice Service falls, along with the administration of legal services). In addition to the Juvenile Justice Service, other key functions that fall under DJAG’s justice administration services include probation services, parole services, and village court and land mediation services. Under the Juvenile Justice Act 2014, the Juvenile Justice Service is primarily responsible for implementation of the child justice system. It is staffed by the Director of the Juvenile Justice Service and support personnel at their headquarters in Port Moresby and by Juvenile Justice Officers (JJOs) in provinces where they have been deployed.

**Juvenile Justice Officers (JJOs)** are critical stakeholders within the child justice system and their primary role is to provide support and advice to children in conflict with the law at all stages of the child justice process.<sup>59</sup> JJOs are appointed by the Director of Juvenile Justice, based at the national offices of DJAG in Port Moresby, and whilst based in the provinces, are responsible only to the Director. The Director also has the power to appoint Volunteer Juvenile Justice Officers (VJJOs) who can be tasked with carrying out any or all of the functions of a Juvenile Justice Officer under Section 13(1) of the Juvenile Justice Act 2014.

In addition to JJOs and VJJOs, **Probation Officers** also play an important role. The Probation Act 1979 sets out the role of the Probation Officer, which is to: “*supervise, advise, assist and where possible to befriend, a probationer under him for the purposes of social rehabilitation of that probationer.*”<sup>60</sup> Under the Juvenile Justice Act, should a child in conflict with the law be sentenced to a period of probation, the Probation Officer is responsible for monitoring compliance with the terms of that order in accordance with Chapter 381 of the *Probation Act 1979*.<sup>61</sup>

Coordination of the child justice system and services is carried out by the **National Juvenile Justice Committee (NJJC)** and, at province level, the **Provincial Juvenile Justice Committees (PJJC)**. The roles and responsibilities of the NJJC are codified in the Juvenile Justice Act 2014.<sup>62</sup> The NJJC has a long history

55 Papua New Guinea, Juvenile Rehabilitation and Reintegration Policy 2021-2031, Section 2.5.

56 United Nations Children’s Fund, ‘Diversion not Detention: A study on diversion and other alternative measures for children in conflict with the law in East Asia and the Pacific’, UNICEF 2017, p.94.

57 Principle 5, Juvenile Reintegration and Rehabilitation Policy 2021 – 2031, p. 17.

58 Principle 6, Juvenile Reintegration and Rehabilitation Policy 2021 – 2031, p. 17.

59 Section 10(1), Juvenile Justice Act 2014.

60 Section 10(a), Probation Act 1979.

61 Section 81(1), Juvenile Justice Act 2014.

62 Article 23, Juvenile Justice Act 2014.

and was formed in 2003 to drive the child justice reform process that started in 2002.<sup>63</sup> The primary roles and responsibilities of the National Juvenile Justice Committee are to oversee and monitor the implementation of the *Juvenile Justice Act 2014*, the Juvenile Justice Regulation and other proposed child justice reforms, as set out in Section 25 of the Juvenile Justice Act. The NJJC are also responsible for promoting collaboration between all government departments and agencies and other organisations, agencies and civil society groups involved in implementing the child justice system. Article 26 of the

Juvenile Justice Act 2014 allows for Provincial Juvenile Justice Committees to be established at the discretion of the Director of the Juvenile Justice Service after consultation with the Provincial Administrator of a province or autonomous region.<sup>64</sup> The functions of PJJC include the planning, coordination and

implementation of the Juvenile Justice Act within their province, planning and coordinating the local delivery of diversion and rehabilitation of juveniles by relevant Government and community services, sourcing additional funding to support the implementation of the Act, and improving the conditions of detention and the welfare of juveniles within the province.<sup>65</sup>

In addition to the Department of Justice and Attorney General's Office, there are several important enabling agencies which have a significant role to play in the child justice system. A key function of the Office of the Public Solicitor (PSO) is to represent and defend children charged with an offence punishable by imprisonment for more than two years, as mandated by Section 177(2) of the Constitution and by the Public Solicitors Act (2021). The Ombudsman Commission was mandated by the Constitution of 1975 to investigate complaints about Government bodies, hold decision makers accountable under the Leadership Code and to investigate alleged discrimination.<sup>66</sup> A key function of the Ombudsman Commission of PNG is to monitor the treatment of children in conflict with the law and other prisoners. This includes visiting and inspecting places of detention and conducting interviews and investigating matters where individuals' rights have allegedly been abused.

The Royal Papua New Guinea Constabulary (RPNGC) is mandated under Section 197 of the Constitution to preserve peace and order and to maintain and enforce the law impartially and objectively.<sup>67</sup> The RPNGC has a critical role to play in child justice, particularly in terms of diversion, arrest and bail. Juvenile Police Officers, under the Directorate of Community Policing, are responsible for attending to juvenile justice matters at the respective police stations. They play a key role in the handling of cases of children in conflict with the law, including being responsible for police diversion.<sup>68</sup> Whilst these officers are not in place at every police station, evidence shows that where they are present, they have a marked impact on the process of diversion (as discussed further in Section 4.2.1). Police Prosecutors sit under the Constabulary, but are responsible to the Department of Justice and Attorney General's Office of the Public Prosecutor as per Section 177 of the Constitution.<sup>69</sup>

The **Magisterial Service** oversees the operation of 57 District Courts and Juvenile Courts in PNG,<sup>70</sup> and is responsible for training and building the capacity of magistrates in the delivery of child-friendly services and the development and monitoring of protocols and guidelines for children accessing courts.<sup>71</sup> PNG's many Village Courts are overseen by the **Village Courts and Land Mediation Secretariat**, within DJAG. Provincial Liaison Officers, employed by DJAG, play a large role in supporting Village Courts through liaising between the national and sub-national levels. Provincial Village Court Officers, which are

Provincial Administration Officers, are responsible for the inspection of Village Courts.

63 Papua New Guinea Department of Justice and Attorney General, Juvenile Justice. Available: <https://www.justice.gov.pg/index.php/2015-04-26-07-32-15/juvenile-justice>, accessed 5 April 2023.

64 Section 26 (a), Juvenile Justice Act 2014.

65 Government of Papua New Guinea, Juvenile Rehabilitation and Reintegration Policy (2021-2031), 2021, p. 26.

66 Section 218, Constitution of Papua New Guinea 1975.

67 Section 197, Constitution of Papua New Guinea 1975.

68 Australian High Commission PNG, Police officers attend inaugural Police Juvenile Officer Introductory Course. Available: <https://png.highcommission.gov.au/pmsb/1126.html>, accessed 23 November 2023.

69 DJAG, Prosecution Policy, 2006. Available: <http://www.pacii.org/pg/opp/PPPolicy.html>, accessed 21 November 2023.

70 Judiciaries Worldwide, Country Profiles: Papua New Guinea. Available: <https://judiciariesworldwide.fjc.gov/country-profile/papua-new-guinea>, accessed 23 November 2023.

71 Section 2, Magisterial Service Act 1975.

The **PNG Correctional Service** is responsible for the provision and regulation of Juvenile Institutions and related rehabilitation programmes across the country, based on the Minimum Standards for Juvenile Institutions.<sup>72</sup> Currently there are six juvenile detention facilities (which in practice are juvenile wings within mainstream prisons) in Papua New Guinea managed by the Correctional Service.<sup>73</sup> In addition, there are six detention facilities for children in conflict with the law that are managed by DJAG, and run by service providers, including faith-based organisations. These facilities are situated outside the

Correctional Service. In practice, children are also often detained alongside adult detainees in Correctional Institutions (though not in the juvenile detention facilities managed by DJAG (see Section 4.2.6 for more information).

Other Government agencies, while not directly responsible for the provision or regulation of child justice systems have a key role in supporting children in conflict with the law and other vulnerable children. The **Office of Child and Family Services (OCFS)** was established by Section 12 of the *Lukautim Pikinini Act* which entered into force in 2019. Its primary function is to provide services for promoting and protecting

the well-being of families. It also has a role in inspecting centres providing care for children, including jails and police cells.<sup>74</sup> The OCFS is also mandated to keep a register of children in need of protection, though this does not explicitly include children in conflict with the law.<sup>75</sup>

Under the Organic Law, the OCFS does not have the power to appoint Community Development or Child Protection Officers at Provincial level, rather this responsibility rests with the Provincial Administrator in each of PNG's 22 provinces.<sup>76</sup> The primary role of Provincial and District Administrations is to allocate appropriate budget and human resources to plan, monitor and coordinate implementation of child justice programmes at provincial, district and lower levels of government. At the provincial level this includes the Provincial Juvenile Justice Committee and a Provincial Manager of Law and Justice Services (which includes child justice, community based corrections, probation and parole).<sup>77</sup> In addition, Community Development Officers are responsible for a wide range of functions, including child protection.

Non-government organisations (NGOs) also provide a range of services for children in conflict with the law in PNG. The non-government sector includes faith-based organisations (FBOs), inter-governmental organisations (INGOs), national non-government organisations (NGOs) and community based organisations (CBOs). Faith-based organisations have an outsized role in supporting the administration of child justice as a key service provider of services to vulnerable children, including diversion services for children in conflict with the law. The Catholic Church, for example, provides counselling and spiritual direction services in many parts of the country which are utilised by JJOs to ensure children have the needed support.<sup>78</sup> In NCD, the Salvation Army act as observers in the Juvenile Court, provide logistical support to facilitate diversion and provide faith-based counselling support to victims and witnesses giving evidence at the National Court.<sup>79</sup>

**A more detailed analysis of the governance and institutional frameworks for child justice is attached at Annex C.**

72 The Service derives its mandate from Section 188(2) of the Constitution and through the Correctional Service Act (1995), Juvenile Court Act (1991) and Parole Act (1991).

73 These include: Erap Boys Town, Lae, Morobe Province; Wewak Boys Town, Wewak, East Sepik Province; Jegarata Male Juvenile Centre, Popondetta, Northern Province; Hetune Female Institution, Popondetta, Northern Province; Mabiri Juvenile Rehabilitation Centre, Buka, Autonomous Region of Bougainville; and Bomana Correctional Facility, Port Moresby, National Capitol District.

74 These include: Erap Boys Town, Lae, Morobe Province; Wewak Boys Town, Wewak, East Sepik Province; Jegarata Male Juvenile Centre, Popondetta, Northern Province; Hetune Female Institution, Popondetta, Northern Province; Mabiri Juvenile Rehabilitation Centre, Buka, Autonomous Region of Bougainville; and Bomana Correctional Facility, Port Moresby, National Capitol District.

75 Section 14, Lukautim Pikinini Act 2015.

76 Section 15(1) and 2, Lukautim Pikinini Act 2015.

77 Key Informant Interview, Office of Child and Family Services, National, 18 October 2023.

78 Key Informant Interview, Provincial Law and Justice Manager, Western Province, 9 October 2023.

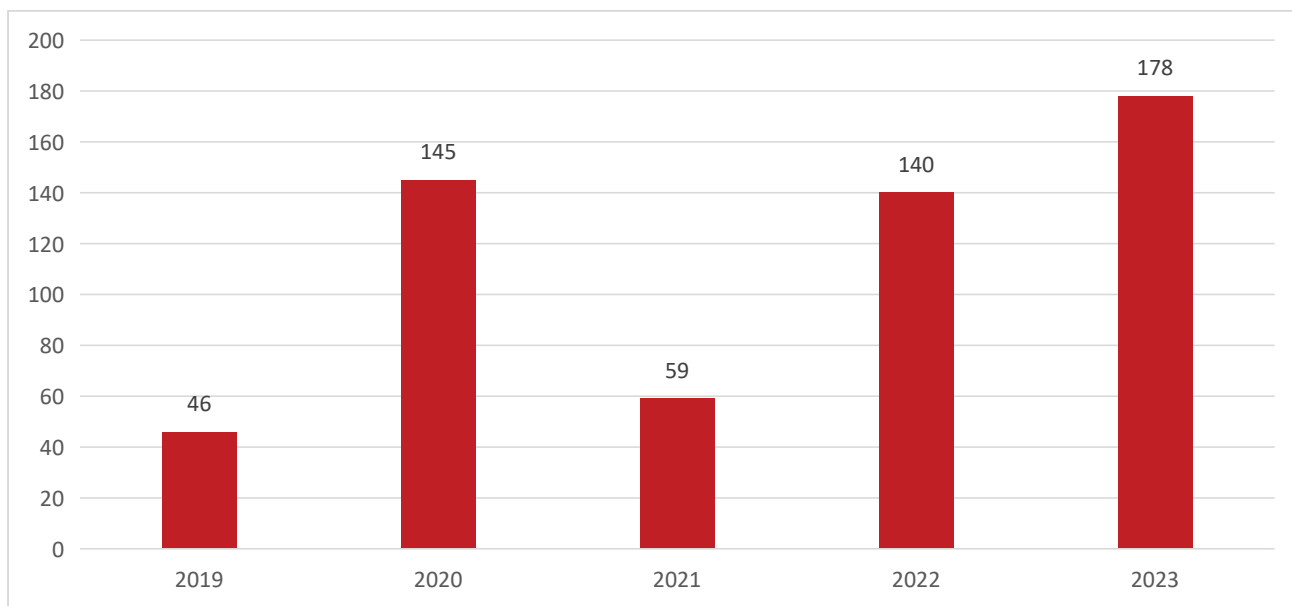
79 Key Informant Interview, Catholic Church, Western Province, 9 October 2023.

## 5. FINDINGS

### 5.1 Profile of children in conflict with the law

Administrative justice sector data, while somewhat limited, can help to provide contextual information on children in conflict with the law. According to available administrative data from the PNG Constabulary, the number of children arrested and charged by police has increased over the previous five years as indicated in the graph below. However, it should be noted that this represents data from only 11 (out of 22) provinces and may not therefore represent the situation across the country.<sup>80</sup>

Figure 1: Number of children arrested and charged by police in eight provinces in PNG (2019 – 2023)



Source: Juvenile Justice Service, DJAG

According to data from the PNG Constabulary, the most commonly reported offences committed by children are property offences, including stealing, property damage; assaults (fighting, school fights), drug possession offences; and sexual offences (including sexual penetration and, less frequently, rape), as set out in the two graphs below.

<sup>80</sup> The 11 provinces include: NCD, Central, Gulf, Kiunga, Milne Bay, Northern, East Sepik, Western Highlands, Eastern Highlands, Manus, West New Britain, Autonomous Region of Bougainville, and Arawa.



Figure 2: Number of children arrested and charged by police in eight provinces in PNG by type of offence (2021)

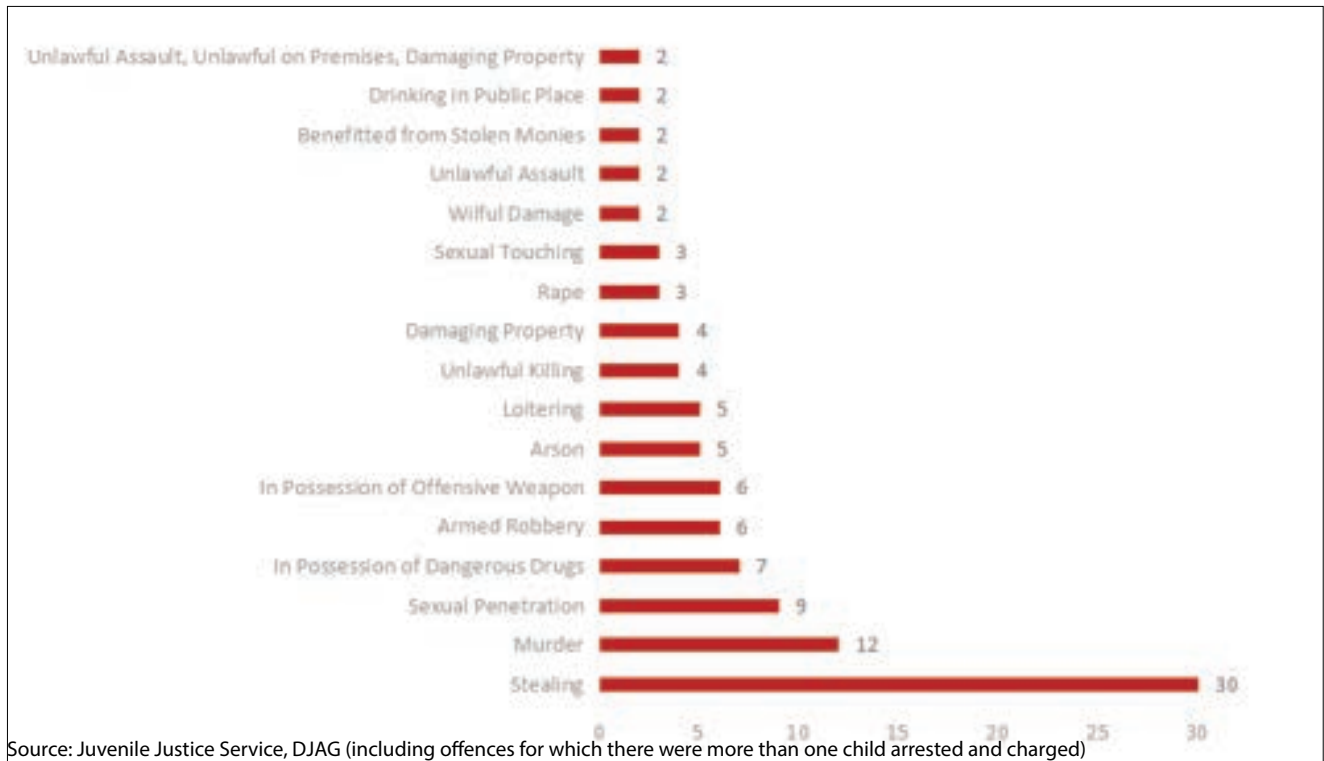
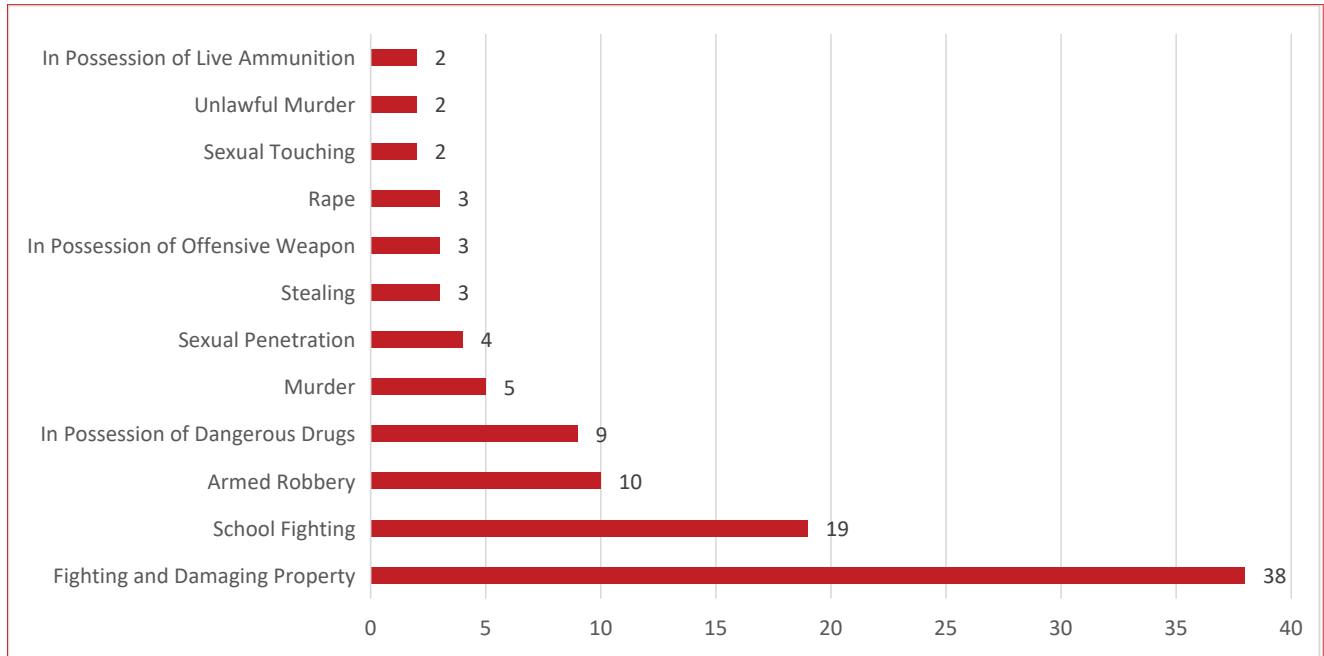


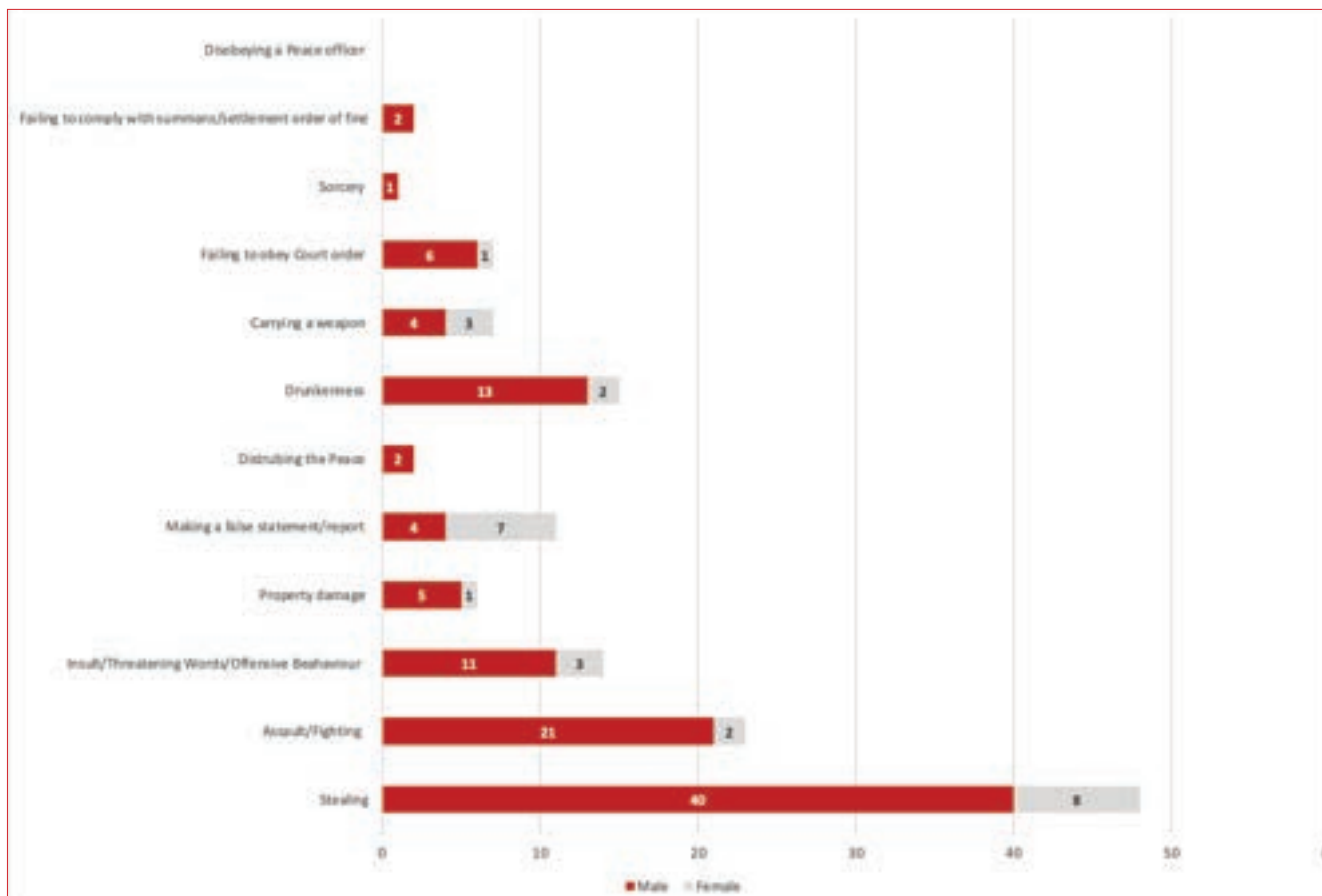
Figure 3: Number of children arrested and charged by police in eight provinces in PNG by type of offence (2022)



It should be noted that the police data are quite limited and likely only represent a small proportion of children who come into conflict with the law. The reasons for this are due to limited administrative data reporting at the local levels and the likelihood that many cases of children in conflict with the law go unreported and / or are resolved at the community level and are therefore not captured in police data.

Village Court data (from 2020 – 2023) can also be used to give an indication of the types of criminal cases involving children, though it should be noted that data received by the researchers only represents around 20 per cent of Village Courts. When looking at the types of criminal offences allegedly committed by child defendants in Village Court hearings, the most commonly heard cases relate to incidents of fighting, stealing, drunkenness or other ‘unsocial’ behaviour. Whilst the vast majority of offences heard at the Village Court were allegedly committed by boys, the offence of ‘making a false statements/report’ stands out as the only recorded offence more commonly committed by girls. However, frequent gaps in the data mean this conclusion may not be representative across all Village Court areas. Collecting data on cases resolved through mediations within the Village Court may offer deeper insight into the gender dynamics of village courts, as interview participants reported that cases involving girls were more likely to be resolved at the mediation stage to protect their reputation within the community.

Figure 4: Criminal cases heard at the Village Court, by offence and gender



Source: Village Courts and Land Mediation Secretariat

## 5.2 Diversion and alternative sentencing measures and Processes

Diversionary and alternative sentencing measures in PNG can occur under powers set out in statutory law or (more commonly) according to customary law, which varies widely and is practiced throughout PNG’s diverse communities. According to the research, diversion options for children in conflict with the law include community-facilitated mediation; village court mediation; several forms of police diversion; and court diversion (which typically involves community-based conferences). As set out above (section 3.1.1), many diversion options are set out in Section 29(1) of the Juvenile Justice Act 2014. However, the research found that some of these options are not being utilised in practice (at least in the research locations). In particular, more comprehensive measures which aim to tackle the root causes of a child’s behaviour in order to prevent further offending, such as counselling by a specified person or organisation<sup>81</sup> or referral to an approved non-residential training or rehabilitation programme<sup>82</sup> were not in place. This represents

81 Section 29(1)(e), Juvenile Justice Act 2014.

82 Section 29(1)(g), Juvenile Justice Act 2014.

a considerable gap in the capacity for the child justice system in PNG to respond to cases in which more intensive interventions are required in order to address risk factors associated with a child's offending.

### 5.2.1 Community Facilitated Diversion

Community-facilitated diversion encompasses a variety of practices implemented at the local level that help prevent children in conflict with the law from entering the formal justice system. Typically, it involves mediations/communal gatherings, which aim to foster constructive dialogue between the child in conflict with the law, their families, the victim, and various other stakeholders within the community. Typically, only minor offences are settled at the community level, which include but are not limited to stealing, fighting and anti-social behaviour.<sup>83</sup>

#### The process for community-based mediation

The process of mediation is guided by Melanesian tradition, though the different provinces have their own customs, meaning that practices differ in each location. However, it was found across the research locations that, in general, mediation involves the accused and their family coming together with the victim and their family to discuss the offence and what can be done to reach a resolution. This is carried out in an informal, neutral setting within the community, and is mediated by trusted people in the village, for instance, ward members, village magistrates, pastors or community elders. Mediations end with an agreement for restitution or compensation to be paid, typically taking the form of cash payments. In rural settings, items may also be given, such as farm animals, food items or tools.<sup>84</sup> The mediator makes the decision on the compensation to be given to the victim, which helps ensure fairness and affordability of the money given. For cases involving children in conflict with the law, it is the parents/family members who shoulder this payment on behalf of their child.<sup>85</sup> At the end of the mediation, a meal is eaten to represent peace being brokered between the two sides. The below text contains examples of community diversion provided by research participants that were discussed in the interviews:

*"On Tuesday afternoon both sets of parents plus the Ward Councillor met and decided that they would settle the matter at the community level. On the Saturday they had a community gathering and the parents of the victim asked for compensation, but the offender's parents wanted money for property damage and abusive language. After 3 weeks they reached a settlement. The boy's parents paid 2,500 Kina, and the girl's paid 250 Kina."*<sup>86</sup>

*"In January, a young boy after drinking with friends, went to his uncle's house where he left his mobile phone with one of his female cousins. After climbing through an open window, he was spotted by his uncle, who then gave chase to the boy. The boy then physically assaulted the uncle, though no lasting physical harm was inflicted. The incident was reported to the police the following afternoon, and the boy was willingly apprehended the next day. After his arrest, the boy's parents were contacted, and a mediation was arranged with the uncle. The father apologized for his son's behaviour, and agreed to pay 500 Kina to the uncle. The boy's parents paid the compensation on the spot."*<sup>87</sup>

*"Where I come from, if a young person steals a bunch of bananas, they have taken away the life support of that family by stealing from them. So, the juvenile will be ordered to go back, clean the area and plant more bananas and that will pay for what they have done. Then when the bananas are harvested, they will give a banana back to that family."*<sup>88</sup>

83 KII, PBO, Vanimo, West Sepik, 19 October 2023; KII, Provincial Law and Justice Manager, Western Province, 9 October 2023; FGD, male community members, ages unknown, Bougainville, 2 November 2023.

84 KII, Inspector and Coordinator of detainee rehabilitation programmes and prison industries and Deputy Chair of NJJC, Department of PNG Correctional Service, Port Moresby, 9 October 2023

85 KII, Director of Human Rights, DJAG, Port Moresby, 16 October 2023

86 KII, JJO (Case File Reviews), Kiunga, Western Province, 9 October 2023

87 KII, JJO (Case File Reviews), Kiunga, Western Province, 9 October 2023

88 KII, Deputy Director, National Narcotics Bureau and member of NJJC, Port Moresby, 5 October 2023.

Interview participants often referred to the different types of mediation available in PNG, i.e., police mediation, JJO mediation and village court mediation, interchangeably. This has meant that the data gathered on community-level diversion was somewhat limited.

### Utilisation of community-based mediation

Community level mediations are one of the most commonly utilised forms of diversion in PNG. The main reason for this is that mediation is embedded within customary justice systems that offer restorative justice processes that are alternative resolutions to the formal justice system for children in conflict with the law. Mediation was typically referred to by research participants as aligning with the 'Melanesian way' in that the overriding priority is the restoration and maintenance of peace in the community. The research has found that when children commit offences against other family or community members, it causes conflict and tension within the community. Mediations are therefore utilised, as they help broker peace in accordance with cultural traditions. The following quote highlights the hold that cultural traditions have at the local level: *"When the chief asks you to sing, you sing. If the chief asks you to cry, you cry. This is what holds us together, the community law and order system."*<sup>89</sup> The cultural underpinnings and relevance of mediation practices creates a meaningful framework for parties to be held accountable, thus helping to maintain peace within the community. This holds particular value in certain parts of PNG, specifically the Highlands Region, where the failure to resolve such issues can escalate to wider tribal conflict and destruction within the region. It was noted that customary law systems are more embedded and dominant in rural locations, where community customs may be more widely practiced and where access to formal justice institutions may be more restricted. One key informant discussed how customary law systems are less valued in urban environments: *"Many of the kids who live here are fifth generation in the city and they don't know the customary norms and values."*<sup>90</sup> That is, children in urban environments, which boast greater multiculturalism and therefore less strict cultural ties, may place lesser value in specific cultural traditions or find it harder to identify a common cultural thread, making mediation as a practice less meaningful overall.

In addition to culture, family and community plays a hugely constructive role in a child's life. One interview participant noted how *"As Melanesians, every issue starts with the family unit. Every person represents a family, community and clan. So, coming from that background, the family unit must be the first to deal with such issues."*<sup>91</sup> Community-level mediations are useful in involving stakeholders in the process, who then help to exert social pressure on the child (and their families) to fulfil the mediation agreements, and help facilitate the child's rehabilitation and reintegration into the community. Familial and wider community involvement in the settlement of disputes thus creates a framework for accountability. According to some research participants, parents who were engaged in their child's life played a more active role in their child's release from the formal legal process, demanding for the dispute to be resolved within the community.<sup>92</sup> This suggests that children from less engaged familial environments may not have the same opportunity to engage with community level diversion methods.

Carrying out mediations is also valuable in protecting a child's standing in the community. One village magistrate in Goroka noted that *"putting the victim in public, can bring shame to the girl. Culturally, we see that we must protect her from being embarrassed and from punishing her family name. So, it has to be sorted within the village through mediation or compensation, so it doesn't bring a bad*

89 KII, Deputy Director, National Narcotics Bureau and member of NJJC, Port Moresby, 5 October 2023

90 KII, NJJC member and Deputy Director of National Narcotics Bureau, Port Moresby, 5 October 2023

91 KII, Child Protection Officer, Vanimo, West Sepik, 20 October 2023

92 FGD, members of the community, mixed gender, Mission Corner, Kiunga, Western Province, 11 October 2023.

name to her or her family.”<sup>93</sup> Whilst this refers to the context of victims, this sentiment can also be extended to children who come into conflict with the law. The research found many cases that were resolved at the community level for this reason, especially in the context of intra-family offences. Community members also demonstrated an awareness of the difficulty of the formal justice process and the harm this has on the child, with some reported instances where victims were willing to settle disputes through mediation to prevent this. This was seen in particular in minor cases, intra-family cases, and in the case of accidental/unintentional offences.<sup>94</sup>

In addition to the culturally embedded nature of community mediation, this form of diversion is often more accessible, particularly for persons living in rural or more remote locations who face obstacles in accessing justice services due to their concentration in urban locations. The localized nature of community-level mediations, coupled with the cost-effectiveness of conducting these sessions, renders them an exceptionally accessible form of diversion.

### Challenges in the use of community-based mediation as a diversion measure

Despite the widespread use of community mediation, its use as a method of diversion for children in conflict with the law raised several concerns.

First, whilst the payment of compensation as an outcome of mediation may satisfy the victim’s side, it does not target the child’s offending behaviour. To ensure that diversion measures are effective, it is recommended that they follow a comprehensive assessment of the child and their circumstances, along with the circumstances of the offence, and that a measure is developed that addresses any risk factors that drove the offending behaviour. Without this focus, vulnerabilities that place a child at risk of (re)offending, risk going unaddressed. For example, one police officer commented that with community level mediations, “the child is not learning something. They commit a crime but can seek refuge from parents or elders, so they think what they’re doing is okay. The mediation doesn’t change their thinking or behaviour. Although mediation protects peace in the community, the offender does not learn anything better to change.”<sup>95</sup> The value of compensating victims should also be reconsidered, as in cases involving child victims the compensation is given to the family, so the victim may not directly benefit from the compensation given.

The research also highlighted instances where mediations and compensation were used, when in fact, referral to the formal legal system was legally required and appropriate. This was most typically seen in intra-family sexual violence cases, where the family resorted to community mediation instead of formal legal processes in order to protect their reputation. The following case, highlighted by a key informant, illustrates this issue:

*“There was one case where a Juvenile penetrated his big sister’s daughter. The father of the boy supported the boy, and the mother of the victim (the elder sister) conflicted with the family. They said they wanted compensation, they didn’t want to go to court because they didn’t want the shame or the gossip about their family, but that didn’t heal the victim’s father, who said he wanted to go to court. In the end we had to mediate and restore peace; we did compensation. I don’t know how much this helped the small girl who was the victim.”<sup>96</sup>*

Sexual violence is viewed as one of the severe offences in PNG, with such cases often reaching the higher courts i.e., Juvenile or National Court. In cases of intra-family sexual violence, opting for compensation rather than engaging in formal legal proceedings raises concerns about the lack of accountability for perpetrators, and the continued risk they pose to the community. It is therefore important for involved stakeholders to advocate for the referral of these matters to the formal legal system. This not only ensures that perpetrators are held more substantially accountable for their

<sup>93</sup> KII (Group Interview), Village Court Officials, Goroka, Eastern Highlands, 9 October 2023

<sup>94</sup> KII, Director of Human Rights, DJAG, Port Moresby, 16 October 2023

<sup>95</sup> KII, Police Officer, Vanimo, West Sepik, 16 October 2023

<sup>96</sup> KII, JJO, Goroka, Eastern Highlands, 12 October 2023

actions, but it also allows for referrals to programs and services designed to address their negative behaviours, thereby mitigating the likelihood of recidivism. It is noteworthy that courts also possess the authority to mandate community mediations as a diversionary mechanism, so the benefits of this measure to restore community harmony can be realized alongside a formal legal process.

### Case Study

A case involved a 15-year-old boy who accidentally shot and killed his cousin. This prompted the family to seek resolution at the community level.

To facilitate the dispute resolution process, a committee comprising of respected people in the village was established, consisting of ward leaders, village court magistrates, church representatives and village elders. Local police officers and the JJO were also invited to support throughout the proceedings.

The victim's family sought compensation of 250,000 Kina, 6 pigs and some shell money for what happened. The perpetrator's family faced difficulty in paying this amount; so other members of the community contributed money to help make this payment on time. After the compensation order was satisfied, a verbal promise was made that the issue was settled and a meal was shared by involved parties to symbolize reconciliation.

During this process, the boy was retained in custody in a cell, ensuring his safety while awaiting the national court case. When the case reached the National Court, it was dismissed as the matter had already been resolved at the community level, and the victim's family no longer wanted to pursue the issue in court.

Another challenge associated with compensation lies in the limited financial capacity of children to fulfil the required amounts. In cases where compensation orders are imposed on juveniles, it is in practice the responsibility of their parents or other family members to meet the financial obligations. The research identified instances where families faced difficulty in paying the prescribed amount within the stipulated timeframe, resulting in greater antagonization of the victim and increasing the likelihood of police involvement. Moreover, this suggests that children who did not live in their nuclear families may not have the same access to community level diversion/mediations. This discrepancy in access highlights how financial barriers restrict equitable participation in restorative justice processes.

### 5.2.2 Village Court Diversion

Village Courts are community-based judicial forums prevalent across PNG. Applying customary law to promote local justice, Village Courts aim to resolve conflicts through mediation and adjudication, emphasizing cultural values and community participation to ensure positive outcomes for both the victim and the perpetrator.

In PNG, Village Courts operate within a unique state-customary model, whereby they apply customary law, whilst also being formally recognized by the government.<sup>97</sup> As set out above (section 4.2.1), customary law is characterized by seeking just solutions through compromise, rather than a rigid application of rules.<sup>98</sup> Customary justice systems provide restorative processes that focus on repairing relationships, and provide alternative resolutions to the formal justice system for children in conflict with the law. The structure, jurisdiction and processes for the Village Courts are outlined in the Village Courts Act 1989. According to the Act, no less than three but an odd number of magistrates preside

97 Paton, M., 'Decolonising human rights: Customary justice and child protection in Papua New Guinea', 25 *International Journal of Children's Rights* (2017), 622 – 657.

98 Orr (1986) in Paton, M., 'Decolonising human rights: Customary justice and child protection in Papua New Guinea', 25 *International Journal of Children's Rights* (2017), 622 – 657.

over Village Courts, with a Chairman and Deputy Chairman appointed to lead courts proceedings. The Act prescribes that court clerks help in the administration of Village Courts, nominally in recording court files, handling court finances and writing orders and summons.<sup>99</sup> Also provided for in the Act is the function of village peace officers, who engage in community policing, carry out the pre-trial mediation and educate the community on their rights and responsibilities under national and customary law.

The Village Courts Act 1989 does not explicitly outline specific offences that are heard by Village Courts but instead broadly outlines their jurisdiction, empowering them to address designated minor civil and criminal matters. Aligned with customary practices, the Act establishes a framework for Village Courts to adjudicate disputes related to customary issues, land disputes, family matters, and other minor offenses within the community's customary law.

In regard to juvenile justice, amendments to the Village Courts Act in 2013 explicitly empowered the Courts to hear matters involving a child in which the primary consideration shall be the best interests of the child. The Village Court Magistrate may refer a dispute to a Juvenile Court if it is 'particularly complex or serious' or if this would be in the child's best interests.<sup>100</sup> Under the Village Courts Amendment Act 2013, a child must be given the 'opportunity to be heard' and 'assistance by a parent, guardian, relative or adult friend.'<sup>101</sup> According to the Juvenile Justice Act 2014, if a Village Court or Village Court Official exercises jurisdiction under the Village Courts Act 1989 with respect to a child, the Court must apply the principles of the JJA.<sup>102</sup>

### Village Court process

The Village Courts Act 1989 encourages mediation in settling disputes, before the organization of a full court hearing. But before a Village Court attempts to reach a settlement by mediation, 'the Village Court must, wherever possible, suggest to the parties to the dispute that they mediate amongst themselves to settle the dispute.' These pre-court mediations typically involve Village Court officials, who help to bring oversight to these informal dispute resolution attempts. The failure of such attempts then leads to formal Village Court hearings.

The mediation process mirrors that of the community-level mediations discussed in the previous section, though in these instances, Village Court magistrates or village peace officers lead the process. These officials receive formal training on the application of customary law and how to conduct mediations in line with the Juvenile Justice Act 2014, whereas the community-led mediations are not mandated or regulated under the law. Village Court mediations may therefore offer better protection for the rights of children in conflict with the law during the dispute resolution process. Upon a successful mediation leading to an agreement between both parties, a settlement order is crafted, which outlines the mutually agreed upon compensation amount. Additionally, adhering to Melanesian tradition, upon the full payment of compensation, a communal meal is shared amongst the involved parties. This symbolic act signifies forgiveness for the child and marks the restoration of peace within the community. In this manner, the Village Court system not only aims to resolve disputes, but also fosters an environment conducive to the holistic well-being of children, promoting reconciliation and harmony within their communities. The following quotes from village court officials who participated in the research illustrates the process of village-court ordered mediation:

*"Verbally before mediation cases are reported to the magistrate, the word of notice is served by the Magistrate to the defendant and also the complainant – this includes timing to attend for mediation. This takes place in an open environment, under the tree or in the community hall. When everyone arrives at the mediation, they follow the Village Court rules. The Magistrate explains each person's role, from how their seating arrangements are organised (complainant*

<sup>99</sup> Kili, Clerk, Village Court, Arima, NCD, 5 October 2023

<sup>100</sup> Section 40A, Village Courts Act 1989 (as amended in 2013).

<sup>101</sup> Section 44(2), Village Courts Act 1989 (as amended in 2013).

<sup>102</sup> Section 21(1), Juvenile Justice Act 2014.

*on one side and the defendant on one side with a peace officer in the middle). The complainant starts by giving their views – parents normally talk on their behalf in juvenile cases, but children are given a chance to talk also... Then the magistrates give the defendant a chance to talk. When both stories are heard from both sides then the options are given by magistrates to the parties for them to come to a mutual understanding. They can do food sharing, which is a customary understanding and compensation from both sides ( for example, they may ask for 30 Kina from the defendant and 20 Kina from the complainant).<sup>103</sup>*

*“What normally happens is the Village Court does three mediations. If the first doesn’t work, they leave it and come back for a second mediation. If that doesn’t work, they do a third mediation. But if that mediation doesn’t work, then they refer to a full court sitting. They draw up an agreement – they are not looking at only one party benefiting, but looking at what works for both parties. If the mediation works, the Magistrate is always the mediator. Magistrates are mainly community leaders – Chiefs within the community who are well versed with customary laws and regulations. Once parties are happy with the mediation, the Magistrate will issue a settlement order, formalizing the agreement reached and then it will be a formal court order.”<sup>104</sup>*

When it comes to hearings involving children, a modified approach is taken. These proceedings unfold in secluded settings, limited to the child and their family, the victim and their family, and the presence of Village Court officials. Some locations, such as Goroka, have dedicated buildings in which hearings are held, though many other locations do not, instead holding sessions in a neutral location, such as a church, local government building or other public space. The hearings follow a structured pattern, typically commencing with introductions and an explanation of customary law by the Chairman. Subsequently, both parties are afforded the opportunity to articulate their perspectives on the conflict. Magistrates then deliberate to discern an equitable resolution that would appease both sides of the conflict. For cases involving young children, it is customary for their family or community members to speak on their behalf during the proceedings, though children are also encouraged to voice their opinion and perspectives. Older children who have come into conflict with the law may speak for their actions themselves, and parents sit in as witnesses.

Similar to the mediations, hearings at the Village Court end with a settlement agreement between the conflicting parties, containing the terms for compensation/restitution to be rendered. The responsibility for this compensation, whether in cash or kind (such as animals or utensils), ostensibly falls upon the parent, guardian, or family member associated with the child involved in the dispute. Under Section 45 of the Village Court Act, orders for compensation, whether in monetary or material terms, is capped at a maximum value of 1,000 Kina. The nuanced application of this provision is evident in the diversity of compensation orders discussed in the interviews. For relatively minor transgressions, such as instances of swearing or fighting, orders typically ranged from 100 to 500 Kina.<sup>105</sup> However, in more severe or sensitive circumstances, compensation orders often reached the maximum limit, as illustrated in the case study in the text box below. An inherent advantage of Village Court Magistrates being familiar figures within the community is their likely awareness of the social and economic circumstances of the conflicting parties. This familiarity means that Magistrates can develop compensation orders that are both affordable and realistic orders within reasonable time frames.<sup>106</sup> This tailored approach not only upholds the principles of justice but also acknowledges the unique contextual factors that influence the ability of families to meet the obligations set forth by the Village Court, reinforcing a system that is considerate of the socio-economic dynamics at play.

In circumstances where a Village Court foresees the potential escalation of a dispute into wider community conflict or tension, Village Court magistrates wield a proactive tool in the form of

prevention orders,<sup>107</sup> as set out in Section 51 of the Village Court Act. This authority not only empowers

103 KII, Village Court PLO, Kiunga, Western Province, 10 October 2023.  
 104 KII, Executive Director, Village Courts, Port Moresby, 9 October 2023.  
 105 KII, Village Court Chairman, NCD, 5 October 2023  
 106 KII, Deputy Chairman, Village Court, Arima, NCD, 5 October 2023  
 107 KII, Executive Director, Village Courts, Port Moresby, 9 October 2023.



Magistrates to summon disputing parties for resolution within the Village Court, but also grants the magistrates the power to temporarily prohibit individuals or groups from participating in activities that could escalate the dispute.

Non-compliance with such directives constitutes an offence, subject to a fine of up to 1,000 Kina.<sup>108</sup> These prevention orders play a crucial role in de-escalating situations and preventing the onset of retaliatory actions, the prevalence of which will be discussed further later in the report.

### Case study

A boy (16 years old) and a girl (14 years old) were in a relationship. The girl's family then discovered she was pregnant. As she was below the legal age of sexual consent, her family brought the matter to the Village Court. The process was delayed so that she could give birth, but three months later, the case was brought back to the Village Court. The Magistrates discussed what was best for the boy and the girl, their new child and their respective families. The provincial JJO was invited to help with the process.

Eventually, they agreed that the boy's side would pay the girl's side compensation of 3,000 Kina. The boy's parents took 2.5 months to pay the 3,000 Kina. There was also a restraining order placed on the boy to not have contact with the girl, and for the parents not to create any further issues. The girl's parents also organized for another one of their family members to adopt the newborn, and the magistrates put the family in touch with the Community Development Office to help formalize the adoption.<sup>109</sup>

The case study above illustrates the difficulty in upholding the best interests of the child within the Village Court process. In particular, it highlights how the Village Courts must contextualise the best interests of the child within local customary law. The risk of this is that the needs and interests of children in Village Court cases may be secondary to the need to uphold community norms and values (in this case, for example, the need to penalise an extra-marital sexual relationship appears to have been considered secondary to the ensuring that the baby is able to develop a meaningful relationship with their parents).

### Utilisation of Village Courts for diversion

Data shared by the Village Courts and Land Mediation Secretariat for the years 2020-2023 provides some insight into the frequency and types of cases heard at Village Courts. However, it should be noted that the data shared only represents information from around 20 per cent of Village Courts in PNG, as the remaining Courts did not record and/or report case numbers. This issue will be discussed further in the following subsection, as well as section 4.5.7 on data and information management.

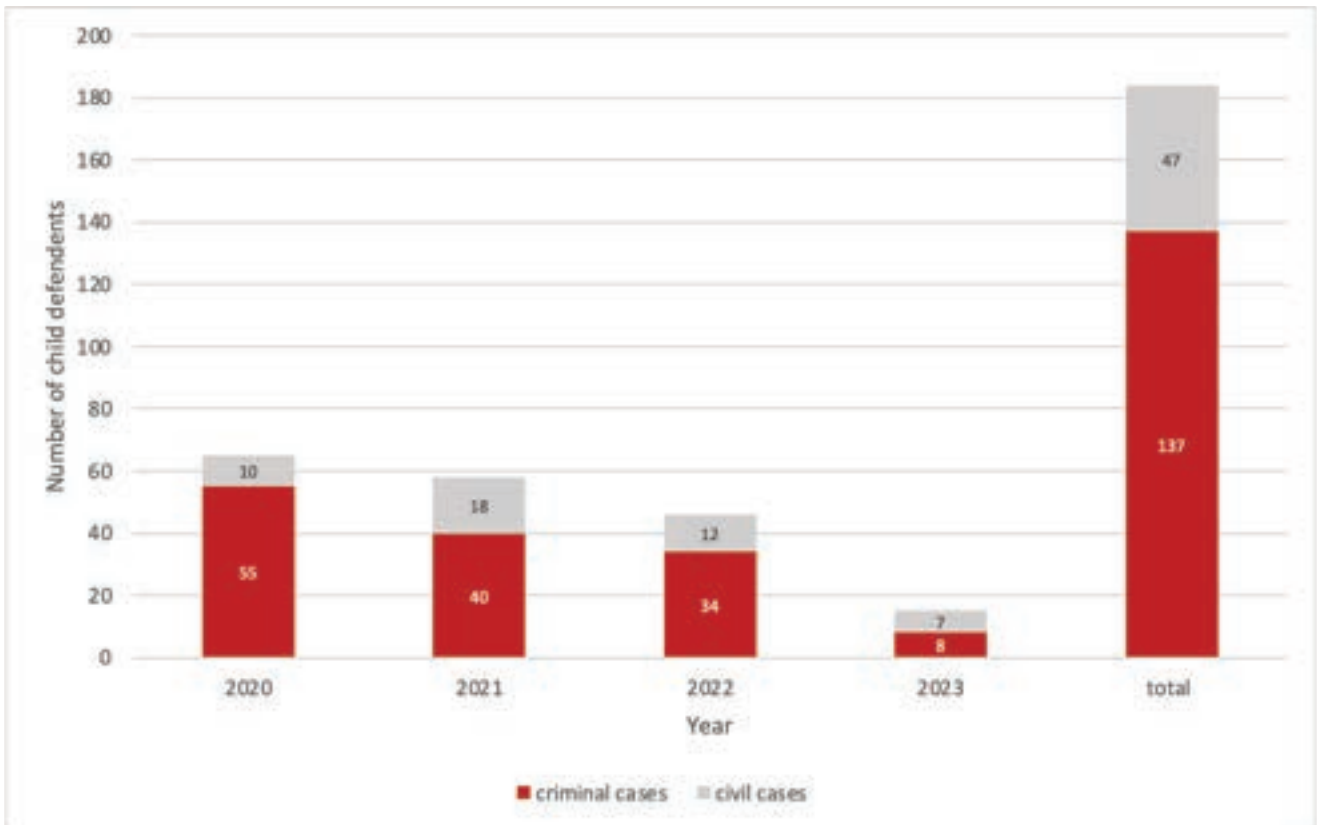
Nevertheless, the data does provide useful contextual information as to the types of cases that appear in the Village Courts for which data were collected, and the proportion of cases involving children in conflict with the law. Illustrated in the graph below is the number of cases where children appeared as defendants at the Village Courts for the years 2020-2023. Over this three-year period, a total of 184 cases involving child defendants were recorded, with 25.54 per cent of these being pertaining to civil matters, and 74.46 per cent as criminal cases.<sup>110</sup>

<sup>108</sup> Section 51(3), Village Court Act.

<sup>109</sup> KII (Case File Reviews), Kiunga, Western Province, 9 October 2023.

<sup>110</sup> DJAG data: The distinction between criminal and civil matters are not always easy in the Village Court setting. In order to make this distinction, researchers reviewed data on case numbers, disaggregated by type of matter and sought clarification from the Village Court Secretariat as to which matters were criminal and which were civil in nature.

Figure 5: Number of cases involving child defendants at the Village Courts, 2020-2023



Source: Village Courts and Land Mediation Secretariat

As set out above (section 4.1), the most commonly heard offences involving children in Village Courts are fighting, stealing, drunkenness or other offensive behaviour.

The qualitative research provides further insight into the utilisation of Village Courts. It is apparent that most cases at the Village Court are brought directly by the victim or other community members, though on some occasions the police refer cases which then leads to JJOs being involved in the Village Court process.<sup>111</sup> The police most commonly refer offences such as assault, financial disputes, infidelity, theft, domestic abuse, and drunkenness, for resolution at the community level, which is reflective of the quantitative data previously discussed. Cases that extend beyond the Village Court jurisdiction and are therefore referred to the police/higher courts include rape, assault, sexual violence, armed robbery, and murder, amongst many other serious indictable offences.<sup>112</sup> Additionally, when there is no co-operation or agreement between the conflicting parties, then cases are referred to the police or juvenile courts.<sup>113</sup> According to Village Court officials across all five research locations, most cases referred to the Village Courts are settled at the mediation stage, with only the more serious cases proceeding to full hearings.

There are many reasons for why Village Courts are a prevalently used forums for dispute resolution in PNG, many of which echo the explanations for the popularity of community-based mediation discussed earlier. Not only can Village Court mediations run in parallel to higher court proceedings, thus facilitating the preservation of peace within the community, they also serve as effective ‘filtering systems’ in that they address minor cases, allowing higher courts to focus on more serious and weighty cases.

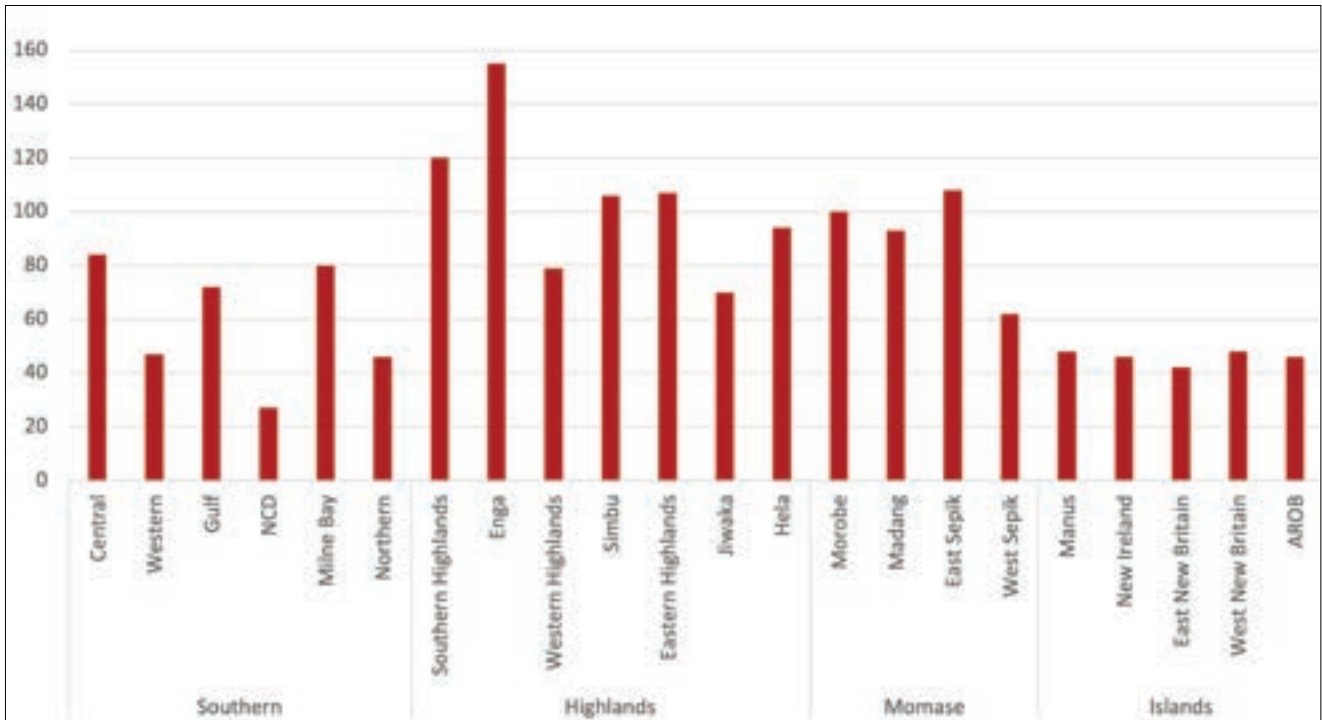
<sup>111</sup> KII, Clerk, Village Court, Arima, NCD, 5 October 2023

<sup>112</sup> KII, Clerk, Village Court, Arima, NCD, 5 October 2023; KII, Village Court PLO, Kiunga, Western Province, 10 October 2023; KII, Sergeant, FSVU unit, Vanimo Police, Vanimo, West Sepik, 19 October 2023

<sup>113</sup> KII, Deputy Chairman, Village Court, Arima, NCD, 5 October 2023.

The inherent accessibility of Village Courts also stands out as a pivotal factor. As discussed in section 4.2.2, the localized nature of Village Courts, coupled with existing challenges in accessing other justice services, makes conflicting parties more likely to pursue their cases in Village Court settings. The graph below (Figure 6) depicts the number of Village Courts currently established in PNG, with there being 1,680 in total.

Figure 6: Number of Village Courts per province (2023)



Source: Village Court data, DJAG, 2023

Communities in the research locations also appear to have confidence in Village Court processes, as illustrated by community members in a focus group in Vanimo: *“the Village Court is in the village itself, so families can access the court system easily. In doing so, that will discourage young people from doing anything bad. So they know that if they do anything the Village Court is always there to administer justice.”*<sup>114</sup> Therefore, the Village Courts emerge not only as practical forums for swift resolution but also as tangible symbols of deterrence, fostering a sense of accountability within communities.

Another benefit of accessibility is the fact that village courts are able to resolve cases quickly. One interview participant noted how *“Village Courts are very effective because they put out the fires of dispute before they escalate”*<sup>115</sup> and another participant echoed that, *“Village Courts are helpful in stopping things from escalating and leading to serious offences.”*<sup>116</sup> In communities where the failure to resolve issues can lead to retaliation or tribal conflict, the existence of an accessible mechanism that offers a relatively quick resolution is highly valuable to maintaining order and peace. One national level interview participant noted how the main purpose of Village Courts is *“to ensure that they don’t start taking their own justice. It is to cool them off: ‘belisi’ in Tok Pisin – it means you have to ‘cool them down.’ So, they refer it to the police but they still have responsibility to maintain order so they exchange pigs and use traditional justice mechanisms. It prevents the conflict from escalating. It can lead to tribal conflicts if this process is not followed.”*<sup>117</sup> This interplay between accessibility, prompt resolution and the prevention of conflict escalation highlights the crucial role Village Courts maintain in maintaining peace within the community.

114 FGD, Male community members, aged 51-68, Vanimo Village, 18 October 2023  
 115 KII, Village Court PLO, Kiunga, Western Province, 10 October 2023  
 116 KII, State Prosecutor, Vanimo, West Sepik, 16 October 2023  
 117 KII, Executive Director, Village Courts, Port Moresby, 9 October 2023.

Village Courts have also proven successful because they are rooted in customary norms and traditions. The cultural relevance of Village Court practices, coupled with the esteemed status of magistrates as well-respected elders in the community, creates a meaningful platform against which to hold parties accountable.

Whilst this study did not yield any findings regarding the experiences of children with disabilities in the Village Court system, it did uncover certain insights into the experiences of girls. The research found that cases involving girls primarily centred around instances where they were victims of sexual or physical violence or engaged in consensual sexual relations below the age of sexual consent (and outside of wedlock). Magistrates also emphasised the importance of resolving such cases outside the courts to safeguard the reputation of the girl and her family, suggesting that gendered norms may encourage the diversion of girls from the formal system. While previous research illustrates how customary norms that guide Village Court proceedings may discriminate against women and girls, some evidence indicates that there may be greater access and comparable or better outcomes for women/girls during the process.<sup>118</sup> It should be noted that recent efforts have been taken to tackle the gender imbalances in Village Courts. For instance, the DJAG reported that in 2021, ten female village court officials received training in AROB to handle juvenile justice responsibilities,<sup>119</sup> which underscores a commitment to addressing gender imbalances within the village court system with the aim of improving access and outcomes for girls and women.

Overall, Village Courts are valuable in delivering swift justice of a restorative nature, and in an accessible and culturally relevant way, making them a valuable solution for the diversion of children away from the formal justice system.

### Challenges in the use of Village Courts for diversion

Despite its merits, the Village Court system grapples with significant shortcomings that warrant attention. Foremost among these challenges is the reportedly weak knowledge and limited training among Village Court Officials in regard to juvenile justice, a shortcoming found in all five research locations. Interview participants voiced concerns about the insufficient training of Village Court officials, noting instances where cases were not handled appropriately. One participant from Kiunga stated that *“Sometimes our Village Court officials are not well trained and sometimes they do not handle cases properly... they are currently not familiar with the law, and the penalties and decisions they can make.”*<sup>120</sup> This limited knowledge hampers their ability to carry out their duties in line with the *Juvenile Justice Act 2014* or *Lukautim Pikinini Act 2015*. While some Village Court officials have received basic training from UNICEF<sup>121</sup> and the DJAG,<sup>122</sup> the training sessions have not had a wide reach, and some participants have requested further sessions.<sup>123</sup> Another challenge that was reported was the observation that many Village Court officials, being community elders with lower levels of formal education rather than qualified lawyers, leads to difficulties in grasping legal terminology during training.<sup>124</sup> Additionally, concerns were raised regarding the accessibility of learning resources and court materials which were mostly provided in English, posing a barrier for elderly Village Court officials and those from areas where English is not widely spoken.<sup>125</sup> A noteworthy gender-related challenge emerged from the discussions, with female participants underscoring the necessity for magistrates at all levels to undergo gender-equity training.<sup>126</sup> Such training is deemed essential for more effectively and sensitively responding to cases involving women and girls. For a more in-depth exploration of the training requirements for professionals, refer to section 4.5.3.

This lack of training, paired with the accessibility issues to other justice services, has led to instances

118 Goddard M., ‘Research and Rhetoric on Women in Papua New Guinea’s Village Courts’, *Oceania*, Vol 75, Issue 3, March 2015, pp. 247-267.

119 [Department of Justice Attorney General, Annual Management Report, 2021.]

120 KII, Provincial Law and Justice Manager, Kiunga, Western Province, 9 October 2023.

121 KII, Provincial Law and Justice Manager, Kiunga, Western Province, 9 October 2023.

122 KII (Group interview), Village Court Officials, Goroka, Eastern Highlands, 9 October 2023.

123 Police Prosecutors Office NCD and Central

124 KII, Village Court PLO, Kiunga, Western Province, 10 October 2023.

125 FGD, Female community members, Joyce Bay, NCD, 19 October 2023.

126 KII, Executive Director, DJAG - Village Courts, National, 9 October 2023.

where Village Courts venture beyond their jurisdiction, as highlighted by a key informant:

*“Most people only access the Village Courts, so the Village Courts are hearing matters beyond their jurisdiction. So, they have other issues and they just have to deal with it even if it’s beyond their jurisdiction as the parties just can’t access other courts. Sometimes, when serious cases come before them, they issue preventive orders. And then they refer it to the police. For children’s cases, if in the best interests of the child to refer the case to the juvenile court, they will refer. But if they can deal with it, they will.”<sup>127</sup>*

A striking example that emerged from the data collection was a reported case of a child of seven years old being brought before the court for an offence, which is inconsistent with the Juvenile Justice Act 2014, which sets 10 years of age as the minimum age of criminal responsibility. Hearing cases beyond their jurisdiction appears to be a particular issue in rural locations, due to the limited presence of and access to other justice services. Consequently, cases that would typically fall under the purview of the police / District or National Courts are directed to the Village Court,<sup>128</sup> exacerbating this challenge. Furthermore, in urgent situations demanding swift intervention or resolution, Village Courts may opt to hear cases to maintain peace within the community, even when it extends beyond their jurisdiction. Reports indicate that Village Courts in such settings have handled indictable offences such as rape or murder.<sup>129</sup>

Whilst involved parties may prefer cases to be handled discretely at the Village Court level,<sup>130</sup> considerations of justice demand that Village Court officials be trained and held accountable to the cases that must be referred to the police or juvenile court for adjudication. This underscores the critical need for enhanced training and accountability measures within the Village Court system, which will be discussed more generally in section 4.5. Village Court officials must be equipped with the knowledge and discernment to accurately determine the jurisdictional boundaries of their role, ensuring that justice is served appropriately and that cases are directed to the appropriate legal channels for adjudication.

Another shortcoming of the Village Court system pertains to the penalties they can impose. The limitations with compensation, as discussed in the previous subsection, are also relevant in the context of Village Courts; in that it doesn’t target offending behaviour, and it may not directly satisfy the victim, as it is paid to their family. Moreover, there were reports that the penalties given frequently exceeded that which would be a commensurate response with the offence committed.<sup>131</sup> While there is a mechanism for appeal, it was noted that many parents or children are unaware of this recourse.<sup>132</sup> Although Village Courts have the authority to impose community service orders or refer the child to counselling services, these alternatives are rarely used in practice, with compensation being the dominant form of settlement utilised in all research locations. The reliance on compensation, coupled with its limitations in addressing the underlying risk factors that drive a child’s offending behaviour, raises concerns about the potential for reoffending. This highlights the need for a more varied approach to penalties within the Village Court system; one that not only aligns with the severity of the offence but also considers alternative rehabilitative measures to address the root causes of offending behaviour and promote lasting behavioural change.

There are also many capacity issues associated with the Village Courts reported across all research locations. One clear challenge is the lack of resources within the courts themselves. For example, one court clerk from NCD noted that they “don’t have laptop or any resources to run the court. Everything is done by hand.”<sup>133</sup> This has been at the detriment of recording and filing

127 KII, JJO, Kiunga, Western Province, 9 October 2023; KII, District Magistrate, Vanimo, West Sepik, 18 October 2023.

128 KII, JJO, Kiunga, Western Province, 9 October 2023; KII, District Magistrate, Vanimo, West Sepik, 18 October 2023.

129 KII, Executive Director, DJAG - Village Courts, National, 9 October 2023.

130 KII, Legal and Policy Advisor, JSS4D, DFAT, virtual, 2 November 2023.

131 KII, Catholic Church, Western Province, 6 October 2023.

132 KII, District Magistrate, Vanimo, West Sepik, 18 October 2023.

133 KII, Clerk, Village Court, NCD, 5 October 2023.

cases.<sup>134</sup> Provinces that are well resourced are better equipped to accurately report cases and financial information to provincial or central governments. This discrepancy skews the available data, reflecting a perspective that may not accurately represent the lesser resourced regions.

Furthermore, the physical infrastructure for Village Courts also presents a disparity. Whilst some locations had dedicated buildings for Village Court proceedings and mediations, such as in Goroka, many locations lack formal Village Court infrastructure, carrying out sessions in church grounds or open public spaces. The DJAG's 'Crime Prevention through Revitalized Village Court System Strategy', launched in 2021, has

taken steps to address this gap by supporting the establishment, maintenance and operations of Village Court Houses across PNG. For example, under the strategy, an MOU was signed with Central Province in 2021 for the construction of 84 Village Court Houses.<sup>135</sup> Furthermore, in 2022, construction materials were acquired and service providers engaged to build eight court houses located in Madang, Morobe, Enga, Southern Highlands Province, East New Britain and West New Britain.<sup>136</sup> The Strategy has therefore made strides in addressing the infrastructure gap, providing an enhanced and secure environment in which hearings can be conducted.

### 5.2.3 Police Diversion

Sections 41 and 42 of the *Juvenile Justice Act 2014* set out a clear process for diversion of children by police officers, as a viable alternative to charging children with a criminal offence. However, in practice, police diversion takes different forms in different parts of the country. Broadly, this includes police warnings, police bail, police-led diversion and the option for police to refer cases back down to Village Courts or to community-based mechanisms to allow families and communities to handle cases locally. A lack of clear data does however make it challenging to assess the use of different forms of police diversion for children coming into conflict with the law.

#### Police diversion process

Under Section 40 of the *Juvenile Justice Act 2014* Police have the power to divert children in conflict with the law. Section 40(1) provides that a member of the Police Force must consider diversion wherever the essential criteria contained in section 28 of the Act are met (see below). Police have the power to divert a child in conflict with the law through a warning; referral to a community based conference; or through another measure set out in section 29.<sup>137</sup> However, the Act provides that a child alleged to have committed a serious indictable offence may only be referred for diversion where the offence is triable summarily.<sup>138</sup> As per the *Summary Offences Act 1977*, cases which may be tried summarily include (but are not limited to): drunk and disorderly; assault; breach of the peace; fighting; carrying or using weapons; possession of stolen property; loitering with intent; being in possession of house-breaking implements; indecent exposure; theft (up to the value of 500 Kina); living on the earnings of prostitution; assault of a police officer and dangerous driving.<sup>139</sup> Unfortunately, this provision of the Act excludes a considerable number of (albeit more serious) offences from the reach of diversion provisions.

According to the *Juvenile Justice Act 2014*, children in conflict with the law may be considered for diversion under Section 28 of the if four criteria are met: (1) the child must voluntarily acknowledge responsibility for the offence; (2) the child must give consent to the use of diversion, alongside one of the child's parents (if the child has one or both parents); (3) diversion cases must meet an evidentiary

<sup>134</sup> KII (group interview), Village Court officials, Kiunga, Western Province, 11 October 2023.

<sup>135</sup> Department of Justice Attorney General, Annual Management Report, 2021.

<sup>136</sup> Department of Justice Attorney General, Annual Management Report, 2021.

<sup>137</sup> Section 40(2), *Juvenile Justice Act 2014*.

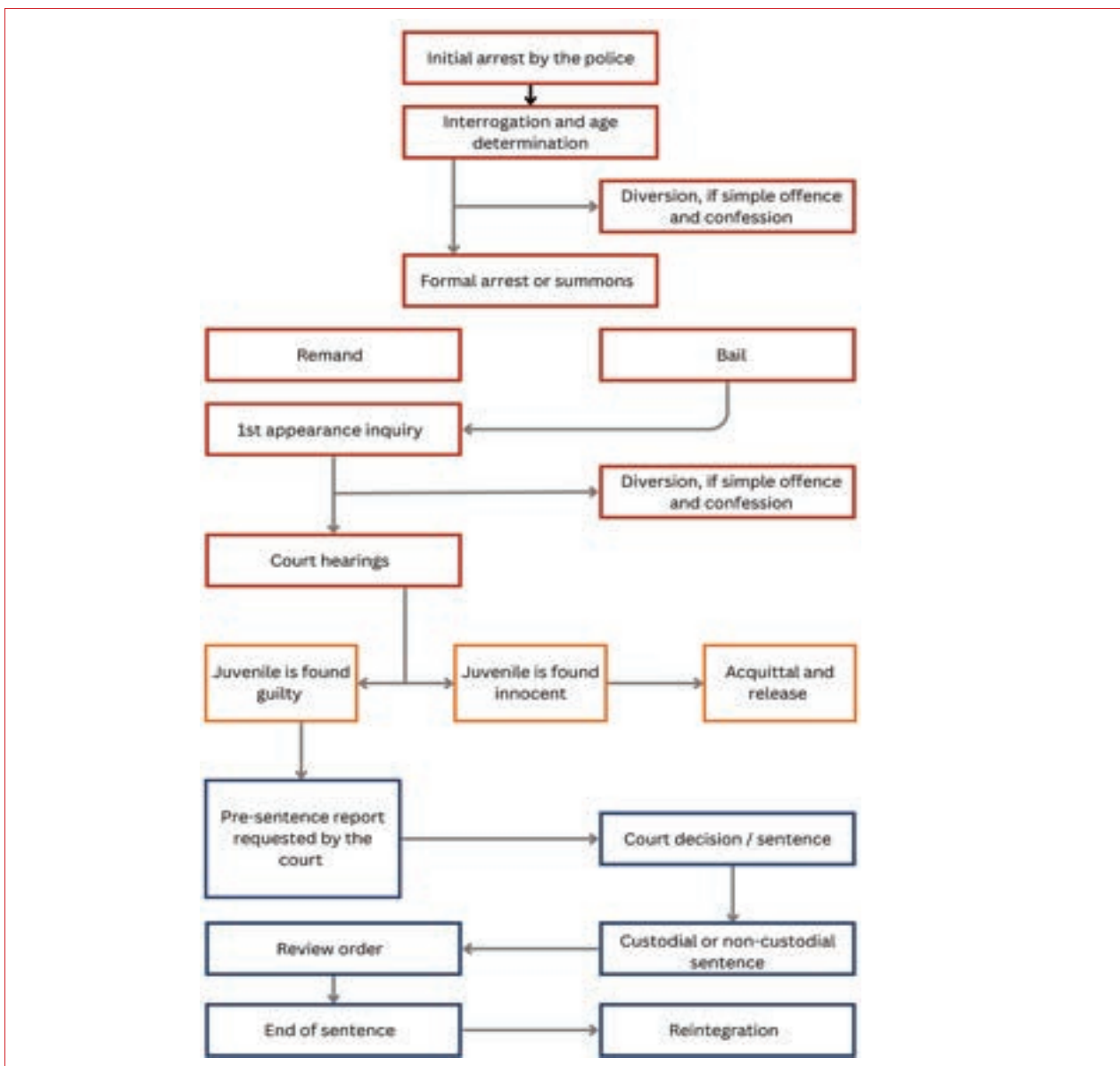
<sup>138</sup> Section 40(3), *Juvenile Justice Act 2014*.

<sup>139</sup> Section 3 – 68, *Summary Offences Act 1977*.

threshold, i.e. there must be sufficient evidence to proceed with the case and the prosecution is not barred at law; and (4) there must be a determination made that it is in the best interests of justice for the matter to be resolved informally. Section 28(2) sets out in more detail the criteria used to determine whether the diversion in a case is in the interests of justice. This includes: (a) the background and circumstances of the child, along with their criminal history and whether the offence is a repeat offence; (b) the views of the victim, though such views are not binding; (c) the need to ensure public safety; and (d) the general principles of the Act (these principles include, among others, that special consideration be applied to children in conflict with the law given their vulnerability; that the best interests of the child are to be the primary consideration in matters affecting them; that the justice system must prioritise the rehabilitation and reintegration of a child in conflict with the law; and that dispositions should be individualised).

A process for police diversion is set out in sections 41 and 42 of the Juvenile Justice Act 2014. The system of juvenile justice in Papua New Guinea allows for multiple types of diversion by police at different stages of the process after police come into contact with a child in conflict with the law, as set out in the flow chart in Figure 9 below.

Figure 7: Process for handling cases of children in conflict with the law



Source: Recreated from DJAG, Information for the Juvenile and the parents in the juvenile justice process, leaflet.

according to the research, typically, cases which result in police warning are diverted by the first officer to come into contact with a child. If a child is detained and brought to a Police Station, it appears that station commanders typically assign Juvenile Justice Officers to cases of children in conflict with the law, where such officers exist. In NCD, for example, police officers reported that when a child first comes to the juvenile cell at Boroko Police Station (the Central police Station in NCD and only station which has a juvenile cell) their first call would be to the Juvenile Police Officer to come and speak with the child.<sup>140</sup> In police stations where there are no Juvenile Police Officers, typically female officers are assigned to handle cases of children in conflict with the law. This was typically due to gendered assumptions around caregiving, which assumed that given female officers were often wives and mothers they had a greater understanding of the needs of children and would handle cases with more compassion than male officers. In many cases, these officers are Family and Sexual Violence Unit (FSVU) Officers.

Despite not being mandated to do so by the Juvenile Justice Act 2014, Juvenile Justice Officers (JJOs) also have a large role to play in facilitating diversion of children in conflict with the law. In many cases examined as part of this research, Police Officers were reluctant to divert children in conflict with the law due to traditional views on justice which favoured a more punitive approach to handling children's cases. In such circumstances, proactive JJOs were often the first to encounter cases of children in conflict with the law in police-lock ups and advocate for police to divert them. JJOs are also mandated to attend community based conferences<sup>141</sup> and in most cases serve as the authorised facilitators these conferences, under Section 37 of the Juvenile Justice Act. They therefore play a large role in mediating diversion cases and awarding compensation to victims' families. More detail on this is contained in Section 4.2.4.

The Juvenile Justice Act 2014 sets out a range of police diversion options. These include police warning, police bail, police-led mediation and community based conferencing and referral by police of cases back to Village Courts/Ward councillors for cases to be handled at the LLG level. It is worth noting that children's experiences of diversion are not universal – but rather have substantial variance depending on their age, gender, geographical location, family background, family status and other factors.

### Police warnings

Section 41 of the *Juvenile Justice Act 2014* permits the use of police warnings as a diversion measure/ alternative to the formal criminal justice system. When issuing a warning, a Police Officer must: (a) explain to the child that his or her behaviour is unacceptable and the possible consequences of offending behaviour; and (b) warn the child that if they persist with such offending behaviour, they may be charged next time.<sup>142</sup> The warning must, however, not involve threats or intimidation. According to the Act the child should not be taken into police custody if a warning is issued.<sup>143</sup> Police also have the power, if appropriate, to require the child to apologise to the victim, provided the victim consents.<sup>144</sup> The Police Officer may make a record of the warning, though they are not required to do so.<sup>145</sup> In practice, contrary to the Act, the process of police warning a child in conflict with the law often appears to take place after arrest at the Police Station, as illustrated by a key stakeholder in Buka:

“Police found this 17-year-old male in possession of home brew and arrested him ... He was cautioned and discharged at the police station in the presence of the Probation Officer. As part of the cautioning they tell him to go home, never to drink home brew in public and to be good.<sup>146</sup>”

<sup>140</sup> Key Informant Interview, OIC Cell Commander, Boroko Police Station, NCD, 16 October 2023.

<sup>141</sup> Section 34 (1g), Juvenile Justice Act 2014.

<sup>142</sup> Section 41(1), Juvenile Justice Act 2014.

<sup>143</sup> Section 41(2), Juvenile Justice Act 2014.

<sup>144</sup> Section 41(3), Juvenile Justice Act 2014.

<sup>145</sup> Section 41(4), Juvenile Justice Act 2014.

<sup>146</sup> Case File Review, Autonomous Region of Bougainville, 3 November 2023.



The decision to issue a police warning is typically made by Station Commanders, rather than by individual police officers,<sup>147</sup> which increases the likelihood of children being detained in a police lock-up in a nearby urban centre, albeit for a relatively short period of time.

While the law does not require any other individuals to be present for police warnings to take place, in many provinces, it is the case that police officers will only issue warnings when certain persons are present. For example, children's parents are often required to be present for such warnings to be issued.<sup>148</sup> This presents challenges in the application of diversion in some cases, for instance, those involving street children in conflict with the law. In other communities, other Government officials such as the JJO or the Child Protection Officer for the Province are required by police to be present.<sup>149</sup>

In communities where there is no JJO or the JJO lives a distance away from the police station where the arrest is made, this can cause delays in children being diverted. Victims and their families are not required to be present for a warning to take place.

In addition, police warnings are generally only given in the most minor summary cases for crimes such as drinking alcohol (known locally as home brew) or disturbing the peace.<sup>150</sup> For summary offences

considered slightly more serious – i.e. theft, property damage – children are generally detained in police lock up or released on police bail into parental custody.

### Police-led mediation

Police-led mediation is also an option for diversion under the Juvenile Justice Act 2014.<sup>151</sup> This involves Police Station Commanders inviting the parties, i.e. the child in conflict with the law, their parents/guardians and members of their extended family and community, the victim(s) and members of their extended family and community, community leaders and juvenile justice officers, to come to the police station in order to discuss what happened and how the dispute can be solved. Mediation typically involves the child in conflict with the law apologising to the victim(s) and the child's parents/guardians compensate the victim(s) financially. More information on community-based conferencing is found in Section 4.2.4 below.

In some circumstances, children are asked to do community work to compensate the victim. The form of community work is often tied to the offence.<sup>152</sup> This appears to be viewed by justice professionals as a positive way to encourage children to take personal responsibility for their actions. For example, if a child was to damage a garden, they would be asked to grow flowers to be re-planted in the garden.<sup>153</sup> In another example, in NCD, when a child stole a neighbour's bike, the child agreed as part of the mediation to help his mother to sell things in the market in order to earn enough money to buy two bikes – one for the victim and one for himself – by way of apology.<sup>154</sup>

Police also have the power to refer children in conflict with the law to a community-based conference.<sup>155</sup> The use of this method by Police was however found to be limited, with the only examples found in the National Capital District. Where this measure is used, an Authorised Facilitator - typically the JJO - will be required to convene a conference in accordance with the Act (see Section 4.2.4 below on community based conferencing).

In some cases, a child's family will give other items such as food or shell money as compensation or share a community meal to mark the restoration of peace in the relationship between the two parties.

147 Key Informant Interview, Police Prosecutor, NCD, 17 October 2023.

148 Key Informant Interview, Police Prosecutor, West Sepik, 17 October 2023; Key Informant Interview, Juvenile Justice Officer, NCD, 5 October 2023.

149 Key Informant Interview, FSVU Officer, West Sepik Province, 19 October 2023.

150 Key Informant Interview, Juvenile Justice Officer, Eastern Highlands Province, 12 October 2023.

151 Section 40, Juvenile Justice Act 2014.

152 Key Informant Interview, Social Law and Order Sector Secretariat, 4 October 2023.

153 Key Informant Interview, Senior Juvenile Justice Officer, NCD, 5 October 2023.

154 Key Informant Interview, Senior Juvenile Justice Officer, NCD, 5 October 2023.

155 Section 42, Juvenile Justice Act 2014.

The reasons for applying police mediation for children in conflict with the law were often complex. In some circumstances, children’s cases were diverted at Police level because the seriousness of the offence did not warrant Court proceedings,<sup>156</sup> whilst in other cases police chose to divert based on the views of the victim, the victims’ wider family or community opinion, as illustrated by a key informant in Eastern Highlands Province:

*“There are other serious indictable offences like sexual touching and sexual penetration. Sometimes parents of victim and offender are related. They feel shame, they don’t want to go to court to save their reputation. They then resolve to compensation; in PNG we use this to restore peace in the family. Sometimes they ask for 1000-kina compensation. Depends on the family of the juvenile if they have the capacity to help.*

*If one of the parties doesn’t agree with the conferencing, then we have no choice but to say we will go to court.”<sup>157</sup>*

The decision to divert serious offences at Police level is contrary to the Juvenile Justice Act 2014 and means that often there is a perception of impunity for offences committed by children. In addition, when the victim is a child, the process of mediation (or compensation) is often conducted without victim consent, leading to further negative impacts on the victims’ mental health.

Cases of children in conflict with the law that are solved through mediation at the police level are not registered, except to note the case in the Station’s Juvenile Occurrence Book.<sup>158</sup> This is the main characteristic which sets police diversion apart from community-based diversion:

*“It’s similar to the community diversion, but it’s a more formal way – it is all documented and it is recorded in a record book, so they have to go through the formal process within the protocol procedures within the police. So more formally recorded but a similar process...”<sup>159</sup>*

### **Police permitting settlement through Village Courts or community-based diversion**

Finally, Police Officers will permit, and in some cases encourage, cases reported to Police to be sent back to Village Courts or to be handled through community-based diversion. The reasons for this are case-specific but often are the result of a perception by Police that cases are best handled by communities, particularly those that are considered sensitive family matters. In addition, Police Officers often believe that handling cases within the community promotes peace. This is discussed in further detail in Section 4.2.3 above.

#### **Case Study: Boy (17 years old), Kiunga, Western Province**

In one case reviewed by researchers, the JJO described the case of a 17-year old boy from Kiunga who had sexual intercourse with a 15-year old girl on the evening of a rugby league game. When the girl’s family found their daughter had not returned home that evening the family caused damage to the boy’s family home and were reportedly swearing outside the home.

The following day, the girl’s father reported the case at Kiunga Police Station who then passed the case to the Criminal Investigation Department (CID), suspecting rape. The girl was taken by her family that afternoon to the hospital for a medical exam which found evidence of sexual penetration. Both children were interviewed by Police who informed officers that the sexual intercourse was consensual and that they were friends. The boy was not charged.

<sup>156</sup> Key Informant Interview, Juvenile Justice Officer, Western Province, 9 October 2023.

<sup>157</sup> Key Informant Interview, Juvenile Justice Officer, Eastern Highland Province, 9 October 2023.

<sup>158</sup> Note: Juvenile Occurrence Books are not standardised and as a result biographical data collected is not uniform. Typically however, data collected includes the name and age of the child in conflict with the law, the location and a description of the offence and the names of the child’s parents/guardians (when provided by the child).

<sup>159</sup> Key Informant Interview, PNG Correctional Service, National, 9 October 2023.

The following day the boy's parents went to the JJO and asked him to intervene, at which point the JJO walked to the Police Station at Kiunga [a 2 minute walk from the JJO's Office] to speak to the child and the CID Officer. The JJO believed that mediation was preferable in this case; however, the CID Officer believed the evidence allowed for prosecution should the victim's family want to proceed.

Both families, the JJO and the Criminal Investigation Department Officer met with the families and allowed the victim's father to explain his concerns. The father of the girl was keen to wait on his wife arriving back into town [she was away elsewhere] and to discuss the following week. However, the JJO pushed back, noting that it was unacceptable for the boy to be in police-lock up over the weekend given that he had not yet been charged. Despite the reluctance of the victim's father the Criminal Investigation Department Officer agreed the child could be released into parental custody, pending investigation.

On the Tuesday afternoon, both the victim and child in conflict with the law's family met with the Ward Councillor, without the JJO or Police present. The families agreed to settle the matter at community level. On the Wednesday the families came to inform the JJO and Police Officer of this. The Officer asked that once the matter was settled, the families report back to the Police on the outcome of the mediation.

On the Saturday a village meeting was held and the victim's family asked for 2,500 Kina in compensation. The child in conflict with the law's family also asked for 250 Kina in compensation for the property damage caused as well as for swearing in the community.

The families both reported the results of the community-based diversion to the Police and JJO. On discussion with the JJO, the Police did not pursue charges given that nothing more than a complaint was made by the victims' family, and no formal charges had been laid.<sup>160</sup>

While this case illustrates the application of police diversion through cooperation with the JJO and Police, the case also highlights some issues of concern from a child's rights perspective. According to international standards, States should ensure that cases involving factually consensual sexual acts among close-in-age older adolescents, should not be criminalised.<sup>161</sup> Instead, these cases should be removed from the criminal justice system (including from the application of diversionary measures) altogether. The collection of evidence in the case is also a cause for concern. In particular, it is not clear whether the girl consented to the medical exam (a process that would likely have been invasive and traumatic), and whether she consented to the case being pursued criminally. The child in conflict with the law and the child victim were not invited to participate in the mediation, other than being required to attend the compensation meeting, in clear violation of their right to be heard under Article 12 of the UN Convention on the Rights of the Child.

## Utilisation of police diversion

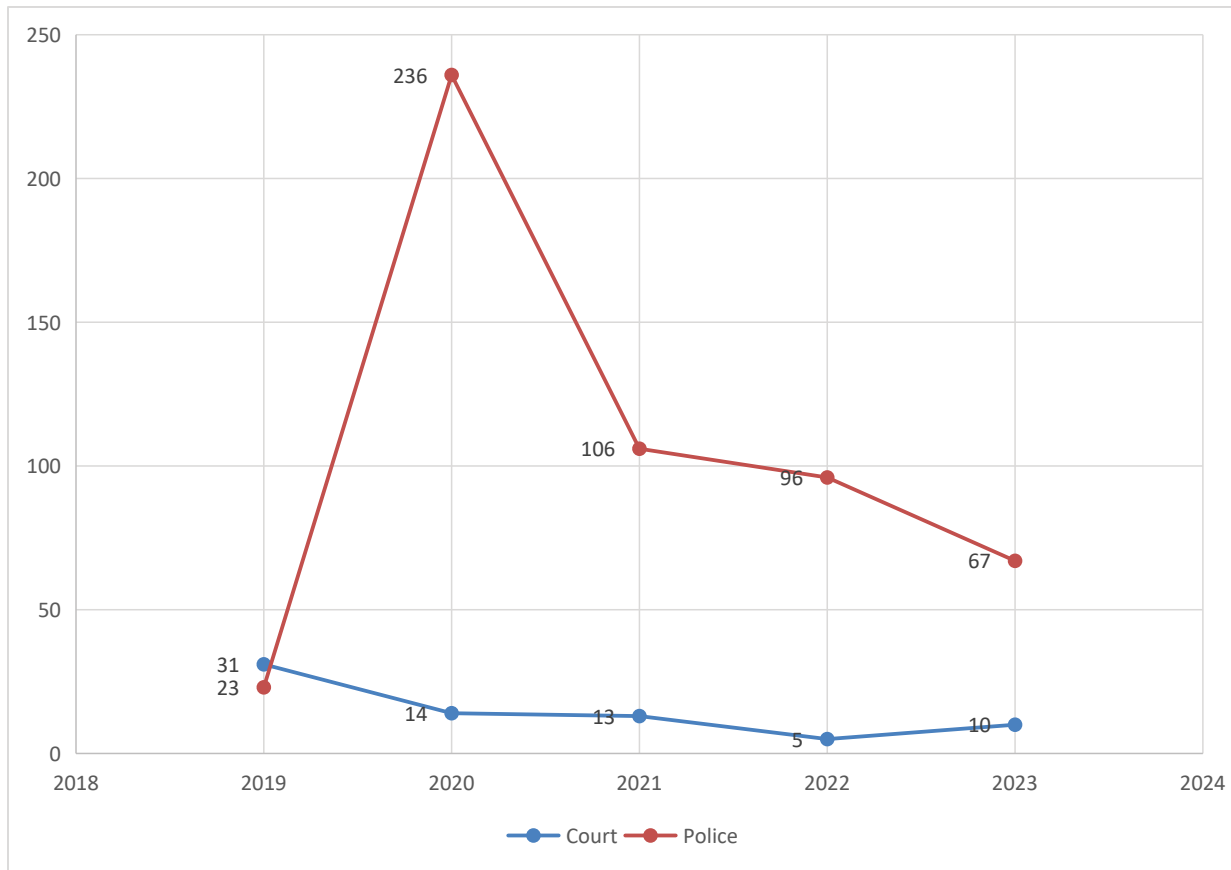
Among the types of diversion for which (limited) data are collected – police and court-led diversion – police diversion is the most common recorded form of diversion used in Papua New Guinea, according to the most recent data available from the Department of Justice and Attorney General's Office (see Figure 11, below). Whilst this data is likely to underestimate the scale of police diversion, it does provide a snapshot of recorded diversion cases and makes clear that the use of police diversion is substantially higher than the use of court-based diversion.<sup>162</sup>

<sup>160</sup> Summarised from full transcript in Case File Reviews, Western Province, 9 October 2023.

<sup>161</sup> UN Committee on the Rights of the Child, General Comment No. 20 on the implementation of the rights of the child during adolescence, 6 December 2016, CRC/C/GC/20, para. 40.

<sup>162</sup> DJAG data provided to researchers, 2023.

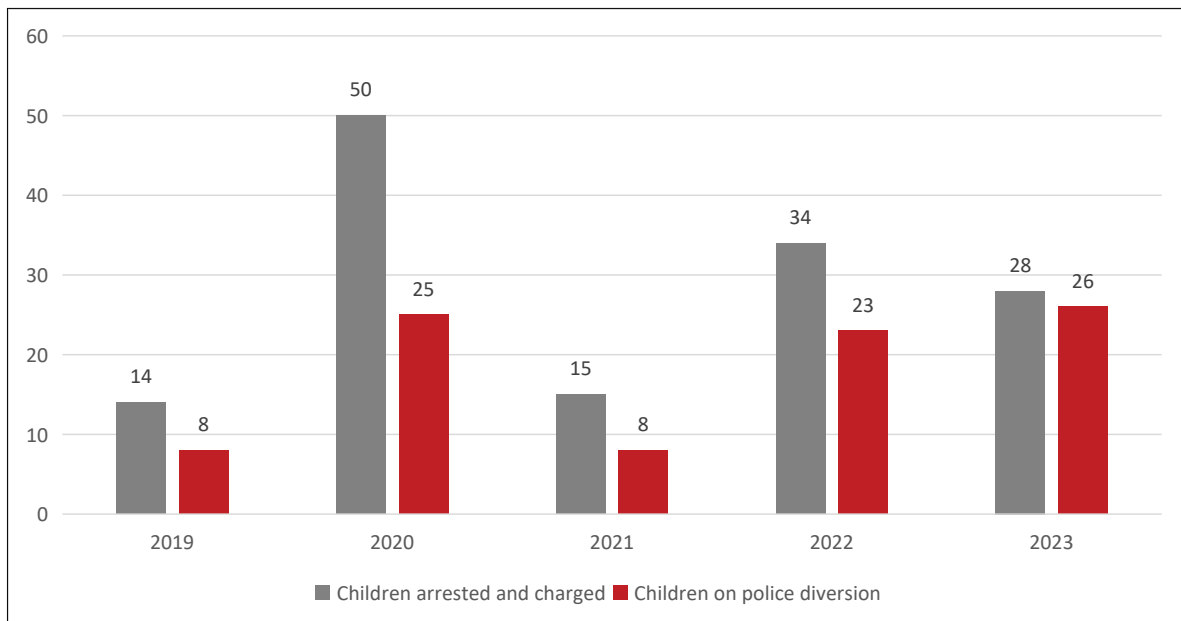
Figure 8: Prevalence of police and court-based diversion for children in conflict with the law in 15 provinces (2019)



Source: DJAG

It is notable that, in the National Capital District (NCD) (the only province for which a full set of data were provided), the use of diversion as a proportion of all cases of children who are arrested and charged has increased substantially, as indicated in the graph below (Figure 12). The data indicate that, in 2019 and 2020, 57 per cent (2019) / 50 per cent (2020) of cases were diverted compared to 93 per cent of cases in 2023.

Figure 9: Children diverted by police out of children arrested and charged by police (NCD) (2019 – 2023)



Source: DJAG

Unfortunately, due to limitations in the administrative data collected, it was not possible to examine the types of offences, cases or children in conflict with the law (age, gender etc.) for which police diversion is being used. Nor was it possible to examine geographical trends (given that data was collected across only 11 provinces, with most missing several years of data across the five-year timeframe).

The qualitative research found that cases diverted by police span a wide range of offences. According to the data, it appears that, typically, cases of assault, drug possession, sexual offences (including sexual touching and sexual penetration), breaking and entering, minor thefts, and drunk and disorderly behaviour are diverted by police. In some circumstances, cases are informally diverted at the police level through police officers permitting informal compensation to occur after a case has been reported to the police, and sometimes even after the arrest or charge of a child in conflict with the law (this is discussed in more detail below). Whilst there is no available data which would allow for a fuller understanding of which cases are diverted informally at community level and which are brought to the attention of the police, qualitative data suggests that there are some commonalities shared by cases which are sent to police for diversion in the research locations.

Firstly, cases which are diverted by police are those considered to be “*more serious*” by members of the community, or are crimes perpetrated by children who are repeat offenders.<sup>163</sup> Such cases are considered too serious to be handled by Village Courts or other community mechanisms, or in circumstances where the crime perpetrated was so serious that a child is brought to the police to protect them from violence or retribution within the community by the victim’s family and friends, as articulated in a focus group discussion in Bougainville:

*“Yes, serious cases are treated differently from minor offences like stealing small items. For serious cases like rape, or killing, we must remove the child from the local setting and place them in the hands of police to prevent retaliation and payback by family and relatives and for the safety of the offender. That is a good way to deal with the situation because, if we don’t act in time, things could get out of hand.”<sup>164</sup>*

<sup>163</sup> Key Informant Interviews, Senior Provincial Magistrate, Western province, 11 October 2023

<sup>164</sup> Focus Group Discussion, Autonomous Region of Bougainville, 2 November 2023.

Particularly in rural communities where access to Police Officers is limited, the act of reporting a case requires significant time and money to travel to an urban centre with a Police Station (which can often be several days travel by foot or boat). As a result, only in the most serious of cases would a Village Elder make the decision that a case was of sufficient gravity that reporting to the Police was necessary. Typically, these are cases for which diversion would not be considered appropriate, such as rape and murder.

Perhaps more significantly, cases are brought to police in circumstances where there are no Village Courts or other community based mechanisms for handling cases of children in conflict with the law. This includes some urban areas where Village Courts are not active and access to police is greater,<sup>165</sup> and in communities where trust in Village Courts is low. In some circumstances Village Court Magistrates have poor reputations, which drives the community to take cases directly to the police:

*“Some they don’t really like the village court system, the process that happens at village court system they say takes a little bit of time and sometimes the village court officials are not supposed to charge fees [to victims] but they do. Hence people who do not want to charge fees bring it to the police and let the police officer handle it.”<sup>166</sup>*

### 5.2.4 Court-ordered Diversion

For cases which are considered unfit for Police-led diversion, the Juvenile Justice Act 2014 also allows for Court-based diversion. There are three types of Courts which hear children’s cases in Papua New Guinea: Juvenile Courts, District Courts (in areas where no Juvenile Court has been established) and the National Court based at Waigani in the National Capital District.

Under section 62 of the Juvenile Justice Act 2014, the Court may make an order to refer a child in conflict with the law to one or more of the diversion options set out in section 28 of the Act. Where a community based conference is used, the Court must refer the child to an Authorised Facilitator and adjourn the court proceedings for the purposes of holding the conference.<sup>167</sup> If a diversion agreement is developed following a community based conference, the Court may: (a) make a diversion order in accordance with the agreement; (b) vary the agreement and make an appropriate diversion order with the consent of the child in conflict with the law; or (c) reject the agreement and refer the matter to plea or trial.<sup>168</sup> In practice Courts almost always accept the outcome of community-based conferences.<sup>169</sup> If a diversion order is made, the Court must adjourn the proceedings pending the completion of the diversion agreement and, on satisfactory completion of the agreement, must discharge the child on all charges.<sup>170</sup> If the child does not comply with the diversion agreement, the Court may issue a summons to the child to appear before the court, and may: (a) vary the diversion order or impose a different diversion order; or (b) set the matter down for plea and trial.<sup>171</sup>

Where a case that is eligible for diversion reaches Court, the Court also has the power to dismiss the charge instead of accepting a guilty plea, if it is satisfied that the child should have been diverted or that no action should have been taken.<sup>172</sup> If the Court dismisses the charge, it may administer a caution to the child; or direct that a caution be administered as directed by the Juvenile Court.<sup>173</sup> In practice dismissal of cases often happens when there is limited evidence,<sup>174</sup> incomplete or incorrect filing of a case by the Prosecutor (or Police), a child has been in police-lock up or on remand for an extended period of time waiting on a Court hearing or there is evidence of a child having experienced violence in detention.<sup>175</sup>

<sup>165</sup> Key Informant Interview, Juvenile Justice Officer, Eastern Highlands Province, 12 October 2023.

<sup>166</sup> Key Informant Interview, Juvenile Justice Officer, Western Province, 9 October 2023.

<sup>167</sup> Section 62(2), Juvenile Justice Act 2014.

<sup>168</sup> Section 62(3), Juvenile Justice Act 2014.

<sup>169</sup> Sections 62(3) and (4), Juvenile Justice Act 2014.

<sup>170</sup> Sections 62(3) and (4), Juvenile Justice Act 2014.

<sup>171</sup> Sections 62(6), Juvenile Justice Act 2014.

<sup>172</sup> Section 43(1), Juvenile Justice Act 2014.

<sup>173</sup> Sections 43(4), Juvenile Justice Act 2014.

<sup>174</sup> Key Informant Interview, JJO, Eastern Highlands Province, 12 October 2023.

<sup>175</sup> Key Informant Interview, Juvenile Court Magistrate, NCD, 18 October 2023.

### Juvenile Court: Diversion process

The Juvenile Justice Act 2014 provides Ministers with the power to establish Juvenile Courts led by a Magistrate to hear cases, including criminal cases, involving children under the age of 18 years. According to the Juvenile Justice Regulation 2024 (yet to be gazetted), Juvenile Courts must be physically separate and “as distinct as is reasonably practicable from another sitting Court.”<sup>176</sup> However, a lack of political will, financial and human resources has meant that in practice, the coverage of Juvenile Courts is very limited (see Figure 13 below). In areas where a Juvenile Court has not been established or there is no Juvenile Court Magistrate available to preside over the Juvenile Court, a child’s case will instead be heard by a court of summary jurisdiction exercising jurisdiction over a child in conflict with the law.<sup>177</sup> Qualitative data did not suggest any substantive difference in the number of cases diverted between the two types of courts.

Figure 10: Type of Court where juvenile cases were heard in sampled research locations

Province	Juvenile Court	District Court
Autonomous Region of Bougainville	X	
Eastern Highlands Province		X
National Capital District	X	
West Sepik Province		X
Western Province		X

Source: Taken from qualitative transcripts.

Juvenile Courts, where established, can only handle cases that would ordinarily be punishable summarily or otherwise are triable in District Courts. During one observational visit conducted with the Juvenile Court in the National Capital District, this included offences such as sexual penetration, sexual touching, assault, dangerous driving causing injury and theft.<sup>178</sup> The jurisdiction of Juvenile Courts is therefore limited.

Figure 11: Picture of NCD Court Room where Juvenile Court took place



Source: Observational Visit, Juvenile Court, National Capital District, 18 October 2023.

<sup>176</sup> Section 26, Juvenile Justice Regulation 2023 (yet to be gazetted).

<sup>177</sup> Section 19, Juvenile Justice Act 2014.

<sup>178</sup> Observational visit, Juvenile Court, National Capital District, 18 October 2023.

In addition, whilst no data is available on the number of Juvenile Court Magistrates, qualitative data suggests that the number of Juvenile Court Magistrates is limited. This in effect means that when a Juvenile Court Magistrate is unavailable for a period of time, the Juvenile Court for that Province will not sit. By way of example, immediately prior to data collection in NCD the lone Juvenile Court Magistrate for NCD was called away for three weeks on official business, meaning the Juvenile Court did not sit for three weeks.<sup>179</sup> As a result of a lack of Magistrates and dual-mandates (often Magistrates preside over multiple Courts), children who would ordinarily be remanded into the custody of their parents or diverted at their first hearing can spend prolonged periods in police lock-up (see information box, below).

Juvenile Courts are unable to hear cases of homicide, rape or any other offence punishable by death or imprisonment for life.<sup>180</sup> In such cases, under Section 20 of the Juvenile Justice Act 2014, National Courts are responsible for trial proceedings. Whilst the law mandates that in such cases *“when exercising jurisdiction under this section, the National Court shall, so far as is practicable, sit and conduct proceedings in accordance with this Act”* this does not guarantee child-friendly proceedings, causing children whose cases do not come before a Juvenile Court to be denied special protections to which they are entitled. This is particularly concerning given the extensive list of crimes under which life imprisonment are the recommended sentences under Section 19 of the Criminal Code Act 1974 and therefore the extensive number of cases that fall under the jurisdiction of the National Courts rather than Juvenile Courts.

In practice, however, research found that in rural communities in Papua New Guinea, given the absence of formal justice actors, communities often handled even the most serious offences through community-based diversion methods or Village Courts (see Sections 4.2.1 and 4.2.2).

Juvenile Justice Officers also have a large role to play in the diversion of cases at every level. Research found that where community-based conferences are mandated by a Magistrate, typically JJOs are the authorised facilitators of such conferences. In areas where no JJOs are present, Probation Officers often fulfil this role.

### **What does the measure involve in practice?**

Community based conferences are the cornerstone of Court-ordered diversion. However quantitative data is limited on the number of such conferences which take place. In practice, District or Juvenile Court Magistrates refer cases to JJOs (or VJJOs) who are tasked preparing and conducting the conference. As one JJO in Eastern Highlands Province noted: *“our job is not able to convince them to accept diversion or compensation, our job is to facilitate the process.”*<sup>181</sup> Under the Juvenile Justice Act 2014, VJJOs are also permitted to conduct the conference, but the research found that in practice the numbers of VJJOs are limited, and where they do exist they did not currently have a role in community-based conferences.

The process for conducting community-based conferences is typically as set out below in Figure 7 and explained further below. However, often JJOs and other justice professionals take a more informal approach to conferencing, instead preferring community-based mediation.

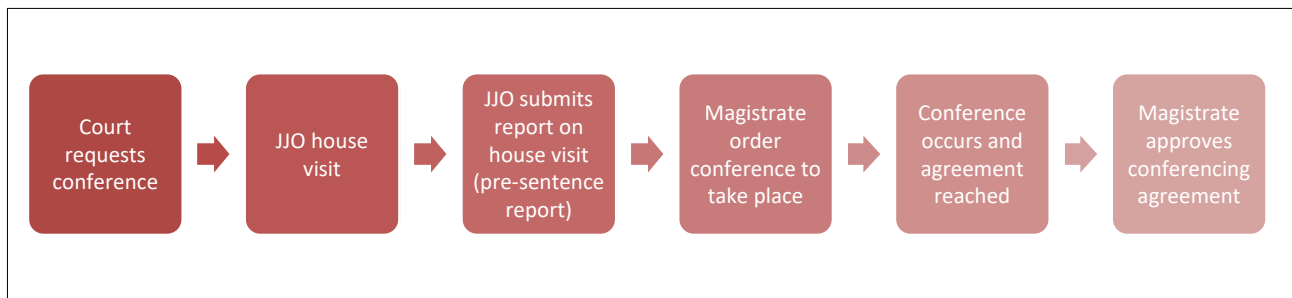
<sup>179</sup> Observational Visit, Juvenile Court, National Capital District, 18 October 2023.

<sup>180</sup> Section 15, Juvenile Justice Act 2014.

<sup>181</sup> Key Informant Interview, JJO, Eastern Highlands Province, 12 October 2023.



Figure 12: Process of community-based processing conferencing



Source: UNICEF East Asia and Pacific Regional Office, *Diversion not detention: A study on diversion and other alternative measures for children in conflict with the law in East Asia and the Pacific*, 2018, p. 108 – 110

After receiving the file of a child in conflict with the law and the request from the Juvenile/District Court to organize a community-based conference, the JJO conducts a house visit during which they explain what a conference means, what the parties may expect and obtains the consent of the parties. This results in an agreement on how to proceed. Within two weeks the JJO must then submit

the Pre-Sentence Report, noting the consent of the parties to conference. The Pre-Sentence Report will typically include details about the child in conflict with the law and their family situation, views of their family member, the views of the victim and their relatives and the wider community.<sup>182</sup> If the parties have given their consent the Magistrate orders the organization of the conference meeting.

Typically, community-based conferences take place in a community hall, church or other community setting, and usually, only one meeting is held. The participants include:

- the child in conflict with the law;
- their parents/guardians;
- relevant members of the community or extended family;
- the victim(s);
- the victims' community or extended family;
- Village Court Peace Officer, Village Court Magistrate(s);
- Community leaders, pastors or other religious leaders; and
- If the child in conflict with the law is a student, his/her teacher (or principal) is also invited.

The Authorised Facilitator, who is typically a JJO, conducts the conference meeting by inviting participants to introduce themselves, explaining the purpose and rules of the conference, inviting the parties to share their stories about what happened, summarising what has been said, and by inviting the child, their parent/s or guardian/s and the victim to discuss how to repair the relationship, starting with the suggestions of the victim. The facilitator directs the discussion but does not make suggestions themselves. Community members and extended families are not involved in these discussions, typically.

When the parties have come to an agreement, the child formally apologizes to the victim(s) and their community, followed by the victim(s) formally forgiving the child and their community for the offence. Agreements reached through community-based conferencing commonly include similar obligations, i.e. that the child in conflict with the law must apologise, the victim(s) must forgive the child, the parents/guardians of the child in conflict with the law have to compensate and the sharing of a joint meal following the conference. Exceptionally, conferencing agreements include other

<sup>182</sup> Key Informant Interview, State Prosecutor, West Sepik Province, 16 October 2023.

obligations, such as counselling by the church/religious leader. However, as noted in Section 4.2.5 on services below, limited access to support and diversion services often means such opportunities are limited.

To finalise the conference, an agreement is signed by both parties and the Authorised Facilitator.[ According to section 37 of the Juvenile Justice Act 2014, authorized facilitators can include Juvenile Justice Officers, Volunteer Juvenile Justice Officers, Village Court Magistrates or any other person of good standing in the community. In practice, this may include faith-based persons, such as volunteers from Salvation Army or e.g. New Britain New Ireland Mission of the Seventh Day Adventist.<sup>183</sup> This is then sent to the Court for approval within two weeks, with Magistrates typically approving the agreement and formally discharging the case.

The processes involved in conferencing does differ across the country, and indeed often chance on a case-by-case basis depending on the circumstances surrounding the case, however the process outlined above is generally considered to be standard practice by JJOs interviewed as part of the research. ase Study: Boy (16 years old), Port Moresby, National Capital District

### **Case Study: Boy (16 years old), Port Moresby, National Capital District**

In one case reviewed by researchers, the JJO described the case of a 16-year old boy from Port Moresby who stole 700 Kina from his parents. The child's family brought him to the Police Station to report the case. The JJO tried to encourage the case to be diverted at the Police Station where the child was detained but the father refused because he felt the theft was a significant amount of money, and he "didn't care" (his own words) about his child being in detention. The child said to the JJO the reason he stole the money was to pay for a bus fare to get to school and for lunch because he was not given enough financial support from his family.

The case came before the Juvenile Court in the National Capital District, and the Magistrate ordered the JJO to conduct a pre-sentence report to look into the child's background and family circumstances. The Magistrate explicitly asked the JJO to pay attention to whether the child was eating well and had enough support from his parents.

Following the report, the Magistrate ordered that the child be diverted by way of a community-based conference facilitated by the Senior JJO for NCD. At the community based conference, the child explained that he did not feel cared for by his parents, and the parents cried and apologised to their child and promised to take better care of him moving forward. The JJO sent a report back to the Court informing them of the outcome of the conference.

The Court ordered that the implementation of the diversion agreement should be monitored by the JJO for three months. In addition, the Court mandated that the parents attend counselling through the NCD Welfare Office, and that the child abide by a strict curfew (6pm-6am), attend church with his parents and support his mother by undertaking household chores as needed.

After three months the case was discharged, and the child was reportedly doing well and attending church.<sup>184</sup>

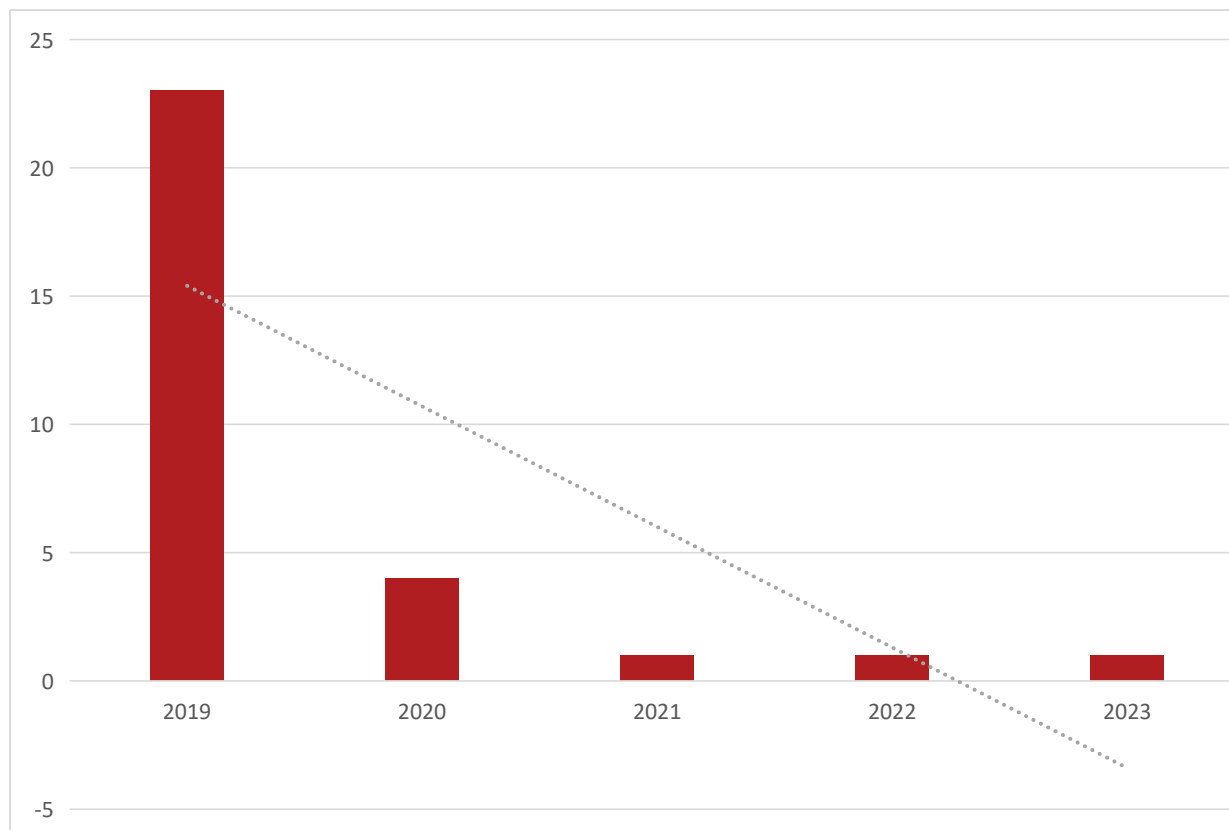
<sup>183</sup> According to section 37 of the Juvenile Justice Act 2014, authorized facilitators can include Juvenile Justice Officers, Volunteer Juvenile Justice Officers, Village Court Magistrates or any other person of good standing in the community. In practice, this may include faith-based persons, such as volunteers from Salvation Army or e.g. New Britain New Ireland Mission of the Seventh Day Adventist.

<sup>184</sup> Case File Review, National Capital District, 16 October 2023.

## Utilisation of Court diversion

According to DJAG data, in 2023, 10 cases of children in conflict with the law were diverted by the Courts – however, this is likely to be an underestimate of the scale of Court-based diversion options, given that only four provinces were represented in the data.<sup>185</sup> For this reason, it was not possible to examine geographical trends in the use of Court data. In terms of trend data, in the one province for which data were reported across all years (the National Capital District), reported cases of diversion dropped from 23 cases in 2019 to just one case in 2023 to just one (see graph below). However, this could reflect the growing use of police diversion (see above), rather than a decrease in the proportion of cases diverted by the courts.

Figure 13: Reported court diversion in NCD (2019-2023)



Source: DJAG

Qualitative data suggests that Juvenile Court Magistrates divert the majority of cases which come before them, either through dismissal of the case or by using JJO-led community based conferencing. The National Court, on the other hand, diverts very few cases of children in conflict with the law, largely owing to the seriousness of the crime committed in these cases.

In practice, the types of case which end up before the Courts are only the most serious offences.<sup>186</sup> District and Juvenile Courts are responsible for cases which are punishable summarily, whilst National Courts are responsible for cases of homicide, rape or any other offences punishable by imprisonment for life (or by capital punishment if the individual was convicted prior to the abolition of the death penalty on 22 January 2022).<sup>187</sup> Typically, lower-level Courts or Prosecutors will only refer the most serious cases to the National Court. However, cases in which crimes occur between different communities are typically not diverted at lower levels, as are cases of crimes against companies.<sup>188</sup> However administrative data on the types of cases diverted by different types of Courts (outside of the Village Court system) is not available.

<sup>185</sup> DJAG., Data Provided to researchers.

<sup>186</sup> Key Informant Interview, National Narcotics Bureau, National, 5 October 2023.

<sup>187</sup> Section 15, Juvenile Justice Act 2014.

<sup>188</sup> Key Informant Interview, Senior Provincial Magistrate, District Court, Western Province, 11 October 2023.

According to the data, it appears that the majority of cases which end up at Juvenile or District Courts are diverted. Typically, only the most serious cases or those perpetrated by repeat offenders are considered ineligible for Court-based diversion as explained by one Prosecutor: “All cases can go for diversion depending on the will of the complainant. If they are repeat offenders then no.”<sup>189</sup>

Drug trafficking offences are considered to be particularly serious and are often considered ineligible for diversion.<sup>190</sup> Very few cases are diverted by the National Court. Sometimes however, more minor cases end up before the District or Juvenile Courts. This is typically because cases have not been settled amicably in the community, either because the victim and child and in conflict with the law are from different communities and so customary practices are not consistent and there is a breakdown in the compensation process or because the child’s family fear restitution by others if the child was to be released.<sup>191</sup>

### 5.2.5 Alternative sentencing

Alternatives to post-trial detention (also called ‘non-custodial sentences’ and ‘alternative sentences’) are alternatives at the post-trial stage that are imposed on children who are formally processed through the criminal justice system. They provide family-based and community-based options for the reintegration, rehabilitation and supervision of children (for example, through the use of behavioural contracts; community service orders; compensation or fines; counselling; drug or alcohol treatment; family group counselling/conferencing; home supervision; intermediate treatment; or probation), rather than sentencing them to any form of detention centre or closed care, treatment or re-education institution.<sup>192</sup> Distinguished from diversion, which can occur at any point until trial completion, alternative sentences are imposed following a formal criminal justice process (i.e. formally entering a guilty plea or a trial), at the point of sentencing.<sup>193</sup>

The value of alternative sentences lies in the safeguarding of children from the deprivation of liberty (i.e. being placed in detention), in line with the CRC.<sup>194</sup> As long as they are focused on the child’s rehabilitation, alternative sentences help to ensure that a child can resume a constructive role in society, thereby preventing recidivism. Global research has shown that non-custodial measures reduce offending by up to 70 percent, whereas time spent in detention increases the likelihood that a child will come back into conflict with the law.<sup>195</sup> Moreover, alternative sentences prove socially and financially more cost-effective than custodial sentences.<sup>196</sup>

In Papua New Guinea, alternative sentencing measures for children in conflict with the law are governed by Part VII of the Juvenile Justice Act 2014. Section 76 of the Act underscores the purposes and principles guiding sentencing, placing a strong emphasis on rehabilitation, accountability and the utilization of the least restrictive measures. Sentences should also be proportionate to the offence, tailored to the juvenile’s circumstances, and focused on reintegration. Section 77 outlines factors for the court to consider during the sentencing process, including the seriousness of the offence, the child’s participation, harm to the victim, age of the victim, their education status, and prior history. Following a guilty verdict for the juvenile and their admission of guilt, community-based conferences (section 78) and pre-sentencing reports (section 79) are used to inform sentencing decisions. Section 80 outlines the measure(s) a court can impose, including but not limited to community service work; counselling sessions; discharge with no further action; a fine not exceeding 500 kina; a good behaviour bond; probation;<sup>197</sup> reprimand; restitution to the victim (both financial and personal service); supervision, and/or vocational training or rehabilitation programme.

189 [ Key Informant Interview, Police Prosecutors Office, NCD and Central, 17 October 2023. ]

190 Key Informant Interview, Juvenile Court Magistrate, NCD, 18 October 2023.

191 Key Informant Interview, Juvenile Court Magistrate, NCD, 18 October 2023.

192 UNICEF East Asia and Pacific Regional Office, Diversion not detention: A study on diversion and other alternative measures for children in conflict with the law in East Asia and the Pacific, 2018.

193 The International NGO Council on Violence Against Children, Creating a non-violent Juvenile Justice system, 2013, [https://defenceforchildren.org/wp-content/uploads/2014/06/InCo\\_Report\\_2013.pdf](https://defenceforchildren.org/wp-content/uploads/2014/06/InCo_Report_2013.pdf)

194 According to article 37 of the CRC, deprivation of a child’s liberty should only be used as a last resort measure, and for the shortest possible period of time.

195 The International NGO Council on Violence Against Children, Creating a non-violent Juvenile Justice system, 2013, [https://defenceforchildren.org/wp-content/uploads/2014/06/InCo\\_Report\\_2013.pdf](https://defenceforchildren.org/wp-content/uploads/2014/06/InCo_Report_2013.pdf)

196 Government of PNG, Juvenile Reintegration and Rehabilitation Policy 2021-2031.

197 Also in accordance with Chapter 381 of the Probation Act 1979.

Alternative sentencing options and processes (post- conviction) Courts in PNG have a range of non-custodial sentencing options available to them including community service, compensation, fines, good behaviour bonds, probation, reprimand, restitution, supervision and suspended imprisonment sentence, as set out in section 80 of the Juvenile Justice Act 2014; however, not all of these options are available in practice in the research locations.

Sentencing decisions and social inquiry reports The JJO and the Probation Officer play a leading role in the administration and oversight of alternative sentences. JJOs are responsible for carrying out

social inquiry assessments; the development of proposed personalized and tailored alternative measures; advocating for rehabilitation and counselling programmes; and supervising the implementation of the alternative measures. Simultaneously, Probation Officers at the Community-Based Correctional Services also assume responsibility for children in conflict with the law receiving alternative sentencing measures, particularly those placed on probation. Guided by the Probation Act 1979, their duties cover the development of pre-sentence reports for courts, supervising probationers and addressing any breaches of probation orders. Whilst the mandate of Probation Officers is clear when it comes to implementation and oversight of probation orders, it is less clear when it comes to the oversight of children placed under supervision orders or good behaviour bonds. The research indicates that the allocation of supervision responsibilities between JJOs and Probation Officers is at the discretion of the court, and based on the operational capacity of both officers at that given time.

An important task carried out by JJOs and Probation Officers is the development of 'social inquiry reports' that are used to inform decision making as to an appropriate alternative sentencing measure. The Juvenile Justice Act 2014 requires that, once a child has been convicted, and before imposing a sentence, the JJO must prepare a written pre-sentence report to be submitted to the courts.<sup>198</sup> The pre-sentence report should contain information regarding the child's attitude, behaviour and maturity; the child's family and social background; the availability of community services in their area; as well as recommendations for the most appropriate sentence.<sup>199</sup> The graph below illustrates the increasing use of pre-sentence reports over the years, underscoring their growing significance in juvenile cases.

<sup>198</sup> Section 79(1), JJA  
<sup>199</sup> Section 79(3), JJA

Figure 14: Pre-sentence reports for children in conflict with the law (2019-2023)



Source: DJAG.

Probation Officers, under section 13 of the Probation Act 1979, may also provide courts with comprehensive reports on the personal history and character of the child in conflict with the law. Additionally, Probation Officers are empowered to offer advice to the court, indicating whether a child is likely to respond positively to probation and specifying any conditions that may be deemed necessary for the child’s release on probation. Ultimately, the aim of these reports is to provide the courts with a more holistic understanding of the individual child, and by delving into the social, psychological, and environmental aspects of a child’s life, these reports contribute to the development of tailored and rehabilitative interventions that address the root causes of delinquent behaviour, promoting the juvenile’s overall well-being and reducing the likelihood of future offences. According to research participants, social inquiry reports are an established process, for example:

*“The judges and magistrates give orders. They give non-custodial sentences. When I write pre-sentence reports, we give recommendations [what goes into this?] details of the child, where he lives, if its sexual offence we emphasise the background and environment the child is growing up in. If he lives in a high-risk environment.”<sup>200</sup>*

*“Yes, every JJO does pre-sentence reports. We have a background information format – this includes their finances, schooling, parents, what the child wants and their future plans. That helps us to recommend it; We recommend appropriate sentencing. Most of the time, it’s probation.”<sup>201</sup>*

While JJOs and Probation Officers maintain supervision and oversight responsibilities, the limited number of justice professionals at the local level and the inadequate resources available to them means they have limited capacity to carry out their supervision duties. For example, while Probation

<sup>200</sup> KII, PBO, Vanimo, West Sepik, 19 October 2023.

<sup>201</sup> KII, JJO, Kiunga, Western Province, 9 October 2023. Senior JJO NCD

Officers are now established in every province excluding Western Province, in practice, each province often relies on a single Probation Officer to handle a diverse range of tasks, illustrating their constrained capacity.<sup>202</sup> The problems associated with a limited workforce and scarce resources is discussed in detail in section 4.5.5. However, in the context of alternative sentences, the lack of professionals and resources to fulfil oversight duties means that children become “lost within the system, because there’s no framework to monitor them and assess them.”<sup>203</sup> To help resolve this capacity issue, volunteer Probation Officers carry out delegated powers under the Probation Act 1979 to carry out this supervisory role at the local level.<sup>204</sup> Furthermore, the organizations where the child is carrying out their order may also supervise the child’s progress and report this back to the JJO/ Probation Officer. However, the limited monitoring and evaluation of the outcomes of alternative sentencing measures makes it difficult to assess their long-term effectiveness and address potential areas for improvement in the juvenile justice system.

### Supervision measures

Within criminal justice systems, there are various mechanisms for supervising individuals who have been convicted of a crime, but are released to undergo their sentence in the community, rather than in detention. In PNG, such supervision mechanisms for children in conflict with the law include supervision orders, probation orders and good behaviour bonds, the definitions of which are outlined in the figure below.

Figure 15: Supervision mechanisms for juveniles in PNG

Good behaviour bonds	Probation	Supervision orders
<ul style="list-style-type: none"> <li>• Require the child offender to be on 'good behaviour' for a period of no more than 12 months.</li> <li>• Also known as a recognizance.</li> <li>• Imposed by courts.</li> <li>• Conditions may be attached.</li> <li>• Does not involve direct supervision. The child is free, but must not come into contact with the law over this period.</li> </ul>	<ul style="list-style-type: none"> <li>• Imposed by courts; on conviction, the child can serve their sentence in the community under supervision.</li> <li>• Involves regular contact with a probation officer who monitors compliance to conditions set by the court.</li> <li>• Conditions attached can include counselling, rehabilitation programmes, or community service.</li> <li>• Non-compliance with probation conditions may lead to more severe consequences, including imprisonment.</li> </ul>	<ul style="list-style-type: none"> <li>• Involves more intensive supervision by a probation officer or other justice professionals.</li> <li>• Typically imposed on individuals who pose a higher risk or have more complex needs than those on probation.</li> <li>• More stringent conditions given i.e. longer community service hours, or greater number of counselling sessions.</li> </ul>

To summarise, all three measures involve monitoring the child upon their return to their community, and impose extra conditions that need fulfilling i.e., community service work or counselling etc. However, the key difference lies in the intensity of supervision mandated, and the severity of other imposed conditions. One significant difference is that good behaviour bonds and supervision orders are governed by the Juvenile Justice Act 2014, whereas probation orders are also carried out in accordance with the Probation Act 1979. Such measures can be valuable in that they encourage

202 Dinnen S., 'Building bridges- law and justice reform in Papua New Guinea' State, Society and Governance in Melanesia Project, Working Paper 01/3, 2010  
 203 KII, JJO, Goroka, Eastern Highlands, 12 October 2023.  
 204 KII, Juvenile Court Clerk, District Court, Goroka, Eastern Highlands, 13 October 2023

accountability and responsibility while allowing children in conflict with the law to remain in their communities, promoting the development of social and life skills essential for their reintegration into society. However, it should be noted that diversion (and alternative sentencing) programmes that focus primarily on controlling behaviour through discipline, fear and surveillance have been found to be less effective. Programmes that operate within a therapeutic rather than a control treatment philosophy are more effective, particularly where interventions are aimed to bring about behaviour change by addressing underlying emotional, behavioural and psychological problems facing children. Therapeutic programmes include: restorative victim-offender mediation; skills building – social skills, cognitive-behavioural techniques, academic and vocational skills building; counselling – individual, group, family – and mentoring; and case management/coordinated services.<sup>205</sup>

In general, it appears that supervision orders in PNG are more focused on controlling behaviour, with less focus on rehabilitation and less grounded in therapeutic practices, as illustrated by the following case example:

### **“What were the conditions of his probation?”**

He still has to report to probation services at required times. No mixing or hanging out with friends. Can't stay out after dark. Not allowed to drink or smoke. Cannot leave the national capital. If he breaches any of the probation conditions, he will be sentenced to a juvenile detention facility. Earlier this year, he went to live with his mum's relatives in another province and enrolled in school over there without informing the probation officer. They called him up and threatened to arrest his mum if he did not report to probation services, so he returned to Port Moresby after two months. He was told that if he breached any of the probation conditions, he would be sentenced to detention, so he is on his best behaviour. No compensation payment was made. The victim's family are from another province where they are used to compensation practices, so they expected that from the offender's parents. However, his parents had no financial or material resources to pay compensation.”<sup>206</sup>

This case illustrates that supervision orders may be quite punitive and focused on controlling the movement of the child, rather than on rehabilitation/addressing the causes of his offending comprehensively.

Typically, attached to supervision measures are specific conditions that need to be fulfilled. These include fines and compensation; community service orders; and counselling and community-based programmes.

Compensation, fines, and restitution are individual measures that are employed in conjunction with other penalties. Monetary fines are remitted by the child in conflict with the law to the court, with a prescribed maximum value of 500 Kina (US\$132.39), in adherence with the Juvenile Justice Act 2014.<sup>207</sup> Conversely, compensation and restitution represent financial redress provided by the child in conflict with the law to the victim. The Juvenile Justice Act 2014 not only grants the Court the authority to mandate restitution for any victim suffering as a result of the offence, involving the return of appropriated items or payment less than 5000 Kina (US\$1323.90),<sup>208</sup> but also, subject to the consent of the child in conflict with the law, permits the Court to direct compensation by way of personal service from the child for any incurred loss, damage, or injury.<sup>209</sup> The financial quantification of fines, compensation and/or restitution is adduced by the courts using social inquiry reports submitted by

<sup>205</sup> Though it should be noted that this evidence was based on a global review of literature to inform a report based in the Eastern Caribbean. Availability of research on good practices in diversion and alternative sentencing in PNG is very limited: UNICEF, *Designing Effective Diversion Programmes: Initiatives from the Eastern Caribbean Area*, 2017. The development of these criteria were informed by Blueprints for Healthy Youth Development, a project of the Institute of Behavioural Science at the University of Colorado Boulder: <https://www.blueprintsprograms.org/about/>

<sup>206</sup> IDI, juvenile who experienced probation, male, 17 years, Port Moresby, 20 October 2023.

<sup>207</sup> Section 80(k), Juvenile Justice Act 2014.

<sup>208</sup> Section 80(i), Juvenile Justice Act 2014.

<sup>209</sup> Section 80(h), Juvenile Justice Act 2014.



the Probation Officer / JJO, which is discussed in detail below. Using such reports ensures that fines/ compensation are set within the means of the child (and their family). The research found that a predominant feature of alternative sentences in PNG is the inclusion of compensation or restitution orders, thus aligning with restorative justice principles. Though, as noted above, compensation/ restitution orders may not address particular risk factors needed to ensure the full rehabilitation of the child and to prevent reoffending.

A **community service order** is when the convicted child is required by the court to perform a specific number of hours of unpaid work or service for the benefit of the community. In PNG, community service orders are most commonly attached to probation and supervision orders. The Juvenile Justice Act 2014 provides that for a community service order, the child in conflict with the law should *“perform community service work under the supervision of a JJO, or a specific person or civil society group that has agreed to supervise the juvenile, for a maximum period of up to 100 hours, and to be completed*

*within a maximum period of 6 months.”*<sup>210</sup> Examples of community service work include: cleaning, gardening and maintenance work on churches, local schools, police stations, and other public/ communal spaces.<sup>211</sup> For minor offences, such as stealing, a child would likely be given 30-60 hours of community work, only raising to the maximum hourly limit for the most serious crimes.<sup>212</sup> When devising community service orders, courts also consider if the child still attends school, because if so, courts offer greater flexibility in the time period to complete community service work. For example, one probation officer discussed how *“If the child is a student, they only do community work during weekend. He has to complete the hours set out, rather than within the set-out period.”*<sup>213</sup> The research also found that in some instances, the convicted juvenile could fulfil their community service order in other villages/communities, in order to save them from humiliation and further stigma in their own community. Both of these examples illustrate the flexibility afforded to juvenile offenders in order to encourage their rehabilitation and reintegration into society.

While a community service order may benefit the community directly and promote restorative justice principles by encouraging offenders to take responsibility, make amends, and build accountability, it is important that the community service is focused on rehabilitation rather than punishment, and that it does not cause harm to or stigmatise the child. It appears that community service orders may be used in a more punitive/stigmatising way in some cases, according to the qualitative data. For example, one community member from a focus group in Buka noted how *“The main point is to teach them that committing offences is wrong. When they are serving the punishment (e.g., cleaning, cutting grass) in the eyes of the community, it is an embarrassing experience. Many don’t like to repeat this, so they stay out of trouble and do not continue to commit crimes.”*<sup>214</sup> Nonetheless, when utilised as part of a rehabilitative programme, community service orders promote the idea that offenders can be reintegrated into society, foster a sense of community and facilitate positive behavioural change in the child in conflict with the law.

As part of an alternative sentencing measure, courts can also mandate that juveniles attend counselling sessions,<sup>215</sup> vocational training or rehabilitation programmes.<sup>216</sup> In regards to counselling, children are referred to organizations that provide counselling sessions, who then assess the child and their needs and develop a tailored counselling plan, the progress and completion of which are reported to the JJO/Probation Officer supervising the child’s order.<sup>217</sup> Children in conflict with the law are also similarly referred to vocational training and rehabilitation programmes to build their skills and facilitate their reintegration back into the community. The amount and quality of programmes on offer will be discussed in detail in the enabling environment analysis section (section 4.5). However, in summary, there are little to no community-based counselling, training or rehabilitation services

210 Section 80(j), Juvenile Justice Act 2014.

211 KIL, Senior Probation Officer, Goroka, Eastern Highlands, 9 October 2023; KIL, Station Commander of Kiunga Police Station, Kiunga, Western Province, 10 October 2023

212 KIL, Senior Probation Officer, Goroka, Eastern Highlands, 9 October 2023

213 Ibid

214 FGD, male community members, ages unknown, Bougainville, 2 November 2023.

215 Section 80(d), Juvenile Justice Act 2014.

216 Section 80 (f), Juvenile Justice Act 2014.

217 KIL, case work counsellor, Eastern Highland Family Voice, Goroka, Eastern Highlands, 10 October 2023

or programmes available in PNG that cater to the needs of children in conflict with the law. This has meant that while these options are available to courts as alternative sentencing measures in law, the lack of availability of such programmes means that these options are not available in practice.

### Utilisation of alternative sentencing

While comprehensive administrative data were not available, according to the qualitative data, the types of cases that receive alternative sentences include: assault, stealing item(s) below the value of 500 Kina, verbal harassment, threatening behaviour, sexual touching or other sexual offences.<sup>218</sup> Cases that would not receive alternative measures are serious offences, including drug smuggling, violent rape and wilful murder.<sup>219</sup> The background of the child and the circumstances of offence committed also appear to be very influential as to whether a child is given a non-custodial sentence. For example,

children who are habitual offenders or those who commit offences in a premeditated and planned manner, are more likely to receive a custodial sentence.<sup>220</sup> It was also reported that if a child did not have a stable home or permanent address, making it difficult to supervise the child's probation, then they would be more likely be placed in custody.<sup>221</sup> Many justice professionals reported that such decisions were made on a case-by-case basis, and factors considered relevant to the decision making include whether the child is a first-time offender; whether they had a stable home environment to support their reintegration; and the child's level of remorse.

According to both the qualitative and quantitative data, probation is an increasingly utilized alternative sentence measure in PNG. For example, a probation officer in Vanimo noted how *"In my experience, not many children go on good behaviour bonds; they are put on probation and we monitor them."*<sup>222</sup> Figure 19 below presents data on the number of children placed on probation compared to those who experience diversion at the police or court level for the years 2019-2023. Not only does the graph illustrate the declining implementation of police diversion and the growing trend in the utilisation of probation, but it also conveys how probation is more frequently utilised than court diversion. This suggests that if a juvenile case reaches the court, it is more likely that an alternative sentence will be imposed, rather than a form of court diversion.

218 KII, Senior JJO, NCD, 5 October 2023; KII, PBO, Vanimo, West Sepik, 19 October 2023.

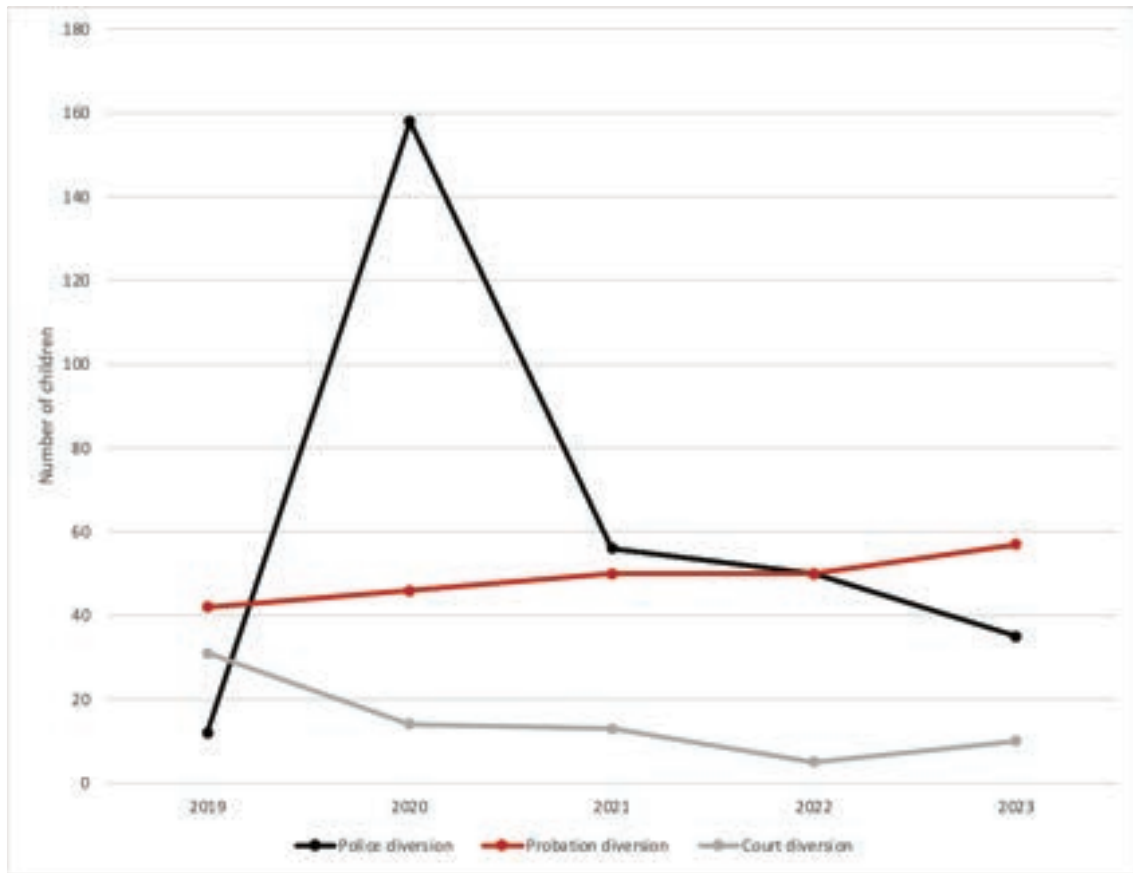
219 KII, Juvenile Police Prosecutor, NCD, 17 October 2023; KII, Senior JJO, NCD, 5 October 2023

220 KII, Senior Provincial Magistrate, District Court, Kiunga, Western Province, 11 October 2023

221 KII, Director of Human Rights, DJAG, Port Moresby, 16 October 2023

222 KII, PBO, Vanimo, West Sepik, 19 October 2023.

Figure 16: Number of children placed on probation, police diversion and court diversion, 2019-2023



Source: DJAG

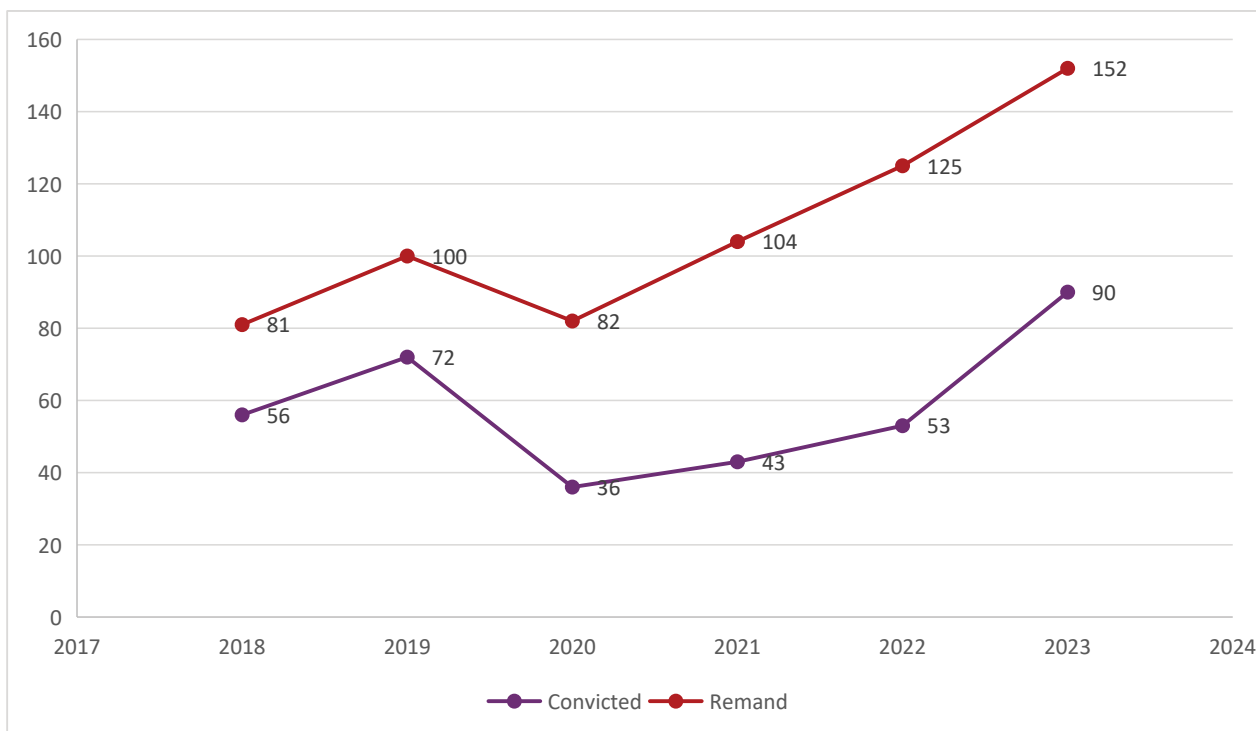
### 5.2.6 Alternatives to detention on remand

While not the focus of this study, data was also collected on alternatives to detention on remand. This is where a child in conflict with the law is awaiting final disposition of their case. According to international standards, children should be released into the care of their families or, where this is not possible, into community-based programmes, and this will typically happen through a bail process. Deprivation of liberty on remand should only be used strictly as a last resort measure.<sup>223</sup>

However, administrative data provided by the Corrections Service shows that in Papua New Guinea large numbers of children remain in detention on remand (see Figure 17 below) and that the number of children in detention on remand has steadily increased since 2020.

223 Article 37(b), CRC.

Figure 17: Children detained in Correctional Institutions, both convicted and remand (2018-2023)



Source: Correctional Services.

In PNG, it appears that children in conflict with the law often spend lengthy periods of time in detention awaiting final disposition of their case. In some cases, this includes children being detained in adult detention facilities. This is particularly true for girls, given the lack of gender-segregated juvenile cells.<sup>224</sup> Where juvenile cells are present, conditions within cells are often far below international standards, with limited access to water, sanitation facilities (including for menstrual hygiene management) and food, and several children reported being beaten by police officers while in detention, as is illustrated by the following quotes from an interview with two boys who were accused of theft of a cuscus (small possum like animal) and one boy’s mother in Western Province:

*“P1: When we got to Kiunga Police Station the police then beat me with firewood at the station. They then locked me in the adult cell where there were 20 other people.*

*P2: The police then came and got me and they took me to the police station and they beat me too and put me in the same cell with my friend. [...]*

*P1: We were in the cell for 3 weeks. They locked us on the Tuesday and on the Saturday; we went to the Catholic Church Child Protection Officer and he interviewed us [as the JJO was away in Port Moresby].*

*P2: In the cell our parents brought food for us. The police gave us dinner but [no other meals, so] in the morning for breakfast our family provided us with things to eat. We were in school and on the job training when it happened so we missed assignments and tests.*

*P1: In the cell it was hot, there was no water to wash. I did not wash the whole time. There was no water to drink. Parents brought us water to drink only. It smelled in the cell and there was no bed, we slept on the floor.<sup>225</sup>*

<sup>224</sup> Key Informant Interview, CIS Superintendent, West Sepik Province, 17 October 2023; Key Informant Interview, District Magistrate, West Sepik Province, 18 October 2023; Observational Visit, Police Station, Western Province, 10 October 2023.

<sup>225</sup> In-depth interview, Two boy children (17 and 18 years old) and mother, Western Province, 11 October 2023.

In rural locations National Court circuits come to certain provinces only once every alternating year, meaning that children can be waiting up to a year on remand or in police-lock up before a Court hearing.<sup>226</sup> One such child interviewed as part of the research described the National Court process as “never ending.”<sup>227</sup>

*The Bail Act 1977* permits the Police to release a child on bail who is in custody at a police station and in the opinion of the Officer in Charge of that Police Station it is not practical to bring the child before a court in reasonable time.<sup>228</sup> Bail is permitted for all people in all but the most serious offences, including serious assault or threat of violence, possession or trafficking of drugs, possession of a firearm or other serious offences detailed in Section 9 of the Act.<sup>229</sup> However, the *Juvenile Justice Act 2014* provides that in the case of children in conflict with the law, those “arrested or detained for an offence [are] entitled to bail at all times from arrest or detention to acquittal or conviction unless the interests of justice otherwise require,” which suggests a more expansive definition of bail eligibility for children in conflict with the law than that envisioned for adults in the *Bail Act*.<sup>230</sup>

Despite clear legal provisions recommending detention only as a measure of last resort and recommending bail as a way to ensure children’s best interests are taken into consideration,<sup>231</sup> in many circumstances children are denied bail and remain in custody. No administrative data is collected on bail, however qualitative data suggests that this is particularly true outside of the National Capital District, where unclear understandings of eligibility for bail combined with punitive views on juvenile offending mean that children often spend protracted periods of time in police custody, as set out above. For example, in Western Province, one Police Station Commander noted that in his station bail eligibility is dependent on age, rather than any of the conditions set out in Section 56(2) of the *Juvenile Justice Act*:

*“Sometimes we release [children in conflict with the law] to the parents – we consider their age as well. If they are 16 or 17 years old we keep them here. For younger children we send [them] home unless it’s a murder case.”<sup>232</sup>*

Children who are considered repeat offenders are also considered by some police officers to be ineligible for bail.<sup>233</sup>

The *Bail Act* also makes an exception to the use of bail in the case where keeping a child in police lock up is necessary for the child’s own protection. Given the high rates of community and tribal violence linked to offending behaviour, Police Officers use of this exception to prevent the granting of bail is particularly common in the Papua New Guinean context:

*“Then I request for police bail if applicable. If the case is very serious I consider the safety of the juvenile – I discuss with the cell guard and say ‘due to these factors I cannot put under custody of parents due to retaliation’. I say please can you make sure nothing happens to that child. Then it comes to District Court Magistrate [and] then they go for bail.”*

Where bail is granted by Police Officers, children are released into parental custody or the care of a responsible person. Often police officers place conditions on police bail to encourage good behaviour, including curfews, church and school attendance and restrictions on interactions with the victim and their family.<sup>234</sup> The exact conditions varied depending on the Police Station granting bail, although were broadly consistent across the provinces studied. In some circumstances children can be placed

226 Key Informant Interview, JJO, Western Province, 9 October 2023.

227 In-depth interview, Boy child (14 years old), National Capital District, 20 October 2023.

228 Section 5, *Bail Act 1977*.

229 Section 56(1), *Juvenile Justice Act 2014*.

230 Section 56(1), *Juvenile Justice Act 2014*.

231 Section 56(2k), *Juvenile Justice Act 2014*.

232 Key Informant Interview, Police Station Commander, Western Province, 10 October 2023.

233 Key Informant Interview, Juvenile Police Prosecutor, NCD and Central, 17 October 2023.

234 Case File Review, Autonomous Region of Bougainville, 3 November 2023; Key Informant Interview, JJO, Western Province, 9 October 2023.

under the care of JJOs.<sup>235</sup> Despite the Act also mandating that children may be placed under the care of the Provincial Child Protection Officer (CPO), no instances were found of CPOs acting as custodians in the course of this research.

One major impediment to the use of police bail for children in conflict with the law was the need for payment (known as ‘cash bail’). Although bail payments ranged in value, the requirement for payment universally had an adverse impact on children and their families:

*“[Bail] is a right but it is dependent on payment. It’s 500 Kina for all offences, including minor offences. For criminal cases it can be much higher, like 1,000 Kina. For children we understand that they can’t afford it.”<sup>236</sup>*

The financial burden of paying for bail was often shared by the child’s immediate and wider family as well as members of the wider community, which had a significant impact on the economic stability of the community. In some low income families, children remained in detention for extended periods whilst families gathered the monies required to pay for bail.<sup>237</sup> For children in street situations and those without parental care, the need for payment was a major barrier to police bail, meaning that in practice they remained in detention until their court date. In other circumstances where parents are themselves were frustrated at their child’s offending, they may refuse to pay bail, with the aim of ‘teaching their child a lesson’. Parental discretion in withholding bail payments was cited repeatedly by community members as a way parents could instil discipline in their children, as one focus group participant in Western Province shared: “If the parents want their child to return back to the village here then they will pay the bail fee to the police.”<sup>238</sup>

The removal of a conditional cash payment for bail would increase the likelihood of children being granted bail. Community-based options for children who are unable to be released back into the care of their family or back into their communities (e.g. for safety reasons) should also be made available to ensure children are not exposed to the risk of detention on remand.

### 5.3 Outcomes of Diversion and Alternative Sentencing Measures

Globally, various evaluations and assessments of diversion programmes have found a range of benefits, not just to the child and their families, but also to the child justice system and in terms of wider social benefits. For children and families, diversion can prevent negative developmental impacts associated with formal judicial proceedings, including stigmatization of the child (and their family) and a criminal record which in turn can prevent deprivation of liberty and reoffending. It can also help to discover the reasons for offending behaviour, provide responsive rehabilitation activities in a timely manner and help the child take responsibility for harm caused.<sup>239</sup> Diversion has also been shown to bring benefits to justice systems by reducing the number of minor and less serious offences clogging up the formal judicial system and allow resources to be focused on reoffenders and/or high-risk offenders, and reducing the number of children placed in detention on remand.<sup>240</sup>

#### 5.3.1 Outcomes for the Children in Conflict with the Law

Limited data on the progress of children through the justice system makes it difficult to have a comprehensive picture of outcomes for children in conflict with the law who undergo diversion

<sup>235</sup> Section 57(bi), Juvenile Justice Act 2014.

<sup>236</sup> Key Informant Interview, Juvenile Police Prosecutor, NCD and Central, 17 October 2023.

<sup>237</sup> Key Informant Interview, Probation Officer, West Sepik Province, 19 October 2023.

<sup>238</sup> Focus Group Discussion, Community Members, Western Province, 11 October 2023.

<sup>239</sup> UNICEF Regional Office for Europe and Central Asia, Diversion of Children in Conflict with the Law from Formal Judicial Proceedings in Europe and Central Asia, Advocacy Brief on Child Justice No. 2, November 2022.

<sup>240</sup> UNICEF Regional Office for Europe and Central Asia, Diversion of Children in Conflict with the Law from Formal Judicial Proceedings in Europe and Central Asia, Advocacy Brief on Child Justice No. 2, November 2022.

and alternative sentencing. No administrative data is collected by JJOs and VJJOs, for example, on the outcomes for children accessing diversion services. However, qualitative data does suggest that outcomes for children who go through diversion or alternative sentencing measures are more positive than those of children who receive a custodial sentence.

Evidence suggests that the use of diversion and alternative sentencing reduces (but does not eliminate) the amount of time children spend in detention, as explained by a Correctional Service staff member: member *“Child offenders are now diverted, so he would only encounter those who breach terms of probation or recidivists turning up in prison after breaching convictions as adults.”*<sup>241</sup>

In addition, it appears that diversion is seen by justice stakeholders who participated in the research to be a positive method of educating and supporting children to be constructive members of society and to make amends for their behaviour within the community context, as one national stakeholder explained:

*“For children, it [diversion] is good. It gives them the opportunity to take ownership for their actions rather than punishing them. It also gives the opportunity for the family to realize their mistake. It gives the child and their family the chance to make amends on how they live and become a responsible child and family. Even though prosecution and conviction is not good for the child, you are doing it for the wider population to deter children from further crime... but for the individual child, it is not very good. I see diversion as a really beneficial part of the juvenile justice system.”*<sup>242</sup>

Several stakeholders also noted that, when at its most effective, the use of diversion resulted in a reduction in the numbers of children coming into conflict with the law repeatedly. Diversion was generally viewed as having the benefit of educating children on the justice system and having given them an insight into the negative repercussions of coming into conflict with the law. At its most effective, diversion also offers an option for children in conflict with the law to be supported to address the root causes of their offending behaviour, through counselling or other support services.<sup>243</sup> Some Magistrates remarked that in their experience after undergoing diversion, children typically did not return to Court having reoffended.<sup>244</sup>

However, other stakeholders did not believe the impact of diversion to be so positive. Several stakeholders across PNG noted that children in conflict with the law often re-entered the criminal justice system either for lower level offences (which would typically be handled in communities or at Village Courts rather than District or Juvenile Courts)<sup>245</sup> or reoffended when they were over the age of 18 and were therefore handled by the adult criminal justice system, as explained by one JJO:

*“They do still reoffend. The cases I have gone through, most of them are 16 year old and 17 years old and when they become 18 they become adults and they offend again. Those who I see ass 14, 15, 16 year olds, there is a fear in them so they reoffend less. The older children get into the very serious offences and some become adults whilst in detention, and other despite out use of diversion they reoffend.”*<sup>246</sup>

According to some research participants, one reason children who had previously been diverted reoffend was due to a lack of services available to support those children during their diversion or alternative sentencing. Limited support services means that in practice children and their families often do not receive access to services in the community and are unable to address the root causes of their offending behaviours,<sup>247</sup> as explained by a national key informant who participated in the study:

241 Key Informant Interview, Correctional Service, Autonomous Region of Bougainville, 1 November 2023.

242 Key Informant Interview, Social, Law and Order Sector, National, 4 October 2023.

243 Key Informant Interview, Juvenile Prosecutor, NCD and Central, 17 October 2023.

244 Key Informant Interview, Senior Provincial Magistrate, District Court, Western Province, 11 October 2023.

245 Key Informant Interview, DJAG, National, 16 October 2023.

246 Key Informant Interview, JJO, Western Province, 9 October 2023.

247 Key Informant Interview, JJO, Eastern Highlands Province, 12 October 2023.

*“Our system says you are free, but we are not helping them [children in conflict with the law] find a place in society again. It needs to look beyond diversion at long term options. We don’t have many vocational centres left here in PNG – only 1 or 2 – where we used to have many options after Grade 6. So children have limited options now if they fail out of school. That’s a missing link. How far is our diversion going to support these children? What happens next? Links need to be stronger with Community Development at provincial level in my view. We know they are responsible but where do they come in for juveniles in conflict with the law?”<sup>248</sup>*

Challenges with accessing services are detailed further in Section 6 of this report.

### 5.3.2 Outcomes for the Efficiency of the Justice System

The implementation of the Juvenile Justice Act since 2014 appears to have had a marked impact on the operation of the juvenile justice system. According to some research participants, the use of diversion has reduced the burden on Prosecutors, Courts and the Correctional Service. While data are limited, it does appear likely that under the Act, fewer children’s cases are progressing through the criminal justice system, leading to a reduction of the number of children who are charged, and sentenced. Data from DJAG in 2023, for example shows that 77 children were diverted by police or the courts, and that 90 children in conflict with the law were convicted. Though it is noted that the use of less formal diversion by police pre-dating the Juvenile Justice Act 2014 is not captured in the data, making a meaningful comparison impossible. Also, this data does not encapsulate community-based or Village Court diversion, which is likely to be far higher. This has a notable impact, as explained by one Prosecutor:

*“...it [diversion] has minimized my workload as a prosecutor. I have seen such a difference since Juvenile Justice Act came in. I have been a prosecutor for 22 years. Before, most children were sent to Bomana and treated like adults but now since 2014, I have seen so much improvement.”<sup>249</sup>*

For Police Officers, the use of diversion also likely reduces their workload, given that a significant number of children’s cases are handled before coming to the attention of Police and a number are also handled by way of police warning. When asked about the impact of diversion on their capacity, one Police Officer responsible for overseeing police lock-up for a children in conflict with the law, summarised the situation as follows: *“It decreases our work. We have plenty of people in the cells normally, but under diversion we have less people to look after. When we have increased juveniles and increased adults it is a lot of work.”<sup>250</sup>*

## 5.4 Access to Diversion and Alternative Sentencing Measures

It is important to ensure that all children can benefit from diversion and alternative sentencing measures. The CRC Committee has stated that “safeguards against discrimination are needed from the earliest contact with the criminal justice system and throughout the trial, and discrimination against any group of children requires active redress.”<sup>251</sup> This means that child justice systems and services, including diversion and alternative sentencing processes and options, must be inclusive of and meet the needs of a wide range of children, irrespective of gender, cultural, religious, ethnic and other identity characteristics, disability and social status. There are many factors that can impact on a child’s access to diversion and alternative sentencing. It should be noted at the outset that there is insufficient quantitative data available to enable a meaningful analysis of the gender and equity dimension of children’s experiences in the child justice system. The qualitative data in this area was also quite limited, though some challenges were noted for children living in remote locations, girls and for children with disabilities in their access to diversion and alternative sentencing.

<sup>248</sup> Key Informant Interview, Constitutional and Law Reform Commission, National, 19 October 2023.

<sup>249</sup> Key Informant Interview, Juvenile Prosecutor, NCD and Central, 17 October 2023.

<sup>250</sup> Key Informant Interview, Cell Commander, Police Station, National Capital District, 16 October 2023.

<sup>251</sup> UN Committee on the Rights of the Child, General Comment No. 24 on children’s rights in the justice system, CRC/C/CG/24, 18 September 2019, para. 40.



In relation to children living in remote locations, these experiences and challenges have been covered in other sections of the report. On the one hand, children in conflict with the law from more rural or remote locations may be more likely to have their case resolved through community-based or Village Court diversion, given their limited access to more formal justice institutions, such as Police and Juvenile/District Courts (as set out in section 4, above). However, these children often do not enjoy the same access to diversion and alternative sentencing options, given the limited network of service providers in more remote locations (as set out in section 4.5.5).

#### 5.4.1 Gender dynamics in the use and experience of diversion and alternative sentencing

Criminal justice responses to girls in conflict with the law require gender-sensitive approaches. The CRC Committee has commented that, “[s]ince girls in the juvenile justice system may be easily overlooked because they represent only a small group, special attention must be paid to the particular needs of the girl child, e.g. in relation to prior abuse and special health needs.”<sup>252</sup> Available research in other countries has demonstrated that the pathways for girls coming into conflict with the law are somewhat different to boys, and that different interventions are needed for girls. Girls who come into conflict with the law have been found to be more likely than boys to have been exposed to sexual abuse and troubled family relationships. They are also more likely than boys to have come from severely dysfunctional families.<sup>253</sup> Criminal justice systems must be responsive to the unique pathways of girls into offending, and to addressing their unique needs.

The research found that the gender of the child in conflict with the law likely has an impact on the use of diversion in PNG. While quantitative data are not available, research participants expressed that very few girls come into conflict with the law. Where they do, there is likely a strong imperative to resolve the matter at the community level. For example, according to a several key informants:

*“Since I have sat in this office, I have not received any complaints of girls committing violence. For young girls, I haven’t received any complaints. This would be my eleventh year at the Family Sexual Violence Unit.”*

##### **Why do you think that is? Do girls not commit crimes?**

*Girls do but it is solved at the community. At the station, I haven’t dealt with any situation regarding girls. For women, yes, above the age of 18, yes, I have dealt with this. Between 16 and above I have.”*<sup>254</sup>

*“We don’t usually have girls...It’s the expectation that girls should behave, regardless of whatever age they should behave and if they do these things bad, they will be taken to the police.”*<sup>255</sup>

*“Girls are scared because of culture, because they come from background where community is strict. The girls are scared to commit crimes in the community.”*<sup>256</sup>

As suggested in the quotes above, the limited number of girls coming into conflict with the law may be due to dominant gender norms which hold girls to a higher standard of behaviour and expect them to comply more strictly with social expectations (including laws).

<sup>252</sup> UN Committee on the Rights of the Child, General Comment No. 10: Children’s rights in juvenile justice, CRC/C/GC/10, 25 April 2007, para. 40.

<sup>253</sup> See Siobhan M. Cooney, Stephen A. Small and Cailin O’Connor, ‘Girls in the juvenile justice system: Toward effective gender-responsive programming’, in *What works, Wisconsin – Research to practice issues*, Issue no. 7, January 2008.

<sup>254</sup> Key Informant Interview, Sergeant, FSV Unit, Vanimo, West Sepik, 19 October 2023.

<sup>255</sup> Key Informant Interview, Probation Officer, Vanimo, West Sepik, 19 October 2023.

<sup>256</sup> Key Informant Interview, Police Officer, NCD and Coastal Region, Port Moresby, 4 October 2023.

Where girls do come into conflict with the law, it appears that these cases are diverted (or otherwise disposed of) quickly, over concerns that they are vulnerable to violence or abuse from inmates and police officers should they need to be placed in police detention. This is compounded by the lack of facilities that cater to the needs of girls, for instance, separate police cells or remand detention facilities, as illustrated by the following quotes from key informants.

*“Girls are diverted more or put in a safe house for children. Girls can’t be in the cell because there are more men in cells, girls can’t be there. It’s a temptation for police officers too. It’s a safety issue for girls to be in cell, they are put in diversion straight away.”<sup>257</sup>*

*“We quickly move girls out of the cells. We try to interview them quickly. Because of their vulnerability in mixed gender cells when they arrive. We do not trust who is taking them. I am very strict with this in my office.”<sup>258</sup>*

*“We have no girls. I do not know where they would go. At the police cells we have a cell for females and at the CS facility. The interesting part is do we remand them and we have a very big challenge because we cannot mix them with men?”<sup>259</sup>*

Where girls are diverted or receive an alternative sentence, it appears that available services do not cater adequately to their needs, as illustrated by a national stakeholder:

*“Even if they went through the system, there is nowhere for girls to be put and they will end up in an adult prison. I haven’t heard cases of them being diverted. It may be that there just are not many cases of girls. So probably they are not well accommodated; they wouldn’t know what to do with them.”<sup>260</sup>*

Moreover, the limited experience of service providers (and justice professionals) at responding to cases of girls in conflict with the law suggests that their unique needs may not be adequately addressed. As an illustration of these points, the data collection found that, in Kiunga, where girls come into conflict with the law, they stay with the FSVU Officer at her home as there is no safe place in the police station to hold them.<sup>261</sup> According to another stakeholder, where girls are in conflict with the law, they will be routinely placed back with their families or, where this is not possible, the Church they belong to will be contacted to provide assistance.<sup>262</sup> Another stakeholder noted that the (female) JJO had to personally provide menstrual hygiene products for a girl who was detained at a police station.<sup>263</sup> These examples demonstrate that the needs of girls who come into conflict with the law are not routinely considered and addressed, and institutions and services do not adequately accommodate their needs.

#### 5.4.2 Children with disabilities and access to diversion and alternative sentencing

The CRC Committee has also expressly stated that “accommodation should be made for children with disabilities, which may include physical access to court and other buildings, support for children with psychosocial disabilities, assistance with communication and the reading of documents, and procedural adjustments for testimony.”<sup>264</sup>

The data indicates that the needs of children with disabilities who come into conflict with the law are not routinely considered or accommodated in PNG. When asked about children in conflict with the law who have disabilities, most research participants reported that they had not received any cases

257 Key Informant Interview, Juvenile Police Officer, NCD, 4 October 2023.0

258 Key Informant Interview, Senior JJO, NCD, 5 October 2023.

259 Key Informant Interview, JJO, Western Province, 9 October 2023.

260 Key Informant Interview, Advisor, JSS4D Programme, DFAT, National, Virtual, 2 November 2023.

261 Key Informant Interview, Community Welfare Officer, Western Province, 9 October 2023.

262 Key Informant Interview, Community Welfare Officer, Western Province, 9 October 2023.

263 Key Informant Interview, Director for Human Rights, DJAG, Port Moresby, 16 October 2023.

264 UN Committee on the Rights of the Child, General Comment No. 24 on children’s rights in the justice system, CRC/C/CG/24, 18 September 2019, para. 40.

involving children with disabilities. They tended to note that children with disabilities are referred into the justice system more commonly as victims of crime. Even as victims, it appears that very limited services are available for these children. Support appears to be provided most frequently by faith-based organisations and NGOs, though it was noted that these service providers can at times operate in isolation; they do not appear to be well connected to the justice system. In addition, it was reported that service providers have very limited knowledge about disability and the needs of children with disabilities.

## 5.5 Enabling Environment Analysis

The implementation of systems, processes and services for diversion and alternative sentencing is embedded in the wider child justice system and relies on a strong enabling environment to support its use. This section considers gaps, barriers, bottlenecks and opportunities for the effective use of diversion and alternative sentencing within the wider child justice system, which is comprised of: a law and policy framework; governance and institutional framework; sufficient human and financial resources; comprehensive services and effective service providers; and information management and reporting systems that enable effective oversight. The effective and coordinated functioning of these system components is necessary for the effective functioning of diversion and alternative sentencing.

### 5.5.1 Law and Policy Framework

PNG has a strong and comprehensive legal framework which supports the use of diversion and alternative sentencing for children in conflict with the law. According to a recent assessment, PNG's child justice laws, including provisions on diversion and alternative sentencing, are largely compliant with international child rights standards.<sup>265</sup> As set out elsewhere in this report, Part III the Juvenile Justice Act 2014 provides a comprehensive and enabling legal framework for the application of diversion to many cases of children who come in conflict with the law. It sets out the purpose<sup>266</sup> and principles<sup>267</sup> for diversion; provides comprehensive and non-restrictive guidelines on which cases may be diverted;<sup>268</sup> defines processes for police<sup>269</sup> and court-ordered<sup>270</sup> diversion; and provides a comprehensive list of diversion measures.<sup>271</sup> The Juvenile Justice Act 2014 also contains important safeguards for children who are diverted, including that children must voluntarily acknowledge responsibility, consent to the diversion measure, that the evidentiary threshold is met and that the use of diversion is in the best interests of the child.<sup>272</sup> In addition, a number of more general procedural safeguards and rights for children in conflict with the law apply to diversion proceedings. However, the right to legal representation for children who are diverted is not entirely clear under the Juvenile Justice Act 2014. For cases that proceed to the Court (for Court-ordered diversion or trial / plea / sentencing), a child has the right to a legal representative at all stages of proceedings,<sup>273</sup> including through assistance from the Public Solicitor where required.<sup>274</sup> However, this only applies to cases that are punishable by imprisonment for two years or more.<sup>275</sup> Also, it seems that the right to legal representation does not apply to police-ordered diversion.

Part VII of the Juvenile Justice Act 2014 contains provisions applicable to the sentencing of a child, setting out the principles of sentencing,<sup>276</sup> guidance to courts on decision making relating to sentencing,<sup>277</sup> and provides a comprehensive range of non-custodial sentences, along with restrictions on the use of custodial sentences for children.<sup>278</sup> It also provides for the development of

<sup>265</sup> Refer to Coram legal analysis publication [when published]

<sup>266</sup> Section 27, Juvenile Justice Act 2014.

<sup>267</sup> Section 28(2) and Section 6, Juvenile Justice Act 2014.

<sup>268</sup> Section 28, Juvenile Justice Act 2014.

<sup>269</sup> Section 40, Juvenile Justice Act 2014.

<sup>270</sup> Section 62, Juvenile Justice Act 2014.

<sup>271</sup> Section 29(1), Juvenile Justice Act 2014.

<sup>272</sup> Section 28, Juvenile Justice Act 2014.

<sup>273</sup> Section 68(1), Juvenile Justice Act 2014.

<sup>274</sup> Section 68(2), Juvenile Justice Act 2014.

<sup>275</sup> Section 68(2), Juvenile Justice Act 2014.

<sup>276</sup> Section 78, Juvenile Justice Act 2014.

<sup>277</sup> Section 77, Juvenile Justice Act 2014.

<sup>278</sup> Section 80, Juvenile Justice Act 2014.

pre-sentencing reports and community-based conferencing to inform sentencing decisions, which is important in ensuring that these decisions are based on the circumstances, needs and best interests of the child in conflict with the law.

The *Juvenile Justice Act 2014* also provides for the establishment of a distinct, specialized justice system for children. This is crucial for supporting the use of diversion and alternative sentencing, the effective use of which relies on specialized institutions and services and specially trained justice professionals who understand the needs of children and the laws in place to provide for these needs.

PNG's system of customary law (under which diversion frequently occurs) also supports diversion. While customary laws vary substantially across the country, in general, they take a restorative approach, favoring community-based resolution practices, such as moots, mediation and compensation processes, which produce outcomes based on custom,<sup>279</sup> rather than a punitive approach. However, it is unclear whether the needs of the child in conflict with the law are centred within these processes, which focus on restoring harmony among families and within the community. It was noted by the Law Reform Commission in PNG that a process is currently underway to codify customary laws throughout PNG.

As noted above, the implementation of diversion has become a core policy priority of the Government in recent years, as evidenced by the recent *Juvenile Justice National Plan 2018 – 2022* which aims to promote the rehabilitation of juvenile offenders and reduce pre-trial detention time by encouraging the exploration of 'good models of diversion' to institutionally strengthen the diversion framework and 'promote diversion' in the form of 'non-custodial measures.'<sup>280</sup> The *Juvenile Reintegration and Rehabilitation Policy 2021 – 2031* provides a framework for the operationalisation of rehabilitation and reintegration programmes for children in conflict with the law.

Unfortunately though, operational challenges have hampered the ability for this strong legal and policy framework to be effectively implemented. As set out in the following sections, implementation of child justice laws has been impacted by insufficient resourcing, limited human resources, challenges in coordination and limited accountability through monitoring and oversight and a lack of robust information management and reporting systems. According to the data, there is also a low level of knowledge of the *Juvenile Justice Act 2014*, particularly among Village Court Officials and police officers, which has undermined the strength of the protective legal framework. Limited supporting instruments are also a gap to the operationalization of the *Juvenile Justice Act 2014*, including accessible tools, guidance and training resources for key professionals (including not only specialized child justice professionals, but also for other actors in the justice system who deal with cases of children in conflict with the law, such as Village Court Officials and non-juvenile police officers). It is also noted that the *Juvenile Justice Regulations* are awaiting adoption.

Unfortunately though, operational challenges have hampered the ability for this strong legal and policy framework to be effectively implemented. As set out in the following sections, implementation of child justice laws has been impacted by insufficient resourcing, limited human resources, challenges in coordination and limited accountability through monitoring and oversight and a lack of robust information management and reporting systems. According to the data, there is also a low level of knowledge of the *Juvenile Justice Act 2014*, particularly among Village Court Officials and police officers, which has undermined the strength of the protective legal framework. Limited supporting instruments are also a gap to the operationalization of the *Juvenile Justice Act 2014*, including accessible tools, guidance and training resources for key professionals (including not

only specialized child justice professionals, but also for other actors in the justice system who deal with cases of children in conflict with the law, such as Village Court Officials and non-juvenile police officers). It is also noted that the *Juvenile Justice Regulations* are awaiting adoption.

<sup>279</sup> Paton, M., 'Decolonising human rights: Customary justice and child protection in Papua New Guinea', 25 *International Journal of Children's Rights* (2017), 622 – 657.  
<sup>280</sup> Papua New Guinea, *Juvenile Rehabilitation and Reintegration Policy 2021-2031*, Section 2.5.

### 5.5.2 Governance Structures

Child justice is a multi-sector issue involving a range of actors, including the government justice and law enforcement sectors, agencies with social welfare and child protection mandates, allied sectors, in particular education and health, and a range of NGO and faith-based service providers. It is important that these actors are working in a coordinated manner at national and provincial levels (to coordinate and oversee the functioning of the system), and at the case level (to ensure a cohesive, joined-up and efficient response to individual children in conflict with the law). A number of frameworks exist to support the coordination of different actors in the justice system, and these play an important role; however, the data indicates that siloed working, exacerbated, at times, by unclear mandates and limited resources hampers coordination, negatively impacting children in conflict with the law.

#### National level coordination

At the national level, the National Juvenile Justice Committee (NJJC) provides a structure for coordination of child justice and related agencies. The NJJC has a long history and was formed in 2003 to drive the child justice reform process that started in 2002.<sup>281</sup> However, the roles and responsibilities of the NJJC were codified in the *Juvenile Justice Act 2014*.<sup>282</sup> The primary roles and responsibilities of the Committee are to oversee and monitor the implementation of *Juvenile Justice Act 2014*, the Juvenile Justice Regulation and other proposed child justice reforms, and are set out in *Section 25 of the Juvenile Justice Act*. The NJJC are also responsible for promoting collaboration between all government departments and agencies and other organisations, agencies and civil society groups involved in implementing the child justice system. In addition, the NJJC's role and responsibilities include:

- Juvenile crime prevention;
- Promoting training initiatives for stakeholders;
- Advising the Director of Juvenile Justice on minimum standards for juvenile institutions and penalties for non-compliance with such standards;
- Sourcing additional funding to further the implementation of the *Juvenile Justice Act*; and
- Monitoring the progress of the system (including the work of *Provincial Juvenile Justice Committees*).

The membership of the NJJC is extensive and includes the Chief Justice; Chief Magistrate; Secretary for Justice; Secretary for Community Development; Secretary for Health; Secretary for Education; Director of Juvenile Justice (of DJAG); Commissioner for Police; Commissioner of the Correctional Service; Office of the Public Solicitor; National Youth Commission; Churches; Women's Groups; Civil Society and other relevant Government organisations on an ad hoc basis as necessary. The NJJC is accountable to the Minister of Justice and is mandated to report annually on the state of child justice services within the country.

The NJJC is an important component of the child justice system, ensuring the coordination of key agencies and actors in child justice; however, limited engagement from several key agencies on the NJJC (most notably, the Police) has somewhat undermined this mandate.

#### Sub-national and case level coordination

At the sub-national level, article 26 of the *Juvenile Justice Act 2014* allows for Provincial Juvenile Justice Committees to be established at the discretion of the Director of the Juvenile Justice

<sup>281</sup> Papua New Guinea Department of Justice and Attorney General., *Juvenile Justice*. Available: <https://www.justice.gov.pg/index.php/2015-04-26-07-32-15/juvenile-justice>, accessed 5 April 2023.  
<sup>282</sup> Article 23.

Service after consultation with the Provincial Administrator of a Province or autonomous region.<sup>283</sup> This includes appointing members of the Committee and determining the Committee's roles and responsibilities.<sup>284</sup> The functions of PJJC include the planning, coordination and implementation of the Juvenile Justice Act within their province, planning and coordinating the local delivery of diversion and rehabilitation of juveniles by relevant Government and community services; sourcing additional funding to support the implementation of the Act and improving the conditions of detention and the welfare of juveniles within the province.<sup>285</sup> However, research showed that in practice, the number of fully functional Provincial Juvenile Justice Committees was limited. In West Sepik Province, the Committee was established in 2021, through a sensitisation workshop, however, it has not met consistently. In Eastern Highlands Province and the National Capital District, the PJJCs have met at least once a year since their establishment in 2019. In the Autonomous Region of Bougainville, the PJJC was established in 2019 and has met once or twice a year since then.

Where PJJCs were in place in research locations, key stakeholders appear to value their role in coordinating the different agencies and service providers, leading to more effective responses to individual cases of children in conflict with the law. For example, as stated by a Juvenile Court Magistrate in NCD:

*"It's enjoyable because we are doing it [working with children in conflict with the law] with commitment, and we can see the outcomes of this. It's teamwork. When I make an order the Clerk drafts it, the JJOs pick it up and do the diversion and come back and give me the report. They see it through to the end. We trust each other to do our bit in our space. I can speak for the team in NCD on this.*

#### **How effective is it in terms of outcomes for children?**

*Because we have a network, and they are in PJJC, it works well for us. When we call them, they are available."*<sup>286</sup>

Coordination at the local level appears to be functioning well in Goroka, where it was mentioned by several stakeholders that cases were effectively managed due to the strong coordination between different government, NGO and faith-based organisations. For example:

*"We have a tight network system in Goroka, we have a networking partner chain here. So it goes to others, the government agencies and NGOs we work together on things. If an organisation requires training on counselling, they'll call on us. If we need someone to tell us about the law, we go to public prosecutor or someone like that to do the awareness with us. Also, family support centre they do rape awareness. We all do our part and work together, and we have a human rights networking committee. We talk about successes and stories we go through and what problems are here."*<sup>287</sup>

However, in other locations, coordination challenges were noted, in particular, in coordinating with the Police. Where police are not well coordinated with other parts of the system, particularly JJOs / Probation Officers, it can lead to children being held for a prolonged period of time in detention on remand. It was noted that no protocols or Memorandum of Understanding were in place, setting out a coordinated framework for police-JJO coordination. For example, according to the following professionals in Vanimo and NCD, police do not effectively coordinate with other key professionals, perhaps driven by limited police resources or limited knowledge:

<sup>283</sup> Section 26 (a), Juvenile Justice Act 2014.

<sup>284</sup> Section 26 (b,c), Juvenile Justice Act 2014.

<sup>285</sup> Government of Papua New Guinea, Juvenile Rehabilitation and Reintegration Policy (2021-2031), 2021, p. 26.

<sup>286</sup> Key Informant Interview, Juvenile Court Magistrate and Clerk, NCD, 18 October 2023.

<sup>287</sup> Key Informant Interview, Counsellor, Eastern Highlands Family Violence, Eastern Highlands Province, 10 October 2023.]

**“Do the police contact you when you receive a child?”** No. They don’t tell me. I am thinking they don’t have access to calling me, maybe they don’t have the credits to call. That means they would have to use their own resources.

### **If not you, who do they contact?**

They’re supposed to contact us first, so we can collect all the info on the child. Then if child ends up in court, we do that.

### **Is there anyone else that has to be notified when child is arrested?**

The Child Protection Officer is only told when it’s a victim. When a child is a perpetrator, the police arrests them, they tell the FSV unit and then they call me.”<sup>288</sup>

“Police need to be trained in the JJ protocol. Their failure up there causes problems for us – if not, children are not processed immediately and left in the cell. They do not handle cases well.”<sup>289</sup>

## **Coordination between child protection and child justice systems**

A critical gap that was identified was the limited coordination between the child protection and child justice sectors, with the two systems appearing to operate in silos. This disconnect is highlighted in PNG’s former National Juvenile Justice Plan,<sup>290</sup> as a critical challenge for the broader child protection and child justice sectors. For example:

### **“Is there effective coordination between the child protection and child justice sectors?”**

It’s quite obvious, there are two separate systems at the national level. At the local level there’s a lack of information and one officer does not know their role has an impact on other work. That’s something that we need to look into. When people create processes and systems, they assume people should know about it automatically, but they do not.”<sup>291</sup>

It was noted that there are no detailed guidelines on how the two systems should operate at the case level and how the role of the JJOs and the Child Protection Officers, in particular, should coordinate in delivering services to children in conflict with the law. This also appears to have led to inconsistencies across the country in how the systems work together, for example:

“In some provinces, the relationship between JJOs and CPOs is very good but in some provinces we need to strengthen it more. What we need to do in my view is have some kind of practice in place to formalise the relationship... In Port Moresby, we have a case currently where a child was forced to steal as the parent couldn’t afford things. They came here and we prepared the report. We conducted a home assessment study report as there could be other factors which influenced the child to commit what he did.”<sup>292</sup>

### **“Can you tell me more about the link between child protection and juvenile justice?”**

I think that’s an area we should collectively work at, so referral pathways become very clear. As it is, we do our business in our own space and there is no connectivity. We need to open up.”<sup>293</sup>

Across the research locations, illustrations were provided of insufficient cooperative working between child justice and child protection professionals, and missed opportunities for cooperative

<sup>288</sup> Key Informant Interview, Probation Officer, Vanimo, 19 October 2023.

<sup>289</sup> Key Informant Interview, Community Welfare Officer, Provincial Government, Western Province, Kiunga, 9 October 2023.

<sup>290</sup> Key Informant Interview, Representative of Office of Children and Family Services, Port Moresby, 18 October 2023.

<sup>291</sup> Key Informant Interview, Constitutional Law Reform Commission, National, 19 October 2023.

<sup>292</sup> Key Informant Interview, Juvenile Court Magistrate and Clerk, NCD, 18 October 2023.

<sup>293</sup> Key Informant Interview, Juvenile Court Magistrate and Clerk, NCD, 18 October 2023.

working. This included Child Protection Officers not being invited to follow up on children who are in detention:

*“I am never taken in to check the juveniles in the cells or jails with the JJO, even though I should be because they are under 18. We need to strengthen relationships with the JJO. I only hear about it later. On paper we should work together on this – once the children are charged.”<sup>294</sup>*

It also included Child Protection Officers not attending court proceedings involving children in conflict with the law, for example, according to a Magistrate in Western Province: “Welfare is not coming to court. They should be, but there are hardly any meetings between them and us. The only interaction with welfare is in child custody cases when they dispute the custody of the child.”<sup>295</sup>

Some examples were also provided of challenges caused by a lack of communication and coordination between the child justice and child protection sectors and institutions, including in a case involving a child with disabilities who was in conflict with the law:

*“We had one deaf female child, but we quickly used special education people to communicate with her so after the translation they gave us a report and said because the man assaulted her, she got a stone and broke his head. She was then released, and the man paid compensation and apologized for what he did. She was not looked after by parents, so we referred to child protection to handle her case. But when we refer to other agencies we do not hear the outcome of the case... The Office of Family Services... should inform us and let us know but they do not. We are still struggling.”<sup>296</sup>*

## Coordination with NGOs

Another gap in coordination is between government justice agencies and NGO / faith-based service providers. While some evidence suggests co-operation among NGOs, the Church and state agencies, particularly in regard to referrals and case conferencing,<sup>297</sup> these efforts lack co-ordination. It appears that organizations operate without an understanding of the full spectrum of services and programmes available within their districts, leading to programmatic overlaps, such as multiple counselling services. Professionals also often find the referral pathway unclear,<sup>298</sup> and collaboration and co-ordination in tackling cases mostly relies on informal relationships between professionals within their respective organization.

### 5.5.3 Capacity and Resources of Duty Bearers

Justice professionals have highlighted significant challenges in executing juvenile justice work and diversion practices due to limited human, technical, and financial capacity. A critical issue identified is the shortage of justice professionals at local and provincial levels, compelling existing staff to undertake multiple roles beyond their designated responsibilities. For instance, it was reported that Magistrates from Kiunga Urban LLG Village Court also function as court clerks and community peace officers,<sup>299</sup> and JJOs in AROB<sup>300</sup> and the Western Province<sup>301</sup> noted how the lack of police officers on the ground meant that juvenile cases were handled inefficiently and not within the required time period.

The scarcity of JJOs nationwide – who have a central role in implementing diversion and alternative sentences is a paramount concern: *“we only have one or two JJOs in each province, and they are not*

294 Ref.

295 Key Informant Interview, Senior Provincial Magistrate, District Court, Western Province, 11 October 2023.

296 Key Informant Interview, JJO, NCD, 5 October 2023.

297 KII, Child Protection Officer, Community Development Office, Vanimo, West Sepik, 20 October 2023; KII, Founder of Kafe Urban Settlers' Women's Association (KUSWA), KUSWA Office, Goroka, Eastern Highlands, 11 October 2023

298 KII, Welfare Officer, Community Development Office, Vanimo, West Sepik, 17 October 2023

299 KII (Group interview), Village Court Officials, Kiunga, Western province, 11 October 2023

300 KII (Group interview), JJOs, Buka, Autonomous Region of Bougainville, 3 November 2023

301 KII, JJO, Western Province, 9 October 2023



*present in all districts and not present where you have police stations.*<sup>302</sup> Lone JJOs often perform multiple roles, such as probation officer, legal advisor and counsellor, stretching their capacity and undertaking tasks for which they are underqualified. There were also some locations, such as Vanimo, where the probation officer informally fulfils the role of JJO, in conjunction with their existing role. The JJO in Goroka described how: *“In terms of division, I’m the only officer, so I have a lot of cases. It would be really good if we have more, maybe one or two to assist me, so that I could focus on the court work, and they can do data entry or smaller tasks. Also, we don’t have a counsellor specialized for the juvenile. They need counselling, I can’t do it all, but right now I try to.”*<sup>303</sup> Efforts have been made to address this workforce capacity challenge, including through the introduction of volunteer JJOs (VJJOs),<sup>304</sup> whose function is to support and complement the work of JJOs at the ward level. In 2020, an MOU was signed between DJAG, the Seventh Day Adventist Mission (SDA) and the Salvation Army in East New Britain, which saw 18 members of the SDA Church trained and appointed as VJJOs.<sup>305</sup> Despite such MoUs, trainings and handbooks, there are still a limited amount of VJJOs on the ground, and many more need to be trained to alleviate the workload challenges faced by JJOs. It is also important to note that VJJOs are a complementary solution, and priority should still be given to recruiting and training JJOs.

Interview participants also reported that there was not enough human capacity at the Village Court level, with magistrates in some locations having to adopt the role of clerk and peace officer as well: *“the double mandate is common here, sometimes even triple.”*<sup>306</sup> The graph below illustrates the disparity in the number of magistrates and clerks in PNG, with a comparably lower amount of magistrates seen in the island regions. Recognizing the various challenges faced at the village court level, there have been greater attempts to build their capacity. The DJAG’s 2021 ‘Crime Prevention through Revitalized Village Court System Strategy’ outlines various goals to strengthen the Village Court system. This has included the recruitment of Peace Officers and Clerks who have been educated to Grade 12, as well as the construction of 84 Village Courts houses in central province, reflecting a commitment to addressing capacity issues at both the infrastructure and personnel levels.

302 KII, Director for Law and Justice Sector and Social Law and Order Secretariat, DJAG, Port Moresby, 4 October 2023.

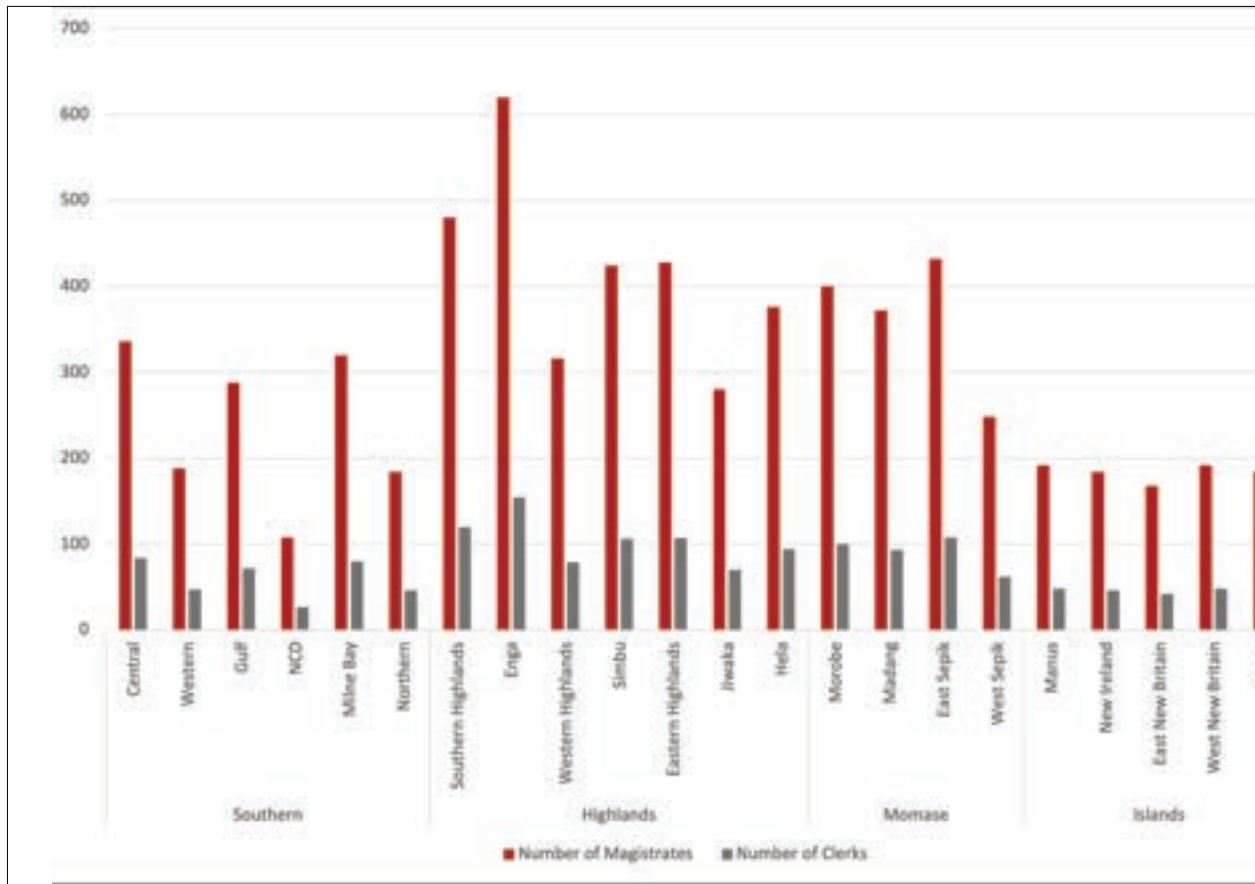
303 KII, JJO, Goroka, Eastern Highlands, 12 October 2023

304 Section 13, Juvenile Justice Act 2014

305 UNICEF Papua New Guinea, Improving access to justice for children and women 2015-2020: final report, 2021

306 KII (group interview), Village Court officials, Kiunga, Western Province, 11 October 2023.

Figure 18: Village Court magistrates and court clerks, per province



Source: DJAG, Village Court Data, 2023.

Professionals engaged in juvenile justice appear to face notable challenges due to a lack of essential technical resources crucial for their tasks, including basic stationery, technology tools, and adequate office space. The scarcity of computers emerged as a prevalent concern, particularly within the police sector,<sup>307</sup> impeding their ability to record cases and report numbers accurately. In response to this need, DJAG and UNICEF purchased 20 laptops for provincial JJOs, so that they could compile pre-sentence reports, diversion reports, supervision reports and monthly statistical data.<sup>308</sup> The recipients laptops all noted provided in facilitating their work. Another critical resource required at the police/JJO level are vehicles or transport budgets for transporting children in conflict with the law to remand centres, courts and other necessary services, as well as for reaching family members quickly after a child’s arrest.<sup>309</sup> Even those with access to vehicles face challenges related to insufficient funds for fuel and necessary vehicle repair.<sup>310</sup> The provision of such essential resources is crucial for enhancing the efficiency and effectiveness of professionals working on juvenile justice matters, as illustrated by a key informant:

*“We don’t have the resources. My office doesn’t have a computer or records, it’s all manual. Sometimes we don’t even write things down if they’re minor, as the manual records are hard to maintain. When I need to take a child to the remand centre or has been convicted, I have to look around for a vehicle to transport them. When there is no vehicle, I have to wait and the JJO will assist me, at the police station I don’t have the vehicle. The juvenile should be transported as soon as possible; this is just a holding cell. We have juvenile who stayed in here for 3 months. 8 Why was he kept here for so long? We didn’t have space or resources to help him.”<sup>311</sup>*

307 KII, Station Commander of Kiunga Police Station, Kiunga, Western Province, 10 October 2023; KII, Police juvenile justice prosecutor, Goroka, Eastern Highlands, 12 October 2023

308 Department of Justice Attorney General, Annual Management Report, 2021.

309 KII, Probation Officer, Vanimo, West Sepik, 19 October 2023

310 KII, Community Justice Advisor, JJS4D, Bougainville, 11 November 2023; KII, JJO, Buka, Bougainville, 3 November 2023

311 KII, Police Juvenile Justice Prosecutor, Goroka, Eastern Highlands, 12 October 2023.

Insufficient funding also poses a significant obstacle to the effective implementation of diversion practices. While comprehensive legal and policy frameworks are in place, there is a lack of financial resources to operationalize and sustain these systems.<sup>312</sup> These budgetary constraints are evident at the provincial level, with a Provincial Juvenile Justice Committee Chair (NCD) noting how *“Funding is the biggest challenge. In my view there is no funding for service provision to support the programme. There is also no funding for the office to conduct meetings.”*<sup>313</sup> A Provincial Law and Justice Manager reported that *“for juvenile justice, probation and parole the budget is 100,000 Kina [approx. \$27,000 USD] for the whole year by the Provincial Government. There is nothing from National Government.”*<sup>314</sup>

NGOs and CBOs face similar limitations, primarily relying on international donors, impacting their ability to deliver effective and sustainable programmes.<sup>315</sup> Child protection professionals at the provincial level also reported a lack of funding,<sup>316</sup> highlighting the finding that children’s programmes in general receive limited funding. To address this issue, greater budget allocation needs to be provided to ensure the effective, efficient and sustainable implementation of programmes and services for children in conflict with the law.

Numerous justice professionals also acknowledged their limited training in the field of juvenile justice, underscoring the pressing need for expanded learning opportunities. This gap was particularly noted at the police level, with one staff member noting how *“most juvenile officers lack counselling training and understanding of juvenile laws and policies.”*<sup>317</sup> Community members in Vanimo noted how the police fail to treat adult and children differently, highlighting the necessity for training to ensure appropriate handling and referral of cases involving children, both as victims and perpetrators.<sup>318</sup> This sentiment and desire for training was also expressed by police officers in Kiunga, Goroka, NCD and Vanimo.<sup>319</sup>

While numerous training opportunities exist for lawyers, judges, and magistrates, facilitated by agencies such as Magisterial Services, UN agencies, and other international organizations,<sup>320</sup> these opportunities remain ad hoc. During the interviews, legal professionals expressed the need for more comprehensive training on child-friendly principles and processes aligned with the Juvenile Justice Act 2014 and the Lukautim Pikinini Act 2015. Village Court officials, in particular, were highlighted as beneficiaries in need of such training, due to their typically lower education levels.<sup>321</sup> The quote from a Juvenile Court Magistrate, below, encapsulates the value such trainings in implementing diversion practices and child-friendly approaches/processes more generally.

*“The Village Court officers and magistrates need to be trained to handle juvenile cases within the community. Even when it comes to children at the district court, the court officers, even the magistrate himself, needs to go through training and awareness on how to better handle cases relating to children. This is a big challenge. The fact that court officers/magistrates don’t have specific skills to handle juvenile justice cases means the juvenile justice cases themselves are adjourned or could be delayed. So, when a child is sent home it can take a long time. So, if the magistrates undergo trainings that can be helpful, they can fast track the process for juveniles.”*<sup>322</sup>

While no data is available on the number of juvenile Police Prosecutors in PNG, literature suggests that a lack of Prosecutors attending Court has also been a barrier to the prosecution of cases in NCD.<sup>323</sup>

312 KII, National Youth Development Authority, Virtual, 7 November 2023

313 KII, PJJC Chairman, DJAG Building, NCD, 17 October 2023

314 KII, Provincial Law and Justice Manager, Kiunga, Western Province, 9 October 2023

315 KII, Director for Law and Justice Sector and Social Law and Order Secretariat, DJAG Office, Port Moresby, 4 October 2023

316 KII, Child Protection Officer, Vanimo, West Sepik, 20 October 2023; KII, Office of Child and Family Services, Port Moresby, 18 October 2023

317 KII, Staff, Bomana Correctional Service, NCD, 17 October 2023

318 FGD, Male community members, aged 51-68, Vanimo Village, 18 October 2023

319 KII, Station Commander, Police Station, Western Province, 10 October 2023; KII, Police Juvenile Prosecutor, Goroka, Eastern Highlands, 12 October 2023; KII, Sergeant of FSV Unit, Vanimo Police, Vanimo, West Sepik, 19 October 2023

320 KII, District Magistrate, Vanimo, West Sepik, 18 October 23; KII, State Prosecutor, Vanimo, West Sepik, 16 October 23

321 KII, Executive Director of Village Courts, Port Moresby, 9 October 2023

322 KII, Juvenile Court Clerk, District Court, Goroka, Eastern Highlands, 13 October 2023

323

Work is also ongoing to train new Police Prosecutors at the Bomana Prosecutions Training School in Port Moresby, with 98 police prosecutors graduating in February 2023.<sup>324</sup>

#### 5.5.4 Community Beliefs and Practices

Community beliefs related to child offending also have a significant impact on the administration of juvenile justice. In particular, community beliefs and practices that support restorative justice are fundamental to the widespread use of mediation as a form of diversion. PNG has a long tradition of restorative justice, and it is enshrined in the 'highest' law in the country: The Preamble to the country's Constitution establishes that consensus as a means to solving problems and emphasises that peace-making is fundamental to a just society. Communities across Papua New Guinea have a complex set of customary laws, and distinct practices for dealing with violations of these shared norms. Handling issues that arise within the family and community through informal mediation and compensation practices (i.e. exchange of goods, cash or materials) helps families to make amends for the harm caused when an offence has been committed. The goal of such practices is the restoration of peace within the community, rather than punishment of the child offender.<sup>325</sup>

Community-based approaches are particularly common in cases involving children in conflict with the law, given that in many communities, children are viewed as an extension of their families, and therefore their crime impacts the communities view of not just that child, but also of their extended family, for example:

"We are a closely knit community. See this bilum bag and all the colours and the patterns... like this twine, we are closely knit together as a community. If it affects one person, then it affects everyone down the line. So, they try to fix and solve issues straightaway, to save community peace."<sup>326</sup>

Such embedded community beliefs drive the use of customary law as a response to children in conflict with the law. Families are viewed as the main mechanism for handling children's behaviour.<sup>327</sup> However, when children break a customary law or commit an offence outside of the home, issues are typically handled by community elders, church leaders or the Village Courts. It appears that community members, especially in rural communities, see progressing with cases through the formal justice system as an affront to such long-standing traditional practices, as one Police Officer articulated: "Going to court is seen as breaking the bond of culture and custom. In Melanesian way we bring people together and they have this understanding... going to court separates families and parties".<sup>328</sup>

In general, community members were clear that even in cases where children in conflict with the law were dealt with through the common law system, in practice communities were primarily responsible for those children and in order for children to return to the community, compensation and mediation between the victim's family and the family of the child in conflict with the law was seen as essential.<sup>329</sup>

A major driver of the use of restorative justice practices is the fear of communal violence and retribution within and between communities. Across Papua New Guinea, but particularly in the Highlands Region, communal violence over alleged criminal behaviour appears to be commonplace. Where a violent crime is committed, including by children, retribution is often the main response, as one Police Officer articulated: "In our culture, if you kill someone, others will come and kill you or your family member [...] Similarly, if a small girl under 6 is raped, the parents of the girl will kill that person if we don't put them in custody..."<sup>330</sup> Compensation, therefore, is not just used as a way to recompense

324 Loop, 98 Cops Graduate from Prosecutors Qualifying Program, 10 February 2023. Available: [www.looppng.com/png-news/98-cops-graduate-prosecutors-qualifying-program-117498](http://www.looppng.com/png-news/98-cops-graduate-prosecutors-qualifying-program-117498), accessed 22 November 2023.

325 Key Informant Interview, KUSWA, Eastern Highlands Province, 11 October 2023.

326 Key Informant Interview, Community Outreach Officer, Eastern Highlands Province, 9 October 2023.

327 Focus Group Discussion, Men, West Sepik Province, 18 October 2023.

328 Key Informant Interview, Child Protection Officer, West Sepik Province, 20 October 2023. [Key Informant Interview, Child Protection Officer, West Sepik Province, 20 October 2023.]

329 [Key Informant Interview, Child Protection Officer, West Sepik Province, 20 October 2023.]

330 Key Informant Interview, Juvenile Police Officer, National Capital District, 4 October 2023.

a victim, but also to restore peace between families and ensure the safety of a child in conflict with the law, as explained by the JJO for Eastern Highlands Province:

*“If you stole my pig, you have to repay me a pig. You have to give something back. If you repay that, then we are finished and we are friends again. But if you do not me pay back, or steal from me again, it means you have an issue with me fundamentally, so we retaliate against you. Tribal fights come from big issues like this which remain unsolved. That’s why Village Courts focus on fixing at small level, because these things escalate to a point where people die.”<sup>331</sup>*

*“In many cases where child is kept in prison/cells due to fear of retaliation, it’s not just about the child’s safety, but the wider families safety too. For example, in the case of a boy penetrating a girl, a girl’s family may penetrate the boy’s female family member in retribution.”<sup>332</sup>*

Despite the longstanding tradition of restorative justice, there remain challenges in handling cases of children in conflict with the law. While many community members expressed that the practice of compensation is positive in that it restores peace, it can also have negative unintended consequences. Children in conflict with the law are not responsible for making compensation payments themselves – instead, families or communities compensate on their children’s behalf, and as a result, many community members feel that children are not made to be accountable to victims directly.<sup>333</sup> Some also view the practice of compensation as an opportunity for communities to *“demand more and make money out of the situation.”*<sup>334</sup>

People from different communities with different languages and traditions have differing practices related to restorative justice.<sup>335</sup> This often leads to a geographical divergence in the handling of similar cases, as one national legal expert explained: *“There is no one way of diverting children in PNG, there are as many methods of diversion as there are communities in this country.”*<sup>336</sup> In the Highlands, for example, compensation payments are particularly high and the use of common law mechanisms for handling cases is limited.<sup>337</sup> In a case handled by a JJO in the National Capital District, a girl child whose family were originally from the Highlands Region was accused of prostitution by her brothers who believed that the best course of action would be to cut their sister’s legs using a knife as a form of punishment.<sup>338</sup>

In urban areas, such as Port Moresby and Lae, where diverse populations live side by side, this challenge is particularly acute, as a Police Prosecutor detailed:

*“We all come from different provinces here and all have different beliefs. There is the Christian view which is common. Some people here have traditional beliefs though – sorcery related things. Because we are from different places, culture is the biggest barrier. I am from the Central Province but my beliefs are very different to others here. Some people are more focused on punishment. Sometimes the culture is a barrier in decision making, it’s a challenge. For example, if someone is murdered from Hela Province then it will be so hard to divert them and will take a long time to make them understand because cultures and traditions are so different.”<sup>339</sup>*

In addition, in communities where inter-marriage is common-place, the decision of how to handle the case of a child in conflict with the law is a particular point of debate.<sup>340</sup> In urban areas, the cases of CICL are often handled according to their parents community traditions and beliefs. In cases of exogamous marriage this challenge is particularly acute. There is no single agreed approach to handling such cases, which can mean that such children are more likely to end up progressing through the formal justice system (see Section 4 for more detail on this).

<sup>331</sup> Key Informant Interview, JJO, Eastern Highlands Province, 12 October 2023.

<sup>332</sup> Key Informant Interview, JJO, Eastern Highlands Province, 12 October 2023.

<sup>333</sup> Key Informant Interview, Juvenile Prosecutor, Eastern Highlands Province, 12 October 2023.

<sup>334</sup> Key Informant Interview, Social, Law and Order Sector, National, 4 October 2023.

<sup>335</sup> Key Informant Interview, Juvenile Police Officer, National Capital District, 4 October 2023.

<sup>336</sup> Key Informant Interview, Constitutional and Law Reform Commission, National, 19 October 2023.

<sup>337</sup> Key Informant Interview, PJC, National Capital District, 17 October 2023.

<sup>338</sup> Key Informant Interview, Senior JJO, National Capital District, 5 October 2023.

<sup>339</sup> Key Informant Interview, Juvenile Prosecutor, National Capital District and Central, 17 October 2023.

<sup>340</sup> Key Informant Interview, Constitutional and Law Reform Commission, National, 19 October 2023.

Despite the restorative justice principles being in place across PNG which support the use of diversion and alternative sentencing for children in conflict with the law, the research also identified conflicting community beliefs and attitudes to child offending that were much more retributive. At times, traditional cultural and religious attitudes take a punitive approach to offending behaviour, in contrast to customary and common law norms (including the Juvenile Justice Act 2014) which promote restorative approaches. Communities believe that perpetrators of crime should be dealt with severely, so as to deter future offending in the community.<sup>341</sup> These attitudes extend to children in conflict with the law, who are often seen as ‘rule breakers’ and ‘badly behaved’. Offending behaviours are typically attributed to low incomes or families living in settlements,<sup>342</sup> poor parenting,<sup>343</sup> a breakdown in traditional culture and ways of life,<sup>344</sup> a perceived increase in the number of single parent families<sup>345</sup> and a lack of discipline within the family (including a decrease in the use of corporal punishment).<sup>346</sup> Some Christian communities also view child offending as a spiritual concern, driven by evil spirits possessing children.<sup>347</sup>

Some stakeholders in the justice system also share these traditional views, which has a particularly negative impact on children. For example, one Police Station Commander in Western Province was clear that in his view the level of criminality he saw children perpetrating meant that they should be treated as adults within the legal system:

*“In terms of justice we can categorise them as a juvenile but the way they commit an offence does not indicate to us they are juveniles in [their] minds. So, I simply told the parents and the Juvenile [Police] Officers here that ‘they know what they did’ which means we have to deal with them the way we deal with adults. You see [for crimes like] rape – how can a juvenile do this? How can a juvenile commit break and enter stealing at 2am? It’s impossible! But I see that they have the knowledge and the skills to commit that offence! How can a juvenile murder somebody? It’s impossible.”<sup>348</sup>*

Punitive attitudes to offending have an adverse impact on the use of diversion measures, as victims and their wider communities are keen to see higher penalties imposed on offenders, including lengthy periods in detention. This is particularly true for crimes viewed as serious, such as sexual penetration and murder.<sup>349</sup>

In addition, awareness of the concept of ‘diversion’ and the *Juvenile Justice Act 2014* remains low across the country, despite being enacted almost a decade ago. A lack of awareness to handling cases of children in conflict with the law compared to their adult counterparts often means that children’s cases are not handled with their best interests in mind, as one participant summarised:

*“People are used to traditional justice, but juvenile justice is new. Parents of the girl [victim] want the boy to go to jail but they don’t realise that there are different approaches to dealing with children under the law.”<sup>350</sup>*

A lack of understanding of the process for handling juvenile cases often leads to tension in communities when children’s cases are diverted and increases the likelihood that communities do not agree when children are diverted by the Police or the Courts. Communities who had experience of such diversion cases expressed a need for increased awareness of and education on the child protection and juvenile justice system amongst children, parents and communities.<sup>351</sup>

341 Case File Review, Autonomous Region of Bougainville; Case File Review, National Capital District, 16 October 2023.

342 Key Informant Interview, Public Prosecutor, Eastern Highlands Province, 12 October 2023; Key Informant Interview, Senior Probation Officer, Eastern Highlands Province, 9 October 2023; Key Informant Interview, Welfare Officer, West Sepik Province, 17 October 2023.

343 Focus Group Discussion, Pastors, Eastern Highlands Province, 10 October 2023.

344 Key Informant Interview, Deputy Chairman of Village Court, National Capital District, 5 October 2023.

345 Key Informant Interview, JJO, Autonomous Region of Bougainville, 3 November 2023; Key Informant Interview, Police Prosecutor, Eastern Highlands Province, 12 October 2023; Key Informant Interview, Police Officer, West Sepik Province, 16 October 2023.

346 Focus Group Discussion, Men, West Sepik, Province, 18 October 2023; Key Informant Interview, State prosecutor, Vanimo.

347 Focus Group Discussion, Pastors, Eastern Highlands Province, 10 October 2023.

348 Key Informant Interview, Station Commander, Police Station, Western Province, 10 October 2023.

349 Key Informant Interview, JJO, Eastern Highlands Province, 12 October 2023.

350 Key Informant Interview, Senior Provincial Magistrate, District Court, Western Province, 11 October 2023.

351 Focus Group Discussion, Community Members, Western Province, 11 October 2023; Key Informant Interview, Catholic Church, Western Province, 9 October 2023

### 5.5.5 Availability of Services and Service Providers

A key enabler for the successful implementation of diversion is the availability of effective community-based programmes/services for children in conflict with the law.<sup>352</sup> Such programmes are essential for a child's rehabilitation and reintegration, which ultimately helps prevent recidivism. As noted above, previous research has found that therapeutic programmes, rather than punitive programmes based on discipline and fear, are the most successful in this regard. Such programmes include restorative victim-offender mediation; skills building (i.e., social skills, cognitive-behavioural techniques, academic and vocational skills); counselling (individual, group, family) and mentoring; and case management/coordinated services.

#### Existing services

In PNG, there are a limited number of CBOs that provide therapeutic services, the most notable of which include: City Mission, Eastern Highlands Family Voice, Femili PNG, Haku Women's Collective and Kafe Urban Settlers Women's Association (KUSWA). The Church and Provincial Community Development Offices also play a significant role in service delivery and referral, and international agencies/organizations such as UNICEF, UNDP, World Vision and Oxfam provide funding to these CBOs, as well as capacity-building for programme delivery.

For children in conflict with the law, the most widely offered service is counselling, with sessions often being mandated by the courts in diversion plans and alternative sentences. Children are referred to local CBOs, who assess the child and decide the number of sessions the child requires (typically ranging from 1-5).<sup>353</sup> Session attendance is then reported to the JJO/Probation Officer/Court supervising the case, until completion of the plan. Some organizations also provide counselling sessions for the child's parents so that they better understand their child's situation and the after-care support required. Church leaders also provide counselling or 'spiritual direction' for children who have mandated church attendance in their diversion plan/alternative sentence, as well children who have come into conflict with the law more generally.<sup>354</sup> Unfortunately, there are evident shortcomings with available counselling services, including the lack of standards, including on what qualifies as counselling, and the lack of formal qualifications/ training for those delivering counselling services. Furthermore, the fulfilment of counselling plans are based on attendance rather than progress, calling into question the effectiveness of these sessions.

On some occasions, it was found that CBOs, church leaders and ward members helped supervise a child's progress in their diversion plan/ probation order.<sup>355</sup> This practice stems from the heightened capacity of these actors at the local level, which enables them to carry out more consistent and effective oversight compared to JJOs and PBOs, who as previously discussed, often contend with overburdened workloads which hinders their ability to carry out these responsibilities consistently. Whilst this type of supervision was infrequently practiced across the provinces, it nonetheless illustrates a promising practice that could help foster a more seamless continuum of care for children in conflict with the law at the community level. CSOs in particular are well positioned to carry out such work, which will be discussed in detail in the following section. However, it should be noted that it is important that cases are 'owned' / managed by the Government agency with the mandate to do so, in order to ensure legal compliance and accountability. Therefore, it is important to ensure that CSOs are closely linked to, and overseen by, Government stakeholders.

<sup>352</sup> UNICEF East Asia and Pacific Regional Office., *Diversion not detention: A study on diversion and other alternative measures for children in conflict with the law in East Asia and the Pacific*, 2018

<sup>353</sup> KII, Case work counsellor, Eastern Highland Family Voice, Goroka, Eastern Highlands, 10 October 2023

<sup>354</sup> KII, Senior JJO, NCD, 5 October 2023; KII, JJO, Goroka, Eastern Highlands, 12 October 2023

355

## Lack of services for children in conflict with the law

Despite the various types of services available in Papua New Guinea, for both children in conflict with the law as well as victims, there are not enough available services to respond to their needs. The Government's Juvenile Rehabilitation and Reintegration Policy 2021 – 2031 notes that, *"There is a lack of services adapted to juvenile circumstances, needs and learning objectives as well as trained professionals who can provide services that target the offence behaviours of juvenile offenders."*<sup>356</sup>

Interview participants across the regions, and at the local, provincial and national levels identified that lack of available services as a limitation to the success of diversion practices:

*"After diversion there is a problem as there are no follow-on activities to assist reintegration in the communities."*<sup>357</sup>

*"If we do diversion and send kids out, then what? We don't have programmes to change the kid."*<sup>358</sup>

*"We don't have a rehabilitation centre here. We don't have services like NGOs we can partner with to help the child, for example to rehabilitate children on probation."*<sup>359</sup>

*"The services are not really in place. The laws are written that the best possible support must be given but the support is not there. You can't give the services to say that the child was diverted successfully."*<sup>360</sup>

The above quotes illustrate the lack of services available to address the at times complex needs of children in conflict with the law. Ideally, children who are diverted or sentenced to an alternative sentencing measure would be able to access a range of different services locally in accordance with their needs (as determined following a comprehensive assessment and the development of a pre-sentence report). A range of services are essential for facilitating a child's rehabilitation and reintegration, and functions to tackle the cause of the child's offensive behaviour. Interview participants identified that a full spectrum of services are needed, in particular: rehabilitation centres that cater to specific needs, including substance abuse or trauma; counselling services with qualified professionals; more frequent awareness prevention programmes that have a wider reach;<sup>361</sup> greater number of safe houses; and skills building sessions so that children are able develop basic life and employment skills.<sup>362</sup>

Not only are there limited services available in PNG, but there are many problems associated with accessing existing services. Most prominently, services and programs are primarily concentrated in urban areas,<sup>363</sup> posing significant accessibility issues. The country's distinctive mountainous terrain introduces logistical and financial impediments to delivering and accessing services in rural areas and islands.<sup>364</sup> This becomes a critical concern given that a considerable portion of the population resides in rural areas. Interview participants in AROB, Goroka, Kiunga and Vanimo, all highlighted geography as a particular obstacle to service delivery and access in their provinces. A village court representative noted how *"the problem is the accessibility of these services... Right down to the village and local levels, these services are needed, but you won't find them available in many locations. As you travel further out, the services become less and less available."*<sup>365</sup> A child protection officer in Vanimo

<sup>356</sup> Government of PNG, Juvenile Reintegration and Rehabilitation Policy 2021-2031.

<sup>357</sup> Kil, Community Justice Advisor, J554D, Bougainville, 11 November 2023

<sup>358</sup> Kil, State Prosecutor, Vanimo, West Sepik, 16 October 2023

<sup>359</sup> Kil, Director for Law and Justice Sector and Social Law and Order Secretariat, DJAG, Port Moresby, 4 October 2023

<sup>360</sup> Kil, Director for Law and Justice Sector and Social Law and Order Secretariat, DJAG, Port Moresby, 4 October 2023

<sup>361</sup> Kil, Police Officer, Port Moresby, 4 October 2023

<sup>362</sup> Kil, Community Justice Advisor, J554D, Bougainville, 11 November 2023; Kil, Community Development Advisor and Child Protection officer, Community Development Office, Goroka, Eastern Highlands, 11 October 2023; Kil, JJO, Goroka, Eastern Highlands, 12 October 2023

<sup>363</sup> Linda Dentana, Implementing juvenile justice and restorative approaches in Papua New Guinea, UNAFEI, March 2017, [www.unafei.or.jp/publications/pdf/RS\\_No101/No101\\_16\\_IP\\_Papua\\_New\\_Guinea.pdf](http://www.unafei.or.jp/publications/pdf/RS_No101/No101_16_IP_Papua_New_Guinea.pdf)

<sup>364</sup> Human Rights Watch, Bashed up: family violence in PNG, 4 November 2015, [www.hrw.org/report/2015/11/04/bashed/family-violence-papua-new-guinea](http://www.hrw.org/report/2015/11/04/bashed/family-violence-papua-new-guinea)

<sup>365</sup> Kil, Executive Director of Village Courts, Port Moresby, 9 October 2023



emphasized the importance of making basic services accessible and affordable to everyone, stressing the need for services to extend to the ward level. They noted, “services are currently demarcated for urban areas only, and this needs to change.”<sup>366</sup>

Service providers also face significant challenges due to inadequate or inconsistent funding, hindering their effective and sustainable delivery of services. Typically, the government allocates funds for state run services and programmes, while CBOs rely on funding from international donors and agencies. However, there was widespread consensus among research participants that current funds are insufficient to adequately support service delivery, with workers at one safe house in Goroka reportedly using their own money to support the children and women there.<sup>367</sup> Even less money was seen to be allocated to services specifically catering to children in conflict with the law.<sup>368</sup> One interview participant noted how financial consistency is the biggest ‘downfall’ for practicing diversion: “There is no consistency and sustainability in NGO funding for services and programming. Because of that we can refer kids places and not know the organizations are gone.”<sup>369</sup>

The lack of funding leads to the inadequate and inconsistent existence of programs or services, leaving very limited options for diversion and alternative sentencing programmes, as illustrated by a key informant: “Judges are detaining children because there are no services. They can make an order on diversion but who will implement it? Having a complete juvenile justice system available in one place is the challenge. You can do your part, but it is a system and if someone else has a responsibility and they are not within reach then we have a breakdown.”<sup>370</sup>

More encouragingly, there were various organizations that offered services specifically for victims and/or those in vulnerable situations, the most prominent of which services are listed in below (see Figure 21). Though very limited referral pathways/MOUs were identified to explicitly enable children in conflict with the law to access these community-based services. Organizations were also reluctant to take on child perpetrators of violence, for the safety of their other stakeholders.<sup>371</sup>

Figure 19: Victim-centred services and programmes available in PNG

Service	Service Description
Awareness and advocacy	In regard to prevention, the Community Development Office, IOs, NGOs and faith-based organizations (FBOs) carry out awareness raising programmes relating to child rights legal and policy frameworks (i.e., the JJA and LPA), programmes and referral pathways. There were some programmes that focused on children and youth specifically carried out in schools, youth clubs and sports teams.
Social welfare assistance	At the provincial level, both the child protection office and welfare office offered social assistance to children who require basic needs fulfilled; including the provision of food and clothes, assistance with school fees, amongst other assistance.

366 KII, Child Protection Officer, Community Development Office, Vanimo, West Sepik, 20 October 2023

367 KII, Founder of Kafe Urban Settlers’ Women’s Association, KUSWA Office, Goroka, Eastern Highlands, 11 October 2023

368 KII (Group), Inspector and Coordinator of detainee rehabilitation programmes and prison industries and Deputy Chair of NJJC, Port Moresby, 9 October 2023

369 KII, Acting Research, Policy and Monitoring Director, Constitutional and Law Reform Commission, NCD, 19 October 2023

370 KII, Executive Director of Village Courts, Port Moresby, 9 October 2023

371 KII (Group), Staff of Femili PNG, Goroka, Eastern Highlands, 10 October 2023

<p>Positive parenting</p>	<p>INGOs and CBOs, such as KUSWA, World Vision and Oxfam, offer group-parenting sessions that aimed to impart parenting skills to parents and guardians, and taught them how to create a positive environment for their child to thrive. These sessions cover sensitive topics such as sex, domestic violence and gender, and some organizations even ran sessions specifically targeted towards men.<sup>372</sup></p>
<p>Mediation</p>	<p>There were many organizations that carried out mediations between victims and their families/perpetrators, most commonly being used in domestic violence and, sorcery accusation-related violence accusations and SARV cases. CBOs are in a strategic position to carry this out, due to their knowledge of local beliefs and customs,<sup>373</sup> as well as their standing within the community, meaning they are in an advantageous position to involve other relevant professionals (i.e., the police, community and church leaders, etc.).</p>
<p>Case management/ support</p>	<p>Some organizations also offer case management support for victims. Femili PNG, for example, offers case management support and carries out case-conferencing: “We think how are we going to solve this case, so we will ask all these co-partners like the police, the welfare officer, the court, the hospital and even the child. We will give the summary of the case, and then other partners will give their side of the story. Then we try to see what we could do and reach a resolution.”<sup>374</sup> Some organizations also support children during the court process, providing counselling or logistical support, with hospital-based social services even providing paralegal support (i.e. drafting summons, court papers and protection orders), for child maintenance or adultery issues.<sup>375</sup></p>
<p>Counselling</p>	<p>Victim focused organizations (i.e. Safe houses and Family support centres), as well as the same organizations who offered counselling for children in conflict with the law, also provide trauma-informed counselling sessions for victims of violence or other issues. However, instead court referrals, for these cases, children are normally referred by police, other organizations, or are brought in by family or community members.</p>
<p>Repatriation Programme</p>	<p>A handful of organizations also offer repatriation programmes, supporting the identification of family members that a child could be repatriated to for their safety, as well as facilitating their journey there. However, such programmes are rare and are hugely dependent on funding and resources available to carry this out.</p>

In addition to the various organizations that offer services and programmes listed above, there were

372 KII, National Director, World Vision, Virtual, 10 October 2023

373 KII, Founder of Kafe Urban Settlers’ Women’s Association (KUSWA), KUSWA Office, Goroka, Eastern Highlands, 11 October 2023

374 KII (Group), Staff of Femili PNG, Goroka, Eastern Highlands, 10 October 2023

375 KII, Head of Social Services, Vanimo Hospital, West Sepik, 19 October 2023

also certain facilities that exist as ‘one-stop-shops’ which provide multiple services in one place. For example, the Nazareth Centre for Rehabilitation in Bougainville, offers counselling, referrals, safe houses, prevention programmes and awareness raising. The Social Services Unit at the hospital also provides counselling, crisis care and legal/case work support.<sup>376</sup> Such centers are typically funded by international donors or agencies, such as the international Women’s Development Agency and Australia’s Department of Foreign Affairs and Trade.

Encouragingly, there is evidence these general or victim-focused services are being utilised to support children in conflict with the law. For example, there were cases reported of girls in conflict with the law being referred to rehabilitation centres<sup>377</sup> or safe houses<sup>378</sup> to access counselling and skill-building services. Moreover, it was observed that in some instances where girls faced arrest, they were directed to safe houses as temporary shelters, instead of being kept in adult/mixed-juvenile cells, in which they would be vulnerable. This illustrates the potential for adapting existing services run by CSOs, who possess the capacity, expertise and standing at the community level to effectively address the needs of children in conflict with the law. Certain services, like the Nazareth Centre for Rehabilitation in AROB, already have established relations with justice stakeholders including the courts, police, and JJOs. This pre-existing network can be strategically utilized to ensure positive outcomes for children in conflict with the law. This adaptive approach therefore holds significant promise in establishing a more comprehensive support system for children in conflict with the law, encompassing their rehabilitation and reintegration into society. However, realizing this potential will necessitate substantial effort from CSOs, including capacity building, training of professionals, securing greater funding and fortifying partnerships with other juvenile justice actors and CBOs.

### 5.5.6 Availability of Legal Representation

Another gap for children in conflict with the law in PNG is access to legal representation. According to the CRC, every child alleged, accused, or recognised as having infringed criminal law has the right to “legal representation or appropriate assistance in the preparation and presentation of his/her defence.”<sup>379</sup> In national law, the right to legal representation is guaranteed under the Constitution of PNG.<sup>380</sup>

However, according to the qualitative data, there are considerable barriers to children in conflict with the law accessing legal representation in PNG. While children receive legal representation from the Public Solicitor if their case reaches the National Court, cases that are heard at the district or juvenile courts, or even at the police station during a child’s arrest and charge, receive no formal legal advice from a lawyer. For children in detention on remand, access to a lawyer is crucial to challenge the detention if it is unlawful, and to ensure an expedited justice process to limit their time in detention.

Various reasons were cited for this, including the price of legal representation being too costly for families to view it as worthwhile at the lower courts,<sup>381</sup> as well as the limited number of and large case load of public solicitors (who are mandated to provide legal aid and assistance<sup>382</sup>) limiting their capacity to handle less severe cases.<sup>383</sup> In an interview with a JJO from the Goroka, she professed that *“To be frank, at the district court, they [the child] does not have legal representation. The public solicitor assists them at the National Court, but at the district court, it is our role is to assist them. They mistake us as lawyers representing the juveniles, but we are just the JJOs.”*<sup>384</sup>

This misconception of JJOs as legal representation was recurrently expressed amongst multiple interview participants, including other justice professionals and children.<sup>385</sup> The challenge presented

376 KII, Head of Social Services, Vanimo Hospital, West Sepik, 19 October 2023

377 KII, Representative, Nazareth Centre, Chabai, Bougainville, 1 November 2023

378 KII (Case file review), Senior JJO, NCD, 16 October 2023

379 Article 40(2)(b)(ii) CRC

380 Article 37(4)e

381 IDI, Parent of child who experienced diversion, Kiunga, Western Province, 10 October 2023; IDI, child who experienced diversion, Female, 17 years old, NCD, 20 October 2023

382 Section 52(d)iii, JJA and Section 68(2)

383 KII, Probation Officer, Vanimo, West Sepik, 19 October 2023; IDI, youth who experienced diversion, male, 19 years old, Goroka, Eastern Highlands, 10 October 2023

384 KII, JJO, Goroka, Eastern Highlands, 12 October 2023

385 IDI, child who experienced diversion, male, 14 years old, Goroka, Eastern Highlands, 12 October 2023; KII, Station Commander of Kiunga Police Station, Kiunga, Western Province, 10 October 2023

is that JJOs lack the requisite legal qualifications for such tasks, potentially resulting in ineffective assistance, and it adds to the already burdensome workload of JJOs.<sup>386</sup> JJOs are also not sufficiently independent of the justice system to be an appropriate option for legal advice and representation. Addressing this issue regarding legal representation is imperative to upholding the rights of children in conflict with the law, and in ensuring a more equitable and just legal process.

### 5.5.7 Information Management, Data, and Reporting

The absence of a clear data management system across the various actors involved in the juvenile justice sector means there is limited data available on the number of children in conflict with the law and their progress through the juvenile justice system. Where data does exist it is often incomplete, delayed or is not disaggregated sufficiently to allow for a detailed understanding of the needs of different groups of children within the juvenile justice system (i.e. different needs of girls, children with disabilities). No data is held on children's outcomes following diversion.

Data held by the DJAG Juvenile Justice Service provides the most complete picture available on the number of children in the juvenile justice system. JJOs are tasked to report monthly data summaries of their interactions with children in conflict with the law to the Director of Juvenile Justice Service, who in turn is responsible for reporting to the Minister of Justice and the Attorney General annually.<sup>387</sup> In line with DJAG practice, the Director also reports to DJAG Senior Management fortnightly and at formal Quarterly Reviews.<sup>388</sup> The Director also reports to the National Juvenile Justice Committee, to support the committee in its mandate to 'share information, review progress and coordinate implementation of juvenile justice initiatives.'<sup>389</sup> However, data held by the Director of Juvenile Justice Service is not sufficiently disaggregated, and is often outdated and incomplete. Data provided to researchers as part of this request shows that for the period 2019-2023 only one province (the National Capitol District) was able to provide DJAG with data on the number of children diverted by police or the courts for all five years. Whilst the quantity of JJOs reporting data has increased since 2019, from 27 per cent of provinces in PNG reporting in 2019 to 67 per cent of provinces reporting in 2023 (see Figure 22 on police diversion reporting), more needs to be done to strengthen the quality of data reported.

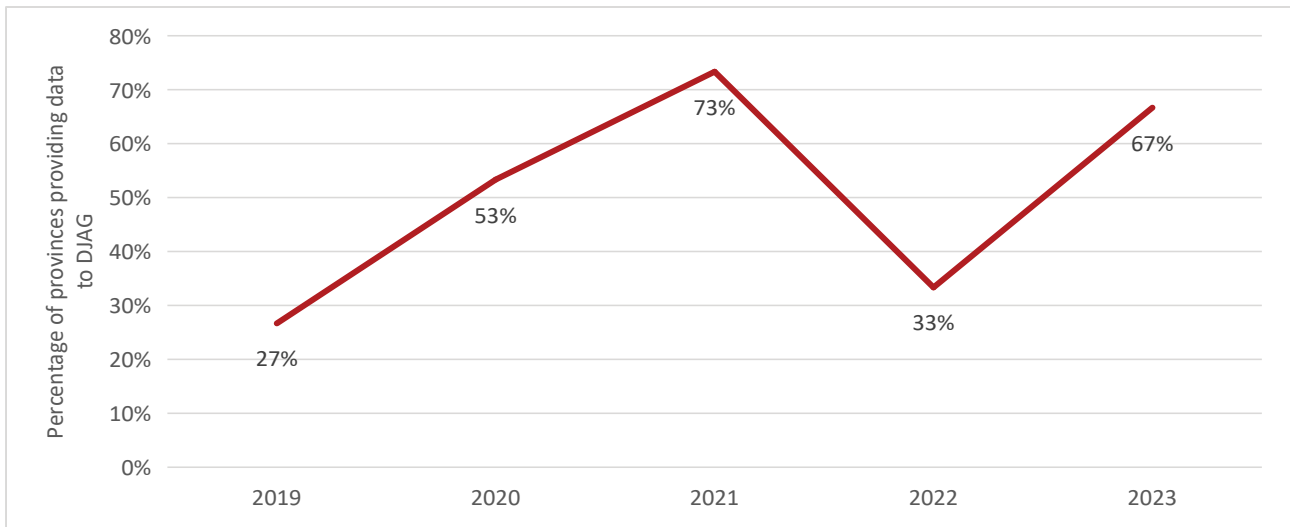
386 KII, JJO, Goroka, Eastern Highlands, 12 October 2023

387 Section 9(2), Juvenile Justice Act 2014.

388 Key Informant Interview, DJAG, National, 16 October 2023.

389 Section 25(d), Juvenile Justice Act 2014.

Figure 20: Percentage of Papua New Guinean provinces providing data to DJAG on the number of cases of CICL diverted by police (2019-2023)



Source: DJAG.

Evidence suggests that in some cases data provided to DJAG may be incomplete. For example, in Western Province, researchers were able to access the data return of the JJO for the province, which noted that *“There are so many unreported cases. Reports from Delta Fly [District] and Middle Fly [District] are unknown. For South Fly [District] reports are with the probation office”* indicating that reported data only accounted for one of the four districts within the Province.<sup>390</sup> In the same province the Village Court Provincial Liaison Officer shared with researchers that of the 48 Village Courts in the province, only six Village Courts had submitted at least one quarterly report this year.<sup>391</sup> The case of Western Province exemplifies some of the challenges faced by DJAG in trying to analyse and utilise data returns to inform policy and programming.

In 2017, a standardised system was introduced to regulate the information gathered by JJOs at the Provincial level. Information on the type of forms provided to JJOs (in English only) and the type of data obtained by such forms are provided in Figure 23 below. These five forms feed directly into the standardised monthly data summaries form mandated by DJAG (last amended 6 May 2021).<sup>392</sup> However, data obtained by researchers as part of this study suggests that whilst such disaggregation is provided to DJAG, collated and analysed data which shows disaggregation is not currently available.

390 JJO, Western Province

391 Key Informant Interview, Village Court Provincial Liaison Officer, Western Province, 10 October 2023.

392 Pictures provided of forms during Key Informant Interview, JJO, Western Province, 9 October 2023.

Figure 20: DJAG Forms for JJO Reporting (2017)

Type of form	Data requested in form
<b>Form 1 - Police Station Visits</b>	Date of visit Name of Police Station Name of child Gender, Age and Home Province of child Offence Date of arrest Name of arresting officer Date of charge Remarks/actions taken
<b>Form 2A - CS Visits (Juveniles convicted)</b>	Date of visit Name of Detention Facility Name Gender/Age Offence Date admitted Sentence term Sentencing Magistrate/Judge Court level Comments/remarks Date of last visit Number of juveniles in CS Number of juveniles accessing education services
<b>Form 2B - CS Visits (Juveniles on remand)</b>	Date of visit Name of Detention Facility Name Gender/Age Offence Date admitted Sentence term Sentencing Magistrate/Judge Court level Comments/remarks Date of last visit Number of juveniles in CS Number of juveniles accessing education services

<b>Form 2B - CS Visits (Juveniles on remand)</b>	Date of visit Name of Detention Facility Name Gender, Age and Home Province of child Offence alleged Date admitted Last Court appearance Next Court appearance Remarks Number of juveniles in CS Number of juveniles accessing education services
<b>Form 3 – Court Work</b>	Date Magistrate Whether it is a Juvenile Court or District Court Court record number Name Gender, Age and Home Province of child Offence Remarks/Notes/Comments Court Orders/Sentence (Section 80)
<b>Form 4 – Police Diversion</b>	Month Province Date Name Gender/Age Offence Diversion Option (Section 29) Police Officer Remarks

Source: Pictures provided of forms during Key Informant Interview, JJO, Western Province

In addition, limited data is available from NGOs and faith-based service providers who support children in conflict with the law.<sup>393</sup>

A further challenge is that in many cases, Government agencies do not keep records of diversion, as they are not required to do so under the Juvenile Justice Act 2014. This is particularly true for community-based diversion, Village Court diversion and police warnings. Those records which do exist in the Police or Village Courts remain largely paper based and are not regularly reported.<sup>394</sup>

### Barriers to information management

There are several barriers to information management in the Papua New Guinean context. Firstly, no records exist of community-based diversion efforts, and data held by Village Courts on diversion are ad hoc and are not reported up to the national level. Under Section 84 of the Village Courts Act 1989, they are required 'as far as is practicable' to keep a record of proceedings. Typically, this involved the maintenance of a log book.<sup>395</sup>

<sup>393</sup> Key Informant Interview, Constitutional and Law Reform Commission, National, 19 October 2023.

<sup>394</sup> Key Informant Interview, Probation Officer, West Sepik Province, 19 October 2023.

<sup>395</sup> Key Informant Interview, Village Court Provincial Liaison Officer, Western Province, 10 October 2023.

The Act prescribes this as a key function of the Village Court Clerk<sup>396</sup> and mandates that records must be certified by a Village Court Magistrate, Clerk or Deputy Clerk.<sup>397</sup> Provincial Village Courts Officers are able to inspect these records under Section 12(a) of the Act. Although not mandated by law, Village Courts are also required by DJAG to submit such data to Village Court Provincial Liaison Officers on a quarterly basis, who in turn submit these to the Village Courts and Land Mediation Secretariat at DJAG Headquarters. Whilst Section 3 of the Act requires the Village Courts and Land Mediation Secretariat at national level to ensure the “efficient management of the system of Village Courts and Village Peace Officers ” it does not mandate the collection of data nor obligate Village Courts to Provide such data. In addition, this data is not however shared internally with the Juvenile Justice Service.<sup>398</sup> Notably, at provincial level, these returns are disaggregated by ‘adult’ and ‘child’, gender and type of offence,<sup>399</sup> but at the national level this data is not disaggregated or analysed, with only cases ‘involving’ children recorded with no specificity as to whether the child was victim or or a child in conflict with the law.<sup>400</sup>

However, data does not reveal the number of diversions conducted for children in conflict with the law, rather it only captured the total number of mediations and compensation cases (including adult cases).<sup>401</sup>

Limited numbers of Village Court Clerks<sup>402</sup> coupled with a limited understanding of reporting responsibilities often means that Village Court data is severely limited. For example, in Western Province the Village Court Provincial Liaison Officer shared with researchers that of the 48 Village Courts in the province, only six Village Courts had submitted at least one quarterly report this year.<sup>403</sup>

A subsequent focus group discussion with the Kiunga Urban LLG Village Court officials revealed that Magistrates in other wards in the LLG had not reported their data to the Chairman, and as a result, data shared with the Village Court Provincial Liaison Officer was largely incomplete.<sup>404</sup> On follow-up the Village Court Provincial Liaison Officer was unaware this data was incomplete.<sup>405</sup>

The largest barriers to reporting data across all Government Departments were practical in nature. These included a lack of access to vehicles, boats or fuel to conduct inspections and monitoring in areas outside provincial capitals, a lack of phone signal and internet to enable data sharing, a lack of laptops, phones and other devices to connect to the internet. For example, in the Autonomous Region of Bougainville, the JJO shared that all data reported to DJAG is based in Buka, rather than the whole Autonomous Region due to a lack of transport<sup>406</sup>. Similar issues were experienced by the JJO in Western Province.<sup>407</sup> These issues are not confined to the Juvenile Justice Service, but also exist in other departments, as exemplified by one Correctional Institution:

*“We have asked for a laptop to capture data so we can give it to the JJO, Commissioner for CS, DJAG and others. We have one flash drive with our data but they chase us when we use the computer in the main building. We need more than just a flash drive. Often we end up submitting reports late because of these reasons. I don’t know how you can help us, but we need the help.”<sup>408</sup>*

Whilst work has been done to remedy this challenge in some areas – such as UNICEF purchasing 20 laptops for JJOs in 2021 to enable them to report to DJAG,<sup>409</sup> further work is needed to fully equip

396 Section 23(a), Village Courts Act 1989.

397 Section 84 (2), Village Courts Act 1989.

398 Key Informant Interview, DJAG, National, 16 October 2023.

399 Data Provided to researchers by PLO, Western Province.

400 Data Provided to researchers by PLO, Western Province.

401 Data Provided to researchers by PLO, Western Province.

402 Focus Group Discussion, Village Court, Western Province, 11 October 2023.

403 Key Informant Interview, Village Court Provincial Liaison Officer, Western Province, 10 October 2023.

404 Focus Group Discussion, Village Court, Western Province, 11 October 2023.

405 Key Informant Interview, Village Court Provincial Liaison Officer, Western Province, 10 October 2023.

406 Key Informant Interview, JJO, Autonomous Region of Bougainville, 3 November 2023.

407 Key Informant Interview, JJO, Western Province, 9 October 2023.

408 Key Informant Interview, Correctional Institution, NCD, 17 October 2023.

409 Key Informant Interview, Correctional Institution, NCD, 17 October 2023.



justice professionals. Several professionals noted that limited human and financial resources are the main barrier to doing so,<sup>410</sup> as shared by one JJO:

“We don’t have up to date internet facilities here – every time I need to use emails I must pay for it myself and it’s 5 Kina. Making calls is also at my cost. We have issues with viruses on computers and storage issues and as a result we lose files. So at the end of every day I make a hard copy as back up files.”<sup>411</sup>

In addition, where resources are available a lack of ICT literacy is a further barrier to accurate reporting.<sup>412</sup>

**Good practice example:** JSS4D, an Australian DFAT funded programme has funded the piloting of an electronic Occurrence Book (using iPads) in three Police Stations in the Autonomous Region of Bougainville with the aim of retaining records track crime trends. Early indications suggest that the programme has been a success, however further work is needed to overcome connectivity issues should the pilot be scaled up.<sup>413</sup>

### Lack of a unified national case management system

One central challenge to information management is the lack of a unified case management system or established process for sharing information within and between Government Departments. Each individual Government Department is responsible for its own reporting and information management system:

- JJOs are responsible for recording cases and reporting to the Director of the Juvenile Justice Service as required.<sup>414</sup> This is typically done monthly.<sup>415</sup> The Director reports to DJAG Senior Management fortnightly and at formal Quarterly Reviews.<sup>416</sup> The Director of the Juvenile Justice Service is also mandated to report to the Minister for Justice annually under Section 9(2) of the Juvenile Justice Act 2014;
- Police Officers report their Station Commander who in turn report to Provincial Police Commanders (PPCs) who in turn report to the Royal Papua New Guinea Constabulary at the national level;<sup>417</sup>
- Juvenile Prosecutors report to their Officers in Charge, who report to the Office of the Public Prosecutor who reports to the Assistant Commissioner of Crimes at RPNGC;<sup>418</sup>
- Village Court Clerks report to Chairman who report to Provincial Village Courts Officers, who in turn report to Village Court Provincial Liaison Officers who in turn report to DJAGs Village Courts Secretariat;<sup>419</sup> and
- Juvenile, District and the National Court report to Magisterial Services; and
- Detention facilities report to Correctional Service.<sup>420</sup>

In many cases, however, reporting cycles are not standardised and aligned, meaning information gathered is often sporadic.<sup>421</sup> Even within DJAG itself, information on children in conflict with the law in the Village Court system is not shared with colleagues in the Juvenile Justice Service and vice versa.

410 Key Informant Interview, Constitutional and Law Reform Commission, National, 19 October 2023.

411 Key Informant Interview, JJO, Western Province, 9 October 2023.

412 Key Informant Interview, Constitutional and Law Reform Commission, National, 19 October 2023.

413 Key Informant Interview, JSS4D, National, 2 November 2023.

414 Section 10 (e.f), Juvenile Justice Act 2014.

415 Picture of Monthly Returns Form, shared by JJO, Western Province, 9 October 2023.

416 Key Informant Interview, DJAG, National, 16 October 2023.

417 Key Informant Interview, Station Commander, Police Station, Western Province, 10 October 2023.

418 Key Informant Interview, Juvenile Prosecutor, NCD and Central, 17 October 2023.

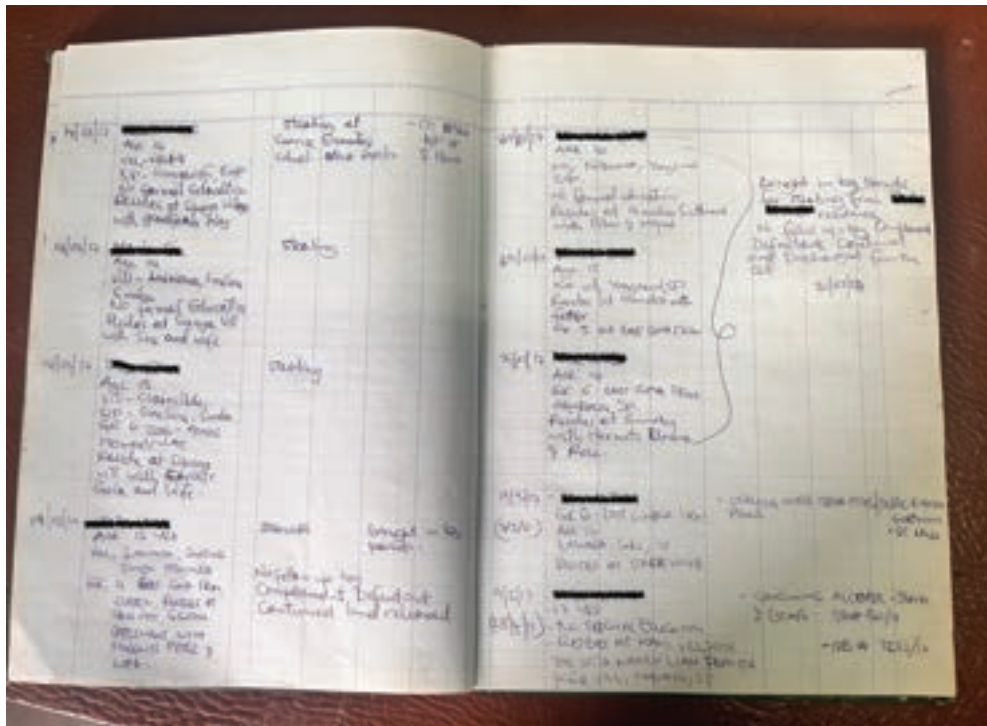
419 Key Informant Interview, Village Courts and Land Mediation Secretariat, DJAG, National.

420 Key Informant Interview, Correctional Institution, Autonomous Region of Bougainville, 1 November 2023; Key Informant Interview, Correctional Service, National, 9 October 2023.

421 Key Informant Interview, Magistrate, Juvenile Court, NCD, 18 October 2023.

The Crimes Directorate is responsible for collating national data on the number of crimes committed within Papua New Guinea, with information collated from available data held by the Royal Papua New Guinea Constabulary and the Office of the Public Prosecutor. However, such records are often incomplete and do not capture diversion cases of children in conflict with the law.<sup>422</sup> For example, limited information is available on the numbers of children diverted at police level. Data on the numbers of children stored in the Juvenile Occurrence Book is not routinely shared with DJAG or the RPNGC. In addition, a lack of standardisation of Occurrence Books often means that data collected is incomplete and does not accurately reflect the action taken in children’s cases, as shown in Figure 24 below, which shows a sample of an Occurrence Book from a Police Station in Goroka, Eastern Highlands Province.

Figure 21: Example page of Juvenile Occurrence Book at Police Station in Goroka (names redacted to protect anonymity)



Source: Picture taken by researchers during data collection on 9 October 2023.

In addition, mechanisms for inter-departmental information sharing remains limited. Whilst the NJJC is mandated to share information and to develop national plans,<sup>423</sup> there are currently no regulations or protocols for information sharing between departments. This lack of information sharing is a particular challenge in diversion cases, given the multiple routes for handling children’s cases and the fact that children may interact with multiple departments, NGOs and faith-based organisations during their diversion, as explained by one DJAG representative who previously held responsibility for data management:

*“Because juveniles are not tracked across entire system, sometimes they do not keep record of the work they are doing – i.e. conversations, following up with service providers. Those are vital activities which are not noted. On case management we said the JJO should open a file when the child comes to the police station – that doesn’t happen at the moment. Currently we only have the major milestones on file – for example when a probation order is made or pre-sentencing reports. JJOs carry so much information in their head but it needs to be on paper.”<sup>424</sup>*

422 Key Informant Interview, Juvenile Prosecutor, NCD and Central, 17 October 2023.

423 Section 25 (c, d), Juvenile Justice Act 2014.

424 Key Informant Interview, DJAG, National, 16 October 2023.

Not only does this impact on the work of JJOs and other justice professionals handling children's cases day-to-day, but on a national level this also presents a challenge for the NJJC and other policy-makers tasked with understanding how children progress through the juvenile justice system, and is a major barrier preventing them from making informed decisions and planning for the development of the juvenile justice system.

## 6. CONCLUSION AND RECOMMENDATIONS

PNG has in place a comprehensive legal framework and basic system for the implementation of various diversion methods and alternative sentencing. The Government has shown strong commitment to the implementation of diversion and alternative sentencing for children in conflict with the law, and existing community practices and customary law systems support a restorative approach to justice. The study found that various forms of diversion and alternative sentencing are being utilised across the research locations. This includes community-based mediation which is guided by cultural norms and restorative justice principles, involving mediations carried out between conflicting parties and the subsequent settlements that have proven effective at resolving issues and securing peace within the community. Mediation through the Village Courts follows a similar process, but perhaps applies a more child-friendly approach due to the training received by Village Court officials. Village Courts offer a localized and culturally sensitive approach to dispute resolution, aligning with the diverse traditions across the different provinces. However, concerns regarding the Village Court system persist, such as magistrates' limited knowledge of the law and, at times, their overstepping of their jurisdiction, leading to failures in referrals to higher courts when necessary. Police diversion is used the application of various measures, including warnings, parental custody, police mediation, and referral to the Village Court. Court-based diversion encompasses diversion measures that are implemented by the juvenile courts, district courts and national courts, where only the most serious offences are considered ineligible for diversion.

A notable gap, however, is the limited availability of more rehabilitative or intensive programmes for children in conflict with the law who are vulnerable or at risk of reoffending. While restorative approaches may be appropriate for many children, some children will require more intensive support, for example, counselling, family therapeutic interventions, drug and alcohol treatment programmes, access to economic strengthening and so on. It is important that these services are available as options to children in conflict with the law where required, through effective, coordinated working with child protection and social welfare services, agreements with NGOs, CSOs and faith-based organisations

The enabling environment for diversion and alternative sentencing contains some gaps and barriers, as well as opportunities. Despite a robust legal framework and rehabilitation policies, implementation challenges and a lack of awareness among professionals underscore the need for improved knowledge dissemination and training. The varied application of customary law in diversion practice may lead to inconsistencies with the child's best interests, highlighting the ongoing need to codify customary laws. Whilst existing national coordination structures support multi-agency collaboration, challenges persist at the sub-national level, including the absence of established referral pathways and limited linkage with child protection services. The research also found that not only do children have limited access to legal representation in PNG, but juvenile justice services across the board possess limited human, technical and financial capacity, revealing a need to strengthen capacity across the system. Moreover, the country-wide lack of data has been an impediment to understanding the true picture of diversion and alternative sentencing in PNG. This underscores the need to better build data systems which can be used to inform more targeted interventions and responses.

### Recommendations

The following recommendations are suggested, based on the research findings. These are structured according to the opportunities, as well as the gaps and barriers that were identified in the enabling environment for diversion and alternative sentencing.

Thematic Area	Recommendations
<b>Access to Services</b>	<ul style="list-style-type: none"> <li>• Increase services available for children in conflict with the law, and bridge gaps in access to those in rural locations.</li> <li>• Enhance understanding of the distinct needs for girls in conflict with the law, and develop services that respond to their requirements.</li> <li>• Increase services tailored for children with disabilities.</li> <li>• Empower Village Courts to formally refer children to rehabilitation programmes or services.</li> <li>• Pilot an in-depth family-based support service for children who are diverted. This could be achieved by identifying a community-based organisation / social welfare service who have the capacity to respond to children in conflict with the law who have more complex needs (e.g. problems with family relationships, family violence, non-attendance at school and other educational needs, economic needs etc.); developing a referral protocol for police, community leaders, Village Courts and the Judiciary for children who are diverted into the programme; developing case management tools for service providers to effectively work with children in conflict with the law and their families; providing training and coaching to referral bodies and service providers to effectively respond to children in conflict with the law who have more complex needs; and monitoring the results of the pilot with a view to rolling out the pilot into other locations.</li> </ul>
<b>Legal framework</b>	<ul style="list-style-type: none"> <li>• Conduct further research to explore cultural variations across provinces and their implications on community-diversion practices.</li> <li>• Accelerate efforts to codify customary laws to create greater consistency in the application of diversion measures.</li> <li>• Develop clear operating procedures / guidelines and referral pathways for police diversion to ensure consistency of handling cases of children in conflict with the law.</li> <li>• Develop linkages between community-based and Village Court diversion and the formal / state justice system, so that referrals are made from one justice system to another where appropriate to the circumstances of the individual case, and to share learning between the systems.</li> </ul>

<p><b>Training and knowledge dissemination</b></p>	<ul style="list-style-type: none"> <li>• Implement comprehensive, multi-sector pre-service and in-service training for justice and other professionals to strengthen their knowledge on juvenile justice and the relevant legal frameworks, services and referral pathways.</li> <li>• Develop a comprehensive and accessible manual / toolkit on diversion processes for justice and other key professionals.</li> <li>• Provide further training to Village Court officials so that they have the capacity to conduct juvenile cases in a gender-sensitive, child-friendly manner, and refer cases to the higher courts when necessary. Provide training sessions and resources in an accessible manner.</li> <li>• Provide awareness raising programmes at the local level, so that community members are aware of the justice process and of the services available to them</li> </ul>
<p><b>Co-ordination</b></p>	<ul style="list-style-type: none"> <li>• Strengthen referral pathways for children in conflict with the law.</li> <li>• Strengthen co-ordination between justice agencies and NGOs to improve service delivery and referral, in particular, at the case level, between Village Court Magistrates and Officials and VJJOs/JJOs.</li> <li>• Develop coordinated approaches and referral mechanisms between the child justice and child protection systems, to ensure comprehensive social welfare and protection services for children who are diverted or who are undergoing alternative sentences.</li> </ul>
<p><b>Resourcing / capacity building</b></p>	<ul style="list-style-type: none"> <li>• Invest in greater capacity building across all levels of the juvenile justice system, addressing human, technical and financial challenges currently present. In the interim, consider multi-skilling key professionals (e.g. Child Protection Officers) to support the VJJO role.</li> <li>• In particular, address the shortage of JJOs/PBOs at the local level to enhance follow-up and supervision of children under alternative sentencing.</li> <li>• Establish more juvenile courts and appoint more Magistrates who are specialized in juvenile justice matters.</li> <li>• Improve conditions within juvenile cells so that they are aligned with international standards, especially in rural areas.</li> <li>• Address gender specific challenges, including the establishment of gender-segregated juvenile cells, and expediting diversion process for girls to prevent prolonged detention.</li> </ul>

<p><b>Data Management</b></p>	<ul style="list-style-type: none"> <li>• Implement a unified, systematic data collection system within the Department of Justice and Attorney General’s Office, to track and analyse trends on diversion, alternative sentencing and juvenile justice more generally.</li> <li>• Strengthen data sharing practices between the Village Courts Secretariat and the Juvenile Justice Service. Protocols should be developed to strengthen inter-departmental information sharing between and within Government Departments.</li> <li>• Provide technical resources to JJOs, VJJOs, Police and Courts (including Village Courts), such as computers/mobile phones, phone credit, transportation and internet access, to enable accurate and timely data reporting.</li> </ul>
-------------------------------	--

## 7. ANNEXES

### Annex A: Data Collection Tools

#### National Key Informant Interview Tool

<b>Participant job title:</b>	
<b>Government Agency/Organisation:</b>	
<b>Location:</b>	
<b>Name of researcher(s):</b>	
<b>Date:</b>	
<b>Time:</b>	
<b>Gender of participant:</b>	
<b>Notes:</b>	

*Thank you for participating in the interview, we really appreciate you taking time out of your busy schedule to speak with our team. I am sure your insights will be very helpful as we continue our work.*

*Introduce yourself.*

*Introduce study – The Government of PNG and UNICEF Papua New Guinea has commissioned Coram International to carry out a ‘deep dive’ study on the use of diversion and alternative sentencing for children in conflict with the law in Papua New Guinea (PNG). The purpose of the research is to assess the use of diversion and alternative measures for children in conflict with the law and to explore to what extent diversion is being offered in across the country, what those measures consist of and the effectiveness of such efforts.*

*Go through the information sheet and consent form and ask if there are any questions. In particular, explain that participation is voluntary and that participants may discontinue their involvement at any time. Gain informed consent and advise participants about anonymity. In case participant has not read the information and consent form, read/explain to participant its intentions and contents.*

*Ask if there are any questions before commencing.*

#### Introduction

- 1. Could you please tell me about the mandate or role of your Ministry / Department / NGO?  
What is its mandate in relation to child justice issues?**
- 2. Which other Ministries / Departments / NGOs do you work with in relation to child justice?**

#### Child justice context

- 3. What are the common types of offences for which children come into conflict with the law in PNG?**
  - the types of offending behaviour vary by province / location, gender, age etc.?
- 4. What is the profile of children who typically come into conflict with the law?**
  - In terms of gender, age, locality, family and social context, education engagement etc.
- 5. Why do children offend? i.e. what are the key drivers of children coming into conflict with the law?**



## Use of diversion and alternative sentencing

### 6. How are cases involving children in conflict with the law typically dealt with in PNG?

*Probe: (How) does the way cases are dealt with vary by type of offence, circumstances of the child, gender of the child, location, whether Juvenile Court is involved etc.? If so, how?*

### 7. What are the types of community mechanisms (mediation etc.) are used to resolve cases of children in conflict with the law?

- (a) Can you tell me about how these processes work?*
- (b) What proportion of cases would you say are resolved this way?*
- (c) What types of cases are resolved this way?*

### 8. What diversion options exist for children in conflict with the law? How frequently are they used and for which types of cases?

- (a) Police warnings*
- (b) Police mediation*
- (c) Community based conferencing*
- (d) Restitution (payment to victims etc.)*
- (e) Community service*
- (f) Referral to other services (counselling, vocational training, activities etc.)*

### 9. What proportion of diversion cases are police-led vs court-directed?

### 10. What alternative / community sentencing options are available in PNG? How frequently are they used and for which types of cases?

### 11. Where children are sentenced to custody, why is that?

*i.e. For what types of cases / children? And why are they not given community-based sentences?*

### 12. What data is currently held on diversion and sentencing practices? Who is this held by?

- (a) Who is this data reported to? How often does this happen (i.e., monthly, annually).*
- (b) Please describe the system used to hold data on these case (i.e., paper-based system, digital system)*
- (c) Where no data is available, why is this the case?*

## Access to diversion and alternative sentencing

### 13. How do the experiences of girls and boys differ within the criminal justice system?

### 14. Is diversion used consistently for different groups of children (i.e. girls and boys or children in different geographic locations)?

- (a) Are there any groups of children who do not have the same access to diversion measures?*

### 15. To what extent and how do the diversion processes and programmes accommodate the needs of children with disabilities?

### 16. To what extent are diversion and community sentencing options accessible to children in rural settings? How does this compare to children in urban settings?

## Impact of diversion practices on the wider child justice system

**17. In your opinion, how successful is diversion and alternative sentencing in practice? What does a successful outcome look like in your opinion?**

*(a) How are successful outcomes of diversion captured?*

**18. Has the use of diversion reduced the length of time children in conflict with the law spend in the justice system? If yes, please describe why? If no, please describe why not?**

**19. Has the use of diversion and alternative sentencing reduced the risk of children being placed in detention?**

*(a) If yes, is this the case for all types of offences? Or not?*

**20. Has the use of diversion reduced recidivism rates for children in conflict with the law?**

*(a) If yes, do you have data to support this? Can we please have copies of this.*

*(b) If not, why not?*

**21. What has been the impact on diversion on the workload of justice sector stakeholders?**

*(i.e. has it increased or decreased workloads)*

### Barriers and bottlenecks to use of diversion

**22. What are the main challenges to ensuring the use and quality of diversion and alternative sentencing measures in practice?**

• Invite participants to consider:

- law and policy frameworks;
- operational guidelines / tools;
- capacity of duty bearers;
- awareness of and beliefs about diversion among stakeholders and communities (in particular, beliefs about diversion among police and magistrates);
- availability of services and service providers; and
- information management, data and reporting and use of data in informing diversion law, policy and practice.

### Conclusion

**23. In your view, what can be strengthened to accelerate progress in the use and effectiveness of diversion and alternative sentencing?**

**24. Is there anything else that you would like to add?**

Thank the participant for their time.

*NOTE: the tool is long and not all questions will be relevant to each agency – please use it flexibly, in a way that is responsive to the answers of the participant.*

*Sub-National Key Informant Interview Tool for police, prosecutors, courts, juvenile justice officers, community leaders*

<b>Participant job title:</b>	
<b>Government Agency/Organisation:</b>	
<b>Location:</b>	
<b>Name of researcher(s):</b>	
<b>Date:</b>	
<b>Time:</b>	
<b>Gender of participant:</b>	
<b>Notes:</b>	

*Thank you for participating in the interview; we really appreciate you taking time out of your busy schedule to speak with our team. I am sure your insights will be very helpful as we continue our work.*

*Introduce yourself.*

*Introduce study - The Government of PNG and UNICEF Papua New Guinea has commissioned Coram International to carry out a 'deep dive' study on the use of diversion and alternative sentencing for children in conflict with the law in Papua New Guinea (PNG). The purpose of the research is to assess the use of diversion and alternative measures for children in conflict with the law and to explore to what extent diversion is being offered in across the country, what those measures consist of and the effectiveness of such efforts.*

*Go through the information sheet and consent form and ask if there are any questions. In particular, explain that participation is voluntary and that participants may discontinue their involvement at any time. Gain informed consent and advise participants about anonymity. In case participant has not read the information and consent form, read/explain to participant its intentions and contents.*

*Ask if there are any questions before commencing.*

## **Introduction**

**1. Could you please tell me about your role and mandate, particularly as it relates to children in conflict with the law?**

**2. Which other Ministries / Departments / NGOs do you work with in relation to child justice?**

## **Child justice context**

**3. What are the common types of offences for which children come into conflict with the law in your province / district?**

- Do the types of offending behaviour vary by province / location, gender, age etc.?

**4. What is the profile of children who typically come into conflict with the law?**

- In terms of gender, age, locality, family and social context, education engagement etc.

**5. In your experience, why do children offend? i.e. what are the key drivers of children coming into conflict with the law?**

**Criminal justice process**

**I'm going to ask about the process for children who engage in offending behaviour in your province / district.**

**6. First, can you tell me about cases involving children in conflict with the law that are informally resolved within the community?**

- (a) *What kind of cases are resolved this way? What cases are not considered appropriate for community resolution? Why?*
- (b) *Can you tell me about how these cases are resolved? What is the process? Who is involved? What is the goal? What are the typical outcomes?*
- (c) *What role do children play in the process? Are children given an opportunity to put forward their story / views etc. in these processes?*
- (d) *How often is the case settled / resolved at the community level? What happens to cases that aren't resolved in the community?*
- (e) *In your view, is community justice effective in addressing child offending? Why / why not?*

**7. What about cases involving police / arrest?**

- (a) *What types of cases are picked up by / referred to police officers?*
- (b) *In these cases, how often are children let off with a police warning? For which types of children and cases are police warnings used? What is the process for a police warning? Do you consider police warnings to be an effective response to child offending? Why / why not?*
- (c) *Do police use mediation to resolve cases of children in conflict with the law? For which children / cases? Do you consider police mediation to be an effective response to child offending? Why / why not?*
- (d) *Can you outline the process for police mediation? In particular: who carries out the mediation? Who is invited / involved and what are their roles? Can you describe the mediation session? How often does mediation resolve a case? What happens if mediation is unsuccessful?*

**8. Which types of cases proceed to the formal arrest and charging of children in conflict with the law? Why are these cases processed through the formal system (and not diverted by police)?**

- (a) *Can you briefly describe the process of arrest and charge? In which cases are children placed in detention on remand?*
- (b) *When cases proceed to trial / sentencing, which Court/s hear children's cases?*
- (c) *Do children receive legal advice / representation? At what stage/s of proceedings? How is legal representation secured? Do they have any other type of support?*

## Diversion and alternative sentencing

### 9. Can you please describe the process and options for (other types of) police-led / court-led diversion?

#### (a) In which cases is diversion used, and for which children (probe: is it different for boys and girls)?

*Which cases are eligible for diversion? Probe [if necessary]: which offences? Does the child need to admit guilt? Does the child need to consent? Does the victim need to consent?*

*In what proportion of cases is diversion used? [If low]: Why do you think diversion is not used more frequently? Has the use of diversion increased since the passage of the JJ Act? Why / why not?*

#### (b) What (other) options exist for diverting children? How effective are each of these options?

*Probe: Ask about each option: Who delivers it? What is the intake / referral process? What services are provided? How effective is it in terms of outcomes for children? Who is responsible for monitoring and follow up and how does this work? What are some of the gaps / challenges in these options?*

#### (c) Are community based conferences used in diversion cases? If so, how frequently and what is their purpose?

*Can you please describe the process for a community based conference, including: who facilitates it? Who is involved? What happens at these conference meetings? What role does the child in conflict with the law play? What role do their parents play? What is the role of the victim? What are the advantages and disadvantages of community based conferences?*

### 10. Can you please describe the process and options for sentencing cases of children in conflict with the law?

#### (a) What are the different sentencing options for children who are convicted?

*Probe: What are the different community-based sentences? In your view, when are each of these measures appropriate for children in conflict with the law? How effective are they and why / why not?*

#### (b) Are community based conferences and / or pre-sentence reports used to inform sentencing decisions?

#### (c) What types of convicted cases of children in conflict with the law are sentenced to alternative (non-custodial) sentences?

### 11. Roughly what proportion of children in conflict with the law are given custodial sentences, and in which cases will custodial sentences be used?

### 12. What data is currently held on diversion and sentencing practices? Who is this held by?

*a. Who is this data reported to? How often does this happen (i.e., monthly, annually).*

*b. Please describe the system used to hold data on these case (i.e., paper-based system, digital system)*

*c. Where no data is available, why is this the case?*

## Access and equity

- 13. How do the experiences of girls and boys differ within the criminal justice system?**
- 14. Is diversion used consistently for different groups of children (i.e. girls and boys or children in different geographic locations)?** *Are there any groups of children who do not have the same access to diversion measures?*
- 15. To what extent and how do the diversion and alternative sentencing options accommodate the needs of children with disabilities?**
- 16. To what extent is diversion accessible to children in rural settings? How does this compare to children in urban settings?**
- 17. Do community opinions on diversion impact on children's access to diversion? If so, how?**

## Impact of diversion practices on the wider child justice system

- 18. Has the use of diversion reduced the length of time children in conflict with the law spend in the justice system?** *If yes, please describe why? If no, please describe why not?*
- 19. Has the use of diversion reduced the risk of children being placed in detention?** *If yes, is this the case for all types of offences? Or not?*
- 20. Has the use of diversion reduced recidivism rates for children in conflict with the law?** *If yes, do you have data to support this? Can we please have copies of this. If not, why not?*
- 21. What has been the impact on diversion on the workload of justice sector stakeholders?** *(i.e. has it increased or decreased workloads)*

## Barriers and bottlenecks to use of diversion

- 22. Are there any challenges to the use of diversion in practice? If so, please describe these challenges? What would make diversion a more viable option?**
- 23. What are the cultural beliefs and practices that support or inhibit the use of diversion and restorative justice? Please describe.**
  - a. Are these cultural beliefs changing in any way? If yes, why?*

## Conclusion

*Thank the participant for their time.*

*NOTE: Juvenile Justice Officers will be requested to bring the three most recently completed diversion cases along to the interview. Please ask the Officers to talk through the case, including the following:*

- Facts of the case and circumstances of the child and their offending.
- How the child came to be diverted (was it police- or court-led etc.)?
- Is there anything you would have done differently and why?

- Why was the child diverted?
- What diversion measure was applied – warning, mediation, community based conference, other services etc. – and why?
- How did the child complete their diversion measure?
- What happened on completion (reporting to referring body)
- What were the outcomes in the case?

*Sub-national Key Informant Interview Tool: Diversion and alternative sentencing service providers (Probation Office, NGOs, CSOs, FBOs etc.)*

<b>Participant job title:</b>	
<b>Government Agency/Organisation:</b>	
<b>Location:</b>	
<b>Name of researcher(s):</b>	
<b>Date:</b>	
<b>Time:</b>	
<b>Gender of participant:</b>	
<b>Notes:</b>	

*Thank you for participating in the interview; we really appreciate you taking time out of your busy schedule to speak with our team. I am sure your insights will be very helpful as we continue our work.*

*Introduce yourself.*

*Introduce study - The Government of PNG and UNICEF Papua New Guinea has commissioned Coram International to carry out a 'deep dive' study on the use of diversion and alternative sentencing for children in conflict with the law in Papua New Guinea (PNG). The purpose of the research is to assess the use of diversion and alternative measures for children in conflict with the law and to explore to what extent diversion is being offered in across the country, what those measures consist of and the effectiveness of such efforts.*

*Go through the information sheet and consent form and ask if there are any questions. In particular, explain that participation is voluntary and that participants may discontinue their involvement at any time. Gain informed consent and advise participants about anonymity. In case participant has not read the information and consent form, read/explain to participant its intentions and contents.*

*Ask if there are any questions before commencing.*

*NOTE: the tool is long and not all questions will be relevant to each agency – please use it flexibly, in a way that is responsive to the answers of the participant.*

## **Introduction**

**1. Could you please tell me about your service / organisation, particularly as it relates to children in conflict with the law?**

**2. Which other Ministries / Departments / NGOs do you work with in relation to child justice?**

## **Child justice context**

**3. What are the common types of offences for which children come into conflict with the law in your province / district?**

- Do the types of offending behaviour vary by province / location, gender, age etc.?

**4. What is the profile of children who typically come into conflict with the law?**

- In terms of gender, age, locality, family and social context, education engagement etc.

**5. In your experience, why do children offend? i.e. what are the key drivers of children coming into conflict with the law?**

**Beneficiaries and referral**

**6. Which types of cases of children in conflict with the law are referred to your service?**

**7. What is the profile of children in conflict with the law that are referred to your service?**

*Age, gender, type of offence, home environment, educational level / engagement etc.?*

**8. How many children in conflict with the law are currently enrolled / receiving services? How many do you work within a year?**

**9. Are there other groups of children receiving services here? Can you please describe.**

**10. How are children referred into your service?**

*(a) For diversion cases:*

*Which institution/s refer the cases? What criteria must they satisfy? Who ensures that they satisfy these criteria?*

*Are you involved in the decision making on diversion referral?*

*(b) For sentencing:*

*Is your organisation involved in the Court's decision making processes (e.g. through a pre-sentence report or participation in a community based conference)?*

**Services**

**11. Can you describe the intake process for children in conflict with the law, in particular, is an assessment is carried out on the child and their family?**

*If so, can you please describe how this is done? How is the child's programme determined?*

**12. At what point is a diversion plan developed? Are you involved in this? What does the plan typically involve?**

*If so, can you please describe the process.*

**13. What services does your organisation provide to children in conflict with the law?**

*Who delivers these services? What qualifications / training do they have?*

**14. Do you refer children in conflict with the law for other services / do children in conflict with the law typically undertake other programmes outside your organisation?**

*If yes, can you please describe these options, including which organisation / agency provides them?*



## Access and equity

**15. Does your service accommodate the needs of different children, including boys and girls?**

*If not, why not? If so, how?*

**16. To what extent and how are your services inclusive of children with disabilities?**

## Outcomes

**17. Who monitors compliance with the diversion plan / programme? How does this work?**

**18. Are any aftercare services provided?**

**19. What outcomes have you seen in children who have undergone a diversion programme / sentence with your organization?**

**20. How do you record or monitor outcomes?**

**21. What do you think would the child's outcome have been if your service did not exist?**

## Barriers and bottlenecks to use of diversion

**22. What are the main challenges you face in delivering diversion / alternative sentencing services? What are the gaps in the services you are able to provide?**

**23. What are the main gaps or barriers more generally in the use of diversion and alternative sentencing in your province / district?**

*What are the factors that hinder more effective use and quality of diversion and alternative sentencing programmes?*

## Conclusion

**24. Overall, if you could introduce changes to the child justice system which would increase the use and effectiveness of diversion and the use of community sentencing, what would they be and why?**

**25. Is there anything else that you would like to add?**

Thank the participant for their time.

## FGD Tool for adult and youth community members

<b>Participant job title:</b>	
<b>Government Agency/Organisation:</b>	
<b>Location:</b>	
<b>Name of researcher(s):</b>	
<b>Date:</b>	
<b>Time:</b>	
<b>Gender of participant:</b>	
<b>Notes:</b>	

*Thank you for taking part in this interview, I really appreciate you talking to me today.*

*Introduce yourself.*

*Introduce study - The Government of PNG and UNICEF Papua New Guinea has asked the organisation that I work for - Coram International -to carry out a 'deep dive' study on the use of diversion and alternative sentencing for children in conflict with the law in Papua New Guinea (PNG). The purpose of the research is to understand the use of diversion and alternative measures (i.e. not putting children in detention) for children in conflict with the law and to explore to what extent diversion is being offered in across Papua New Guinea, what those measures consist of and the effectiveness of such efforts.*

*Go through the information sheet and consent form and ask if there are any questions. In particular, explain that participation is voluntary and that children may discontinue their involvement at any time. Gain informed consent and advise children about anonymity. In case participant has not read the information and consent form, read/explain to participant its intentions and contents.*

*Ask if any of the participants have any questions before starting.*

### Introduction

- 1. Please can you introduce yourselves, including your age, where you're from, how many children you have (if any).**
- 2. Do you play a particular role in your community? If so, please can you tell me a bit about the role that you play in your community?**

### Child justice experiences and opinions

- 3. If a child in your community were to commit a crime, how would that case likely be dealt with? Why?**
  - i. Would the child be treated differently depending on the seriousness or nature of the crime? If so, can you provide examples?*
  - ii. Would the child be treated differently depending on the characteristics or situation of the child? If so, can you provide examples?*
  - iii. Do you think that this is a good way of dealing with children who have committed a crime? Why/ why not?*

4. **Have you had any cases of children committing crimes in your community? If so, please can you tell me a bit about these cases? For example, how old was the child? What crime did he/she commit? How was this case dealt with? (Obtain details)**
5. **In your opinion, is child offending (i.e. children committing crimes) a problem in Papua New Guinea?**
6. **In your opinion, what types of children commit crimes? (e.g. male or female? Ages? Family and living situation (orphan; street children)? In/out-of-school?)**
7. **In your opinion, why do children commit crimes?**

### Knowledge, attitudes and practices on diversion

#### 8. Have you heard of diversion?

*(If yes)*

- a. *Have any children in your community been diverted? If so, please can you tell me about the case? For example, how old was the child? What crime did the child commit? Was the child male or female?*
- b. *When the child was diverted, how did the following parties respond? (Probe: Were these groups happy with the decision to divert the child before the trial?) Please give concrete examples where possible.*
  - i. *The victim?*
  - ii. *The victim's family?*
  - iii. *The child offender?*
  - iv. *The child offender's family?*
  - v. *Community leaders? Other community members?*
- c. **Were there any other parties involved in the case? How did those parties respond to the decision to divert the child before trial?**
- d. *(If any of the groups were unsatisfied with the decision to divert pre-trial) Why were they unhappy with the decision to divert the child?*
- e. **In your view, is diversion a good way of dealing with a child who has committed a crime? Why/ why not?**

*(If no, provide a brief explanation of pre-trial diversion)*

- a. **In your opinion, is this a good way of dealing with a child who has committed a crime? Why/ why not?**
- b. **How do you think the following parties would respond if, instead of prosecuting and sending a child offender to court, the police gave the child a caution, or sent the child to a community rehabilitation programme? (Do you think these groups would be happy with the decision to divert the child instead of going to court?)**
  - i. *The victim?*
  - ii. *The victim's family?*
  - iii. *The child offender?*
  - iv. *The child offender's family?*
  - v. *Community leaders? Other community members?*

c. (If they foresee the groups to be unsatisfied with this decision) **Why do you think they would be unhappy with the decision to divert the child instead of sending the child to court?**

## Conclusion and recommendations

**9. Do you have any other recommendations on how to raise awareness and encourage the use of pre-trial diversion?**

*Thank the participant for their time. Explain what will happen next with the study.*

## In-depth Interview Tool (children)

<b>Participant job title:</b>	
<b>Government Agency/Organisation:</b>	
<b>Location:</b>	
<b>Name of researcher(s):</b>	
<b>Date:</b>	
<b>Time:</b>	
<b>Gender of participant:</b>	
<b>Notes:</b>	

*Thank you for taking part in this interview, I really appreciate you talking to me today.*

*Introduce yourself.*

*Introduce study - The Government of PNG and UNICEF Papua New Guinea has asked the organisation that I work for - Coram International -to carry out a 'deep dive' study on the use of diversion and alternative sentencing for children in conflict with the law in Papua New Guinea (PNG).*

*Purpose of the research....*

*The purpose of the research is to understand the use of diversion and alternative measures (i.e. not putting children in detention) for children in conflict with the law and to explore to what extent diversion is being offered in across Papua New Guinea, what those measures consist of and the effectiveness of such efforts.*

*Go through the information sheet and consent form and ask if there are any questions. In particular, explain that participation is voluntary and that children may discontinue their involvement at any time. Gain informed consent and advise children about anonymity. In case participant has not read the information and consent form, read/explain to participant its intentions and contents.*

*Ask if any of the participants have any questions before starting.*

## Introduction and general information

**1. Can you please tell me a bit about yourself and your life? Where are you living and who do you live with?**

**2. Do you go to school?**

## Experience of diversion / alternative sentencing

### 3. Can you please tell me about what led you to being referred for here / undergoing mediation etc. [this will depend on which service the child is recruited from – it will vary]?

- a. Can you tell me about the offence that was committed?
- b. What circumstances led to the offence being committed?
- c. Was this the first time you were caught doing an offence? If not, could you tell me briefly about the other time/s?

### 4. How were you caught for the offence?

- a. Did a community member report you?
- b. Did the police find you?

### 5. What happened then?

- a. Did you go to police station?
- b. What did they say / ask? What did you tell the police?
- c. Did they call your parent/s? did they tell you that you could have a lawyer or someone else to help you?
- d. How did the police treat you?
- e. Were you held at the police cell? If so, for how long?

### 6. [If it was court ordered diversion]

- a. How long did it take your case to go to court? Which court did you go to?
- b. Can you tell me what happened at court? What did the magistrate say? Did you speak? Did you have a lawyer there? Were your parent/s or any friends or family there? What did they do?

### 7. [If the child underwent a community conference]

- a. Can you tell me what happened at the community conference? Who was leading the conference? Who spoke and what did they say? Did you get the chance to speak? How about the victim/s?
  - b. How did you feel at the community conference? Were you happy with how it went and the outcome?
  - c. How do you feel about it now?
- Do you think the victim was happy with it? How about the community members?

### 8. How did you come to [service]?

- a. Who referred you? What did they tell you about it?
- b. Did you want to come here? If not, did you tell the police / court / service provider this? What did they say?
- c. What did your parent/s think about it? Did they want you to come to [service]?

### 9. What help or services does [service] provide for you / your family?

- a. How did they assess what services or programme you should undertake? Who decided this?
- b. Can you tell me about the activities you do here?
- c. Did these services help you? If not, why not? If so, how?

*d. Where were these services located? Was it close to your home?*

*e. Did you like the staff / social worker? Why / why not?*

**10. Do you feel that the staff / social workers listen to your views and opinions?**

**Impact of diversion / alternative sentence**

**11. What has happened to you since you took part in the diversion programme? (i.e are you attending school? as your relationship with your family improved?)**

**12. What do you think would have happened if you hadn't been able to attend [service]?**

**13. Is there anything that you think is missing from [service]?**

**Conclusion**

**14. What do you think would improve life for children and families in your community, especially for those families that are vulnerable or who have gone through similar things to you?**

*Thank the participant for their time. Explain what will happen next with the study.*

## In-depth interview Tool (parents/guardians)

<b>Participant job title:</b>	
<b>Government Agency/Organisation:</b>	
<b>Location:</b>	
<b>Name of researcher(s):</b>	
<b>Date:</b>	
<b>Time:</b>	
<b>Gender of participant:</b>	
<b>Notes:</b>	

*Thank you for taking part in this interview, I really appreciate you talking to me today.*

*Introduce yourself.*

*Introduce study - The Government of PNG and UNICEF Papua New Guinea has asked the organisation that I work for - Coram International -to carry out a 'deep dive' study on the use of diversion and alternative sentencing for children in conflict with the law in Papua New Guinea (PNG).*

*Purpose of the research....*

*The purpose of the research is to understand the use of diversion and alternative measures (i.e. not putting children in detention) for children in conflict with the law and to explore to what extent diversion is being offered in across Papua New Guinea, what those measures consist of and the effectiveness of such efforts.*

*Go through the information sheet and consent form and ask if there are any questions. In particular, explain that participation is voluntary and that children may discontinue their involvement at any time. Gain informed consent and advise children about anonymity. In case participant has not read the information and consent form, read/explain to participant its intentions and contents.*

*Ask if there are any questions before starting.*

### Introduction and general information

- 1. Can you please tell me a bit about yourself and your life? Are you currently working?**
- 2. How many children do you have? What are their ages and genders?**

### Experience of diversion / alternative sentencing

- 3. Can you please tell me about what led you to your child coming into conflict with the law?**
  - a. What offence was committed?*
  - b. What circumstances led to the offence being committed?*
  - c. How was the child caught? i.e. did a community member report it? Did the police find out?*
- 4. When did you become aware that your child had been caught committing an offence? What was your reaction?**
  - a. Who made you aware of this? (i.e. Police Officer, Social Worker)*

**5. What happened after you found out? Did you attend the Police Station, for example?**

**6. Was your child detained (e.g. held in the police cell) after they were caught?**

**If yes please describe the location of detention, conditions in detention, purpose of detention (if shared with you) and the length of detention.**

**7. Did the police tell you about diversion or diversion options? 7. Did the police tell you about diversion or diversion options?**

*a. Did the police offer to take the case for a community conference or refer your child to a service provider instead of going to court?*

*b. If so, what was the process for this? What did the police tell you?*

**8. [If the diversion was court ordered diversion]**

*a. How long did it take your child's case to go to court? Which court did he/she go to?*

*b. Can you tell me what happened at court? What did the magistrate say? Did your child speak? Did your child have a lawyer there? Did you attend? Did any other friend / family member etc. attend? What did they do?*

**9. [If the child underwent a community conference]**

*a. Can you tell me what happened at the community conference? Who was leading the conference? Who spoke and what did they say? Did your child get the chance to speak? Did you speak? How about the victim/s?*

*b. How did you feel at the community conference? Were you happy with how it went and the outcome?*

*c. How do you feel about it now?*

*d. Do you think the victim was happy with it? How about the community members?*

**10. How did your child come to [service]?**

*a. Who referred him/her? What did they tell you about it?*

*b. Did your child want to come to [service]? If not, did he/she tell the police / court / service provider this? What did they say?*

*c. What did think about it?*

**11. Was the diversion process clearly explained to you as a parent?**

**12. What help or services does [service] provide for you / your child?**

*a. How did they assess what services or programme your child should undertake? Who decided this?*

*b. Can you tell me about the activities your child does here? Are any services or provided to yourself or your family?*

*c. Did these services help your child and your family? If not, why not? If so, how?*

*d. Where were these services located? Was it close to your home?*

*e. Did your child like the staff / social worker? Why / why not?*



## Impact of diversion

**13. What has happened to your child since you took part in the diversion programme? (i.e are they attending school? Has your relationship with your child improved?)**

**14. What do you think would have happened if your child hadn't been able to attend [service]?**

**15. Did your child have any challenges in accessing the diversion services?**

*If yes, please tell us about these.*

**16. Was there anything else you, your child or your wider family needed but were not able to access? If so, what were the gaps?**

## Conclusion

**17. In your child's case if there anything you would have liked to have seen done differently?**

**18. What do you think would improve life for children and families in your community, especially for families whose children have come into conflict with the law?**

*Thank the participant for their time. Explain what will happen next with the study.*

Observation tool: Cases of children in conflict with the law in community based conference, mediation, and courts

<b>Participant job title:</b>	
<b>Government Agency/Organisation:</b>	
<b>Location:</b>	
<b>Name of researcher(s):</b>	
<b>Date:</b>	
<b>Time:</b>	
<b>Gender of participant:</b>	
<b>Notes:</b>	

Please make a detailed record of your observation, including:

- Description of the location, formality, where people are seated, who is present.
- A brief summary of the facts of the case.
- A step-by-step narrative of the process, including what is said, the institutions involved, etc.
- Note the extent to which the child in conflict, parent/s and victim/s participate in proceedings.
- Any outcome/s observed.
- Please do not record any names and addresses.

## Annex B: Stakeholder Mapping

### *Child justice system stakeholder mapping*

The purpose of the stakeholder mapping is to guide the sampling process for the study, in particular for the key informant interviews. It will also inform the development of targeted recommendations at a later stage in the project. A systems framework was used to carry out the mapping of key child justice stakeholders. A child justice system is a specialised, coordinated, harmonised and systematic approach to protecting preventing and responding to children who are in conflict with the law. A rights-based child justice system is accountable, with appropriate monitoring and evaluation frameworks and accountability processes in place for all stakeholders. It has mechanisms to enhance child participation, is child and family friendly, gender transformative and provides a continuum of protection services, including primary, secondary and tertiary services for prevention and for response. This includes diversion programmes to divert children away from the justice system and effective alternative sentencing options.

#### *B.1 Primary stakeholders – juvenile justice sector*

Primary stakeholders are those agencies in government and civil society that have a specific mandate for children in conflict with the law, and specifically diverting children away from the formal justice system. They are mostly implementing agencies.

At the national level the main institutions for the legal and policy frameworks for child focused justice, including diversion is the DJAG, and its various sub institutions. Other institutions include the Royal Papua New Guinea Constabulary (RPNGC), Magisterial Services (MS) and Correctional Service (CS). Below is a brief overview of the roles and responsibilities of each institution.

#### *The Department of Justice and Attorney General (DJAG)*

The DJAG is the lead agency for juvenile justice, including diversion. It is the central agency responsible for the administration of legal services and the provision of law and justice services for adults and children. Its major roles and responsibilities include legal and policy reform, regulation, monitoring and oversight. In the areas of juvenile justice, this includes the development and revision of policies, laws, and regulations. This includes the provision of technical guidance in the development of protocols, operational guidelines, codes of conduct and other regulatory frameworks with respect to children who come into contact with the justice system. This includes the integration child protection in justice sector strategies and work plans. Within DJAG there are several sub institutions that exclusively or partly have mandates related to children. These sub institutions include the National Juvenile Justice Committee; Juvenile Justice Service; Legal and Policy Branch; Crime Prevention and Restorative Justice Branch; Probation and Parole and the Village Courts and Land Mediation Secretariat. These sub-institutions are outlined below.

#### *National Juvenile Justice Committee (NJJC)*

The roles and responsibilities of the NJJC are codified (Article 23) in the Juvenile Justice Act 2014. The primary roles and responsibilities of the National Juvenile Justice Committee are to oversee and monitor the implementation of Juvenile Justice Act 2014 and to promote collaboration between all government departments and agencies and other organisations, agencies and civil society groups involved in implementing the juvenile justice system. Additional roles and responsibilities include developing national plans for the implementation of juvenile justice initiatives and for juvenile crime prevention and sharing information, review progress and coordinate implementation of juvenile justice initiatives. The

<sup>425</sup>PNG Department of Justice and Attorney General. Available at: <https://www.justice.gov.pg/index.php/2015-04-26-07-32-15/juvenile-justice>, accessed 5 April 2023.

NJJC has a long history and was formed in 2003<sup>245</sup> to drive the juvenile justice reform process that started in 2002.

### *Juvenile Justice Service*

The Juvenile Justice Service is primarily responsible for the implementation of the Juvenile Justice Act 2014. It is staffed by the Director of the Juvenile Justice Service and support personnel at their headquarters in Port Moresby and by Juvenile Justice Officers in provinces where they have been deployed. There are approximately 14 Juvenile Justice Officers located at the provincial level. The primary roles and responsibilities of the Juvenile Justice Officers are to provide support and advice to juveniles at all stages of the juvenile justice process.

### *Village Courts and Land Mediation Secretariat*

The primary function of the Village Courts and Land Mediation Secretariat in relation to child protection, child justice and juvenile justice is to administer and implement the legislation on village courts. This includes the Village Courts (Amendment) Act 2014 which updates the Village Courts Act to bring it in line with the Juvenile Justice Act 2014.

### *Crime Prevention Branch*

The Crime Prevention and Restorative Justice Branch is the lead agency for crime prevention including juvenile crime prevention, and restorative justice interventions in partnership with other government agencies and civil society. It provides a clearing house on crime prevention and restorative justice.

### *The Office of the Public Solicitor*

A key function of the Office of the Public Solicitor is to represent and defend juveniles charged with an offence punishable by imprisonment for more than two years. The Office of the Public Solicitor also has a mandate to seek damages on behalf of juveniles whose rights have been violated by the juvenile justice system.

### *Ombudsman Commission of Papua New Guinea*

A key function of the Ombudsman Commission of PNG is to monitor the treatment of juveniles and other prisoners. This includes visiting and inspecting places of detention and conducting interviews and investigates matters where individuals' rights have allegedly been abused.

At the sub-national level there are several important institutions for juvenile justice.

### *Provincial juvenile justice committees*

Article 26 of the Juvenile Justice Act 2014 allows for provincial juvenile justice committees to be established at the discretion of the Director of the Juvenile Justice Service after consultation with the Provincial Administrator of a Province or autonomous region. This includes appointing members of the Committee and determining the Committee's roles and responsibilities. A Provincial Juvenile Justice Committee can determine its own procedures.

### *Village Courts*

The primary role of Village courts is to ensure peace and harmony in the communities in which they operate. There are more than 1,500 gazetted Village Courts across the country. Despite having limited access to training opportunities, Village Courts are obliged to attempt the resolution of disputes first

by way of mediation, which is a mandatory requirement under the Village Courts Act 1989. The Village Courts Act addresses offences relating to fights or violence directed at a person and the property of a person.

### *Royal Papua New Guinea Constabulary*

The Constabulary has a critical role to play in juvenile justice, particularly in terms of diversion, arrest and bail. This includes applying the principles of child friendly policing and protecting the rights of children in contact with the justice system, including alleged offenders. This involves allocating resources to establish child-friendly spaces in police facilities. This entails the provision of a range of justice services such as policing and prosecution, diversion services, and services to victims and witnesses through the Family and Sexual Violence Units.

### *Magisterial Services*

The Magisterial Services play an essential role in the delivery of child friendly justice for child witnesses, victims and alleged offenders. This includes the establishment and operation of Juvenile Courts and Family Courts. Its role includes training and building the capacity of magistrates in the delivery of child-friendly services and the development and monitoring of protocols and guidelines for children accessing courts. The Juvenile Justice Act 2014 directs Juvenile Courts to treat juveniles differently from adults and imposes separate procedures and sentencing practices for alleged juvenile offenders. It also empowers National Court judges and magistrates to inspect institution or police station or 'lockup facilities' at any time without prior notice.

### *Papua New Guinea Correctional Service*

The primary role of the PNG Correctional Service is the provision of Juvenile Institutions and related rehabilitation programmes based on the Minimum Standards for Juvenile Institutions.

## *B.2 Secondary stakeholders – enabling agencies*

Enabling stakeholders are those agencies that have a significant role to play in influencing the agenda for juvenile justice.

### *National Office of Child and Family Services (OCFS)*

The National Office of Child and Family Services (OCFS) was established by Article 12 of the LPA. Its primary function is the overall coordination of the implementation of the LPA. This includes the development, monitoring and implementation of regulations, guidelines and standards. Its other functions include sector policy development and implementation; resource mobilisation and allocation; and coordinating the preparation of the sector budget for the implementation of the LPA. It includes the provision of family services including promoting and protecting the wellbeing of children and families. The powers of the OCFS are broad and include the power to consult with any individual or agency 'that in the opinion of the Office, would assist in the protection and welfare of children.'

### *Department of National Planning and Monitoring*

The key role of the Department of National Planning and Monitoring in relation to is to set national targets for juvenile justice in consultation with the DJAG.

### *Office of and Department of Prime Minister/NEC*

The main roles and responsibilities of the Office of and Department of Prime Minister and National Executive Council (NEC) in relation to child protection, child justice and juvenile justice is to ensure appropriate leadership, commitment and accountability to implementation of Juvenile Justice Act 2014 and related legislation. This includes endorsement of policy, strategy, and structure for the Juvenile Justice Service.

### *Department of Treasury*

The main function of the Department of Treasury in relation to child protection, child justice and juvenile justice is to establish and implement child sensitive budget process including allocating a specific budget for juvenile justice. This includes the allocation of funds in the development budget to support juvenile justice sector development and the allocation of funds in Provincial Services Improvement Programs.

### *Provincial and District Administrations*

The primary role of Provincial and District Administrations is to allocate appropriate budget and human resources to plan, monitor and coordinate implementation of juvenile justice programmes at provincial, district and lower levels of government. At the provincial level this includes the Provincial Juvenile Justice Committee. However, despite this assigned role, there are very few functioning Juvenile Justice committees and those that are operating have virtually no staff and no budget for programmes or operational costs.

### *Department of Foreign Affairs and Trade*

The primary role of the Department of Foreign Affairs and Trade is to facilitate ratification of optional protocols protecting children in PNG. This includes ensuring the monitoring of implementation and reporting as required in the protocols and ensuring government compliance to international commitments.

### *Department of Provincial Affairs and Rural Development*

The primary role of the Department of Provincial Affairs and Rural Development in relation to child protection, child justice and juvenile justice is to develop locally appropriate policies for protecting children in all provinces. This includes ensure that government administration plans and budgets at all levels are appropriate for children and that community-based protection and justice systems are established for children and their families.

### *Human Resources Development Sector*

The human resources development sector includes the Department of Personnel Management, human resources development institutions, the Office of Higher Education and the Public Services Commission. The primary roles of the sector in relation to juvenile justice are to develop national qualification standards, guidelines and instruments for the justice workforce in consultation with the Juvenile Justice Service and to develop a pathway of career development for the juvenile justice workforce.

### *Non-government sector*

The main roles of the non-government sector in relation to child justice are to develop child protection prevention and responsive services and support local level capacity to deliver preventive and responsive services. The non-government sector includes faith-based organisations (FBOs), inter-governmental organisations (INGOs), national non-government organisations (NGOs) and community based organisations (CBOs).

*Development partners*

The primary functions of development partners, in relation to child justice are to provide funding to support the implementation of juvenile justice activities and programmes in line with the SDGs. This includes the provision of technical support and funding for capacity development for juvenile justice workforces along with support research and evidence building.

*Other stakeholders*

Other stakeholders include UNICEF and other international development organizations across the broad child protection, child justice and juvenile justice sector such as UN agencies, academia, research and policy think tanks.

**Summary of mapping of institutional child justice stakeholders at the national, provincial and district levels in PNG**

<b>Mechanism</b>	Juvenile Justice dimension of Child Protection
<b>Law</b>	Juvenile Justice Act 2014 Laukitim Pikinini Act 2015
<b>Policy</b>	Juvenile Justice National Plan 2018 – 2022 National Child Protection Policy 2017 – 2027
<b>National mechanisms</b>	National Juvenile Justice Committee Juvenile Justice Service
<b>Provincial mechanisms</b>	Juvenile Courts Provincial Juvenile Justice Committee
<b>District mechanisms</b>	District Office of Child Welfare District Child and Family Services Committee
<b>Customary /hybrid mechanisms</b>	Village Courts Community Leaders

Source: UNICEF PNG and Coram International: Report on the Protection of Children from all forms of Violence and Child Focused Justice In PNG: Mapping and analysis of legal and policy frameworks, 2022.

## Annex C: Participant List

KIIs, FGDs, and IDIs

### National Level

Participant Organisation/ Interview Type	Location	No. of participants	Date
DJAG (KII)	Port Moresby	1	October 4, 2023
DJAG (KII)	Port Moresby	1	October 5, 2023
DFAT (KII)	Port Moresby	4	October 6, 2023
PNG Correctional Service (KII)	Port Moresby	1	October 9, 2023
DJAG (KII)	Port Moresby	1	October 9, 2023
World Vision (KII)	Virtual (Zoom)	1	October 10, 2023
DJAG (KII)	Port Moresby	1	October 16, 2023
OCFS (KII)	Port Moresby	1	October 18, 2023
Constitutional Law Reform Commission (KII)	Port Moresby	1	October 19, 2023
NYDA (KII)	Virtual (Zoom)	1	November 7, 2023
JSS4D, DFAT (KII)	Virtual (Zoom)	1	November 11, 2023
<b>TOTAL</b>	<b>14 Participants</b>		

### National Capital District

Participant Organisation/ Interview Type	Location	No. of participants	Date
Processing Centre (KII)	Port Moresby	1	October 4, 2023
Arima Village Court (KII)	Port Moresby	1	October 5, 2023
Arima Village Court (KII)	Port Moresby	1	October 5, 2023
DJAG (KII)	NCD	1	October 5, 2023
Village Court (KII)	NCD	1	October 5, 2023
Boroko Police Station (KII)	NCD	1	October 16, 2023
Bomana Correctional Service (KII)	NCD	3	October 17, 2023
PJJC (KII)	NCD	1	October 17, 2023
Police (KII)	NCD	1	October 17, 2023

Salvation Army (KII)	NCD	2	October 17, 2023
District Education (KII)	NCD	1	
Child (IDI)	NCD	1	October 16, 2023
NCD and Central Juvenile Court (KII)	NCD	2	October 18, 2023
Adult community members (FGD)	Joyce Bay	7	October 19, 2023
Adult community members (FGD)	Joyce Bay	8	October 19, 2023
Child (IDI)	NCD	1	October 20, 2023
Child (IDI)	NCD	1	October 20, 2023
Child (IDI)	Joyce Bay	1	
<b>TOTAL</b>	<b>35 Participants</b>		

### Eastern Highlands

Participant Organisation	Location	No. of participants	Date
Community Development Office (KII)	Goroka	1	October 9, 2023
Village Court (KII)	Goroka	6	October 9, 2023
Meri Safe House (KII)	Goroka	2	October 9, 2023
RPNGC (KII)	Goroka	1	October 9, 2023



Probation Administration (KII)	Goroka	1	October 9, 2023
NGO – Femili PNG (KII)	Goroka	3	October 10, 2023
Eastern Highland Family Voice (KII)	Goroka	1	October 10, 2023
Family Support Centre (KII)	Goroka	2	October 10, 2023
Child (IDI)	Goroka	1	October 10, 2023
Parent/Guardian (IDI)	Goroka	1	October 10, 2023
Pastors (FGD)	Goroka	2	October 10, 2023
Community Development Office (KII)	Goroka	1	October 11, 2023
KUSWA (KII)	Goroka	1	October 11, 2023
Oxfam (KII)	Goroka	1	October 11, 2023
CIS (KII)	Goroka	1	October 11, 2023
RPNGC (KII)	Goroka	1	October 12, 2023
Public Prosecutor's Office (KII)	Goroka	1	October 12, 2023
JJO (KII)	Goroka	1	October 12, 2023
District Court of Goroka (KII)	Goroka	1	October 13, 2023
Child (IDI)	Goroka	1	October 12, 2023
Parent/Guardian (IDI)	Goroka	1	October 12, 2023
TOTAL	31 Participants		

## Western Province

Participant Organisation	Location	No. of participants	Date
Catholic Church (KII)	Kiunga	1	October 9, 2023
Provincial Government (KII)	Kiunga	1	October 9, 2023
DJAG (KII)	Kiunga	1	October 9, 2023
Provincial Administration (KII)	Kiunga	1	October 9, 2023
Police (KII)	Kiunga	1	October 10, 2023
Provincial Government (KII)	Kiunga	1	October 10, 2023
Parent/Guardian (IDI)	Kiunga	1	October 10, 2023

Adult community members (FGD)	Mission Corner	11	October 11, 2023
Child and Parent (IDI)	Kiunga	2	October 11, 2023
Parent/Guardian (IDI)	Western Province	1	October 11, 2023
District Court (KII)	Kiunga	1	October 11, 2023
FSVU, Kiunga Police Station (KII)	Kiunga	1	October 11, 2023
Village Court (KII)	Kiunga	6	October 11, 2023
<b>TOTAL</b>	<b>29 Participants</b>		

### West Sepik Province

Participant Organisation	Location	No. of participants	Date
National Court (KII)	Vanimmo	1	October 16, 2023
Vanimmo Police (KII)	Vanimmo	1	October 16, 2023
PBO Office (KII)	Vanimmo	2	October 16, 2023
Correctional Facility (KII)	Vanimmo	1	October 17, 2023
PBO Office (KII)	Vanimmo	2	October 17, 2023
Community Development Administration (KII)	Vanimmo	1	October 17, 2023
Magisterial Services (KII)	Vanimmo	1	October 18, 2023
Community members (FGD)	Vanimmo	7	October 18, 2023
Safehouse (KII)	Vanimmo	1	October 19, 2023
Vanimmo Provincial Hospital (KII)	Vanimmo	1	October 19, 2023
CBC (KII)	Vanimmo	1	October 19, 2023
FSV Unit (KII)	Vanimmo	1	October 19, 2023
Community Development Office (KII)	Vanimmo	1	October 20, 2023
<b>TOTAL</b>	<b>21 Participants</b>		

## Autonomous Region of Bougainville

Participant Organisation	Location	No. of participants	Date
JJS4D, DFAT (KII)	AROB	1	November 1, 2023
CIS (KII)	AROB	1	November 1, 2023
Nazareth Centre (KII)	Chabai	1	November 1, 2023
Community members (FGD)	AROB	11	November 2, 2023
Seif Haus (KII)	Buka	1	November 2, 2023
Haku Women's Collective (KII)	Buka	1	November 3, 2023
JJS, DJAG (KII)	Ieta	2	November 3, 2023
Child (IDI)	AROB	1	November 3, 2023
<b>TOTAL</b>	<b>19 Participants</b>		

## Case File Review

Location	No. of files reviewed
National Capitol District	3
Eastern Highlands	3
Western Province	3
West Sepik Province	4
Autonomous Region of Bougainville	3
<b>TOTAL</b>	<b>16 files</b>

## Annex D: Technical Advisory Group Terms of Reference

A Technical Advisory Group, composed of a Working Group or Nominated Officials from the National Juvenile Justice Committee and its Chairperson, the Department of Justice and Attorney- General, and UNICEF Chief of Child Protection, the Child Protection Specialist as well as others will be established to oversee the research and provide overall leadership and direction to it. This Technical Advisory Group will adopt a Terms of Reference setting out its roles and responsibilities at the start of the Inception Phase of the research. It will work with the successful research firm engaged for this study to develop the specific research questions within the framework of this TOR to ensure full Government ownership over the study from the outset.

Specifically, the Technical Advisory Group will:

- Contribute to the preparation and design of the research, including providing feedback and comments on the inception report and on the technical quality of the work of the consultants;

Develop the specific research questions in consultation with the Technical Advisory Group, which is comprised of the National Juvenile Justice Committee members, the Department of Justice and Attorney-General and UNICEF PNG;

- Review and inputs on the research tools;
- Provide comments and substantive feedback to ensure the quality – from a technical point of view – of the draft and final reports; assist in identifying internal and external stakeholders to be consulted during the research process;
- Participate in review meetings organized by the research manager and with the research team as required; and Play a key role in learning and knowledge sharing from the research results.
- Play a key role in learning and knowledge sharing from the research results.

## Annex E: Ethical Protocol

### 1. Introduction

UNICEF Papua New Guinea has commissioned Coram International to carry out a ‘deep dive’ study on the use of diversion and alternative sentencing for children in conflict with the law in Papua New Guinea (PNG). The study, which was requested by the Department of Justice and Attorney-General, will be conducted under the overall leadership of the National Juvenile Justice Committee and UNICEF PNG. The purpose of the research is to assess the use of diversion and alternative measures for children in conflict with the law and to explore to what extent diversion is being offered in across the country, what those measures consist of and the effectiveness of such efforts.

Currently, little is known about the operationalization of the legal and policy framework for Juvenile Justice in the provinces, the lived experiences of children coming into conflict with the law in PNG and the barriers faced by children to accessing formal justice systems that are child-focused and rights-compliant. This research is intended to complement and build on understanding gained from the recent legal analysis conducted by Coram International, which examined the juvenile justice system in PNG against international child rights standards and showed significant gaps in legal protections for children in conflict with the law.

The research project will be carried out in compliance with UNICEF’s *Ethics Charter and Guidance for Ethical Research Involving Children*<sup>426</sup> and Coram International’s Ethical Guidelines for Field Research with Children. This protocol sets out how these Guidelines will be applied in the context of the research

<sup>426</sup>Graham, A., Powell, M., Taylor, N., Anderson, D. and Fitzgerald, R. Ethical research involving children (2013), UNICEF Innocenti: Florence.

project. It will set out the ethical issues that are likely to arise in the course of the study and how these issues will be managed.

## 2. Harm / benefit analysis

A fundamental principle of ethical research with human (and in particular, child) participants is 'do no harm'. This means that the welfare and best interests of participants are the primary considerations guiding the design of the methodology and data collection methods.

UNICEF and Coram International's ethical guidelines require a consideration of whether the research needs to be done, if children need to be involved in it, and, if so, in what capacity. An analysis of potential harms of the research on children and other participants, is required, along with an assessment of the benefits of the research. Strategies are required to ensure that children are not harmed as a result of their participation in the research, and that distress due to their participation is minimised.

### Benefit analysis

It is important to establish that the research will bring benefit to children and their communities more generally and that it is necessary (the research process will bring about new information or knowledge). It must also be demonstrated that it is necessary for children to be involved in the research as participants.

The justification and rationale for the research is set out in the study's inception report. In summary, the main objective of the research is to assess the compliance of PNG's diversion and alternative sentencing measures for children in conflict with the law in accordance with the country's national legal framework and international standards. This study will also generate evidence on the barriers, bottlenecks and enablers to using diversion and other alternatives to detention in PNG as well as good practices and strategies, including for scaling up diversion.

The rationale for carrying out the research is to provide specific recommendations for the Government of PNG on the development of laws, policies, capacities and quality alternatives to judicial proceedings and deprivation of liberty, as well as provide practical guidance to implementors of diversion programmes from community-based organizations, local non-government organizations and faith-based organizations and provincial Governments.

There is very limited existing information on the treatment of children in conflict with the law in Papua New Guinea, and the scale and nature of diversion and alternative sentencing. In addition, data and reporting on the implementation of key laws such as the Juvenile Justice Act (2014) does not exist. Efforts aimed at strengthening the child justice system and diversion/alternative sentencing services available to children in conflict with the law must rely on a robust evidence base. This research is therefore crucial in providing the evidence needed in responding to the gaps, barriers, bottlenecks and opportunities within the child justice system, with a particular focus on diversion.

The research is timely: the Government of PNG is currently coming to the end of its Juvenile Justice National Plan (2018 – 2022) which aimed to "promote the rehabilitation of juvenile offenders and reduce per-trial detention time". This knowledge generated by this research has the ability to feed into the formulation of the next National Plan on Juvenile Justice and ongoing work to strengthen the use of diversion and alternative sentencing in PNG that have been underway since the introduction of the Juvenile Justice Act in 2014 and the more recent implementation of the Juvenile Justice Regulation 2023 (yet to be gazetted).

The research will involve primary data collection using a mixed-methods research strategy. This will include a combination of a large number of qualitative techniques and a smaller number of quantitative techniques for data collection and analysis, such as:

- National and sub-national level key informant interviews;
- Community focus group discussions;
- In-depth interviews with children and young people and parents/caregivers; and
- Observational visits.

All data collection will be carried out in-person by international and national researchers between late August and October 2023. The research will also collect and analyse data from existing data sources / databases of raw administrative data at the provincial level. Data will be collected from Police Stations, Juvenile Courts/ Courts of summary jurisdiction handling children's cases and from records of any NGOs/ CSOs working in the province. This data will be collected in order to gain a broad and objective picture of the scale and forms of diversion for different groups of children and young people.

According to the research plan, data collection will take place at both the national and in five provinces/ autonomous regions, at the provincial, district and village level. Exact locations will be agreed during the Inception Phase in consultation with the Technical Advisory Group (TAG). Provisionally we suggest the following provinces for data collection:

1. National Capital District (Southern)
2. Western Province (Southern)
3. Autonomous Region of Bougainville (Islands)
4. West Sepik Province (Momase)
5. Eastern Highlands Province (Highlands)

The range in research locations is important. While the study is not quantitative and does not aim to generate data that is representative in a technical sense, it is nonetheless important that the data are broadly generalisable and applicable across PNG and that findings are generated across different contextual factors and beneficiary characteristics. In addition we have suggested that research is conducted in communities where a variety of structures for handling cases of children in conflict with the law are present (i.e. some locations where cases are handled by Juvenile Courts, other where Village Courts or Magistrates Courts are used) to ensure the research is able to capture the full spectrum of bodies responsible for handling children's cases and their use of diversion or alternative measures. It is therefore important that data are collected from a range of different locations across the country.

It is important that, in assessing the child justice system and use of diversion that beneficiaries (children and families) are included in the data collection. This is essential for ensuring that these diversion and alternative sentencing are assessed according to the direct experiences, views and feedback of the persons that the programme aims to directly impact and that any recommendations resulting from the research considers the views and perspectives of the children and parents / carers. It is also important to include children in the research, as child participation in decisions affecting them is a fundamental right.<sup>427</sup>

## **Harm analysis**

Children and parents / carers involved in the research could face secondary trauma, as they will likely be discussing quite sensitive material (personal experiences the child justice system). It should be noted that the data collection will be carried out according to the 'do no harm' principle – that, where the data collection is likely to cause harm to participants, the needs of the participants will be paramount. Nonetheless, the importance of child participation in the data collection is recognised; it is also recognised that, provided the right conditions are in place, children can find it empowering to discuss their experiences and understand that this may contribute to improved programming for children in conflict with the law.

<sup>427</sup>See article 12 of the UN Convention on the Rights of the Child.

To minimise potential harm caused to child participants, children will be given the option of carrying out the interview with a trusted adult (e.g. a parent / carer or social worker, where appropriate), or a friend. In addition, researchers are highly qualified and experienced at interviewing children and will use sensitive, age-appropriate tools and techniques.

Front-line professionals participating in key informant interviews could face risks to their employment should it be discovered that they have expressed views that are contrary to dominant social norms, values and beliefs. However, this risk will be mitigated through carrying out individual interviews with experts and professionals where there are sensitivities (i.e. not FGDs) and through following strict anonymity and data protection protocols (see below). All interviews will be conducted in private spaces (i.e. offices or meeting rooms with doors closed) to minimise the risk of colleagues overhearing interviews.

### **Harm minimisation strategies**

It is important to ensure that all necessary measures are taken to minimise physical and emotional harm to participants and to researchers. The following strategies will be used to minimise harm and ensure the meaningful participation of children, parents / carers, professionals and experts in the research.

### **Selection and training of researchers**

All researchers have necessary qualifications, knowledge and considerable experience carrying out data collection with professionals, government representatives, youth, children, families and community members, including on sensitive topics such as child justice. The Coram International team has been working in Papua New Guinea for the last 8 years, including in conducting a comprehensive 'Mapping and analysis of legal and policy frameworks' (2020-2022). All national researchers are based in PNG and have extensive experience carrying out research on sensitive topics, including with children and families.

International researchers have all undergone criminal history checks and all researchers, including national researchers, have been required to sign a code of conduct as part of the contracting process.

Researchers will all be involved in an orientation session prior to pre-testing of tools and data collection. This will be led by the International Researcher and will cover the purpose and aims of the research, ensuring familiarity with the data collection tools and training on the ethical protocol and tools.

The research consultants speak between them English, Tok Pisin, Hiri Motu and Toaripi, and it is expected that data collection will take place in a variety of languages.

### **Pre-testing tools**

The data collection tools, along with the ethical tools (information sheets and consent forms) will be piloted on a small sample of research participants in Port Moresby prior to the commencement of data collection, in order to test the understanding and utility of the tools and their cultural appropriateness, allowing for tools to be adjusted before data collection commences.

### **Recruitment of research participants**

Researchers will need to ensure that recruitment of participants does not increase the risk of them suffering from harm through the experience through re-traumatisation (through, for example, discussion of traumatic experiences). Selection of participants will be done through consultation with the provincial government and NGO service providers who work with them, to ensure participants are only involved where they are unlikely to experience secondary trauma through the interview process. Participants will only be recruited from the age of 10 years.

Similarly, front-line professionals participating in key informant interviews will be selected purposively on the basis of them having an existing role in the child justice system.

### Design of data collection tools and data collection approaches and processes

The topics covered in the research may cause distress to some participants, particularly those that have had experienced or experienced types of violence or other treatment that are stigmatised (e.g. sexual abuse or exploitation). Throughout interviews, researchers will be led by the 'do no harm' principle, which requires that the data collection be considered secondary to the need to avoid harm to research participants. This will be covered in-depth in the orientation session, with practical examples being given.

Where it is clear that the interview is having a negative effect on a participant (e.g. the participant breaks down, becomes very quiet and withdrawn, becomes shaky etc.), Researchers will be advised to suggest stopping the interview and will suggest follow up support to the participant. Where participants reveal current or past experiences of violence or exploitation, researchers will convey empathy, but will not show shock or anger, as this can be harmful to persons who have experienced violence (please refer to section below on how child protection disclosures will be addressed). These matters will be covered in-depth during the orientation session with the researchers.

In order to reduce the risk of stress or harm to participants:

- Data collection tools have been designed in a manner that avoids direct, confronting questions, judgement and blame. They have also been developed to ensure that they are relevant to the cultural context. Pre-testing these tools will ensure that they are relevant and appropriate and that they avoid confronting or culturally insensitive questions.
- Interviews may cover particularly sensitive or traumatic material, and it is important to ensure that participants feel empowered. Interviews will finish on a 'positive or empowering note' through asking questions about what would improve the situation of children in their community. This will help to ensure that participants do not leave the interview focusing on past traumatic experiences.
- In order to reduce stress caused to children and parents / carers in individual interviews, children and parents / carers will be provided with the opportunity to participate in data collection with a trusted adult or friend if this would make them feel more at ease. Researchers should identify staff at institutions (e.g. Juvenile Justice Officers Social Workers, NGO staff etc.) that are available to accompany participants, if requested.

### **Ensuring the safety of participants and researchers**

Given the security challenges posed in Papua New Guinea researchers are aware of the risk of undertaking data collection. A comprehensive risk assessment will be undertaken for all researchers prior to travel, including guidance on security from the UK Foreign, Commonwealth and Development Office (FCDO) website and NHS Fit for Travel health advice.

Researchers will take all reasonable security precautions in country and data collection with professionals will be carried out in a public place (government or NGO offices, offices of service providers etc.). However, where preferable for participants, interviews maybe carried out where participants are located in their households. All data collection will take place in daylight hours.

Where possible Coram researchers will also travel alongside the national research team and UNICEF colleagues for security purposes.

Coram International will take measures to support the mental wellbeing of researchers. Coram has a



Mental Health First Aid focal point within its staff and researchers will be provided with the opportunity to de-brief with the manager of the research project or member of staff responsible for supervising data collection. Researchers will be sign-posted to counselling services if required.

### **Responding to trauma, distress and protection disclosures**

During the data collection process, child participants may disclose information that raises child protection concerns – i.e. that they are at risk of significant harm. As participants will be accessed through government and non-government service providers, it is likely that they will already have accessed necessary services and support for past child protection issues. However, to ensure that participants who have protection concerns are identified and responded to appropriately, a referral process will be developed in collaboration with the Department of Justice and Attorney General's Office. This referral process and accompanying is attached at Annex 4. However, in summary, the following measures will be taken:

- Coram International researchers will report all concerns in line with the attached Policy to UNICEF's Child Protection Specialist who focuses on child justice issues, Ndangariro P. Moyo ([ndmoyo@unicef.org](mailto:ndmoyo@unicef.org)).
- UNICEF would then be responsible for reporting any safeguarding concerns to local child protection authorities as soon as possible.
- The local child protection authorities will then be able to refer the child to appropriate services; and
- All researchers will be provided with in-depth training on the child protection protocol, including through the use of practical, hypothetical scenarios and role plays.

In addition, the Information sheet for children and parents/carers also includes the helpline number of the toll-free and confidential Tok Kaunselin Helpim Lain in Papua New Guinea. The helpline supports with cases of domestic and sexual violence.

It is also possible that adult participants disclose past or current traumatic experiences. In these cases, it is essential that participants provide consent to any protection referrals. Participants will be given a list of service providers that they are able to contact to receive support or assistance.

### **3. Principle of respect: informed consent, privacy and confidentiality**

Researchers must ensure that all participation in the research is voluntary and takes place only if informed consent is given by each research participant.

#### **Informed consent and voluntary participation**

Researchers will ensure that participation in research is on a voluntary basis. Researchers will explain to participants in clear, age-appropriate language that participants are not required to participate in the study, and that they may stop participating in the research at any time. Researchers will carefully explain that refusal to participate will not result in any negative consequences. Incentives will not be provided to participants in order to ensure that participation in the research has not been induced. However, where transport costs are incurred, they can be reimbursed. These matters are set out clearly in the study's participant information sheets (Annexes E.2 – E.3). Participants will be clearly advised that their participation or lack of participation in the study will not lead to any direct benefits or sanctions / removal of benefits.

All research participants will be required to give positive informed consent in order to participate in the study. Researchers will use information and consent forms with interviews with national stakeholders, front-line professionals / service providers, children and parents / carers. All participants will be given

an information sheet (Annexes E.2 – E.3) containing information about the study and ethical protocol, along with the contact details of service providers in case the participant requires access to services following the interview. For interviews with children, parental consent will also be required. Where it is not possible for a parent / carer to give consent (e.g. where a child is separated from their, is accessed through a children's home or where it would be harmful to request consent from a parent), the child's consent to participate in the research will be sufficient. This is important to ensure that a diverse range of children are included in the research, including children who are separated from parents. For children who are unable to read and write, the research will read the consent form to the child and indicate on the form that the child has given consent.

At the start of each interview, research participants will be informed of the purpose and nature of the study, their contribution, and how the data collected from them will be used in the study, verbally and through an information sheet (Annexes E.2 – E.3), which will be made available in a range of languages. The information form explains, in clear, appropriate language, the nature of the study, the participant's expected contribution and the fact that participation is entirely voluntary.

Researchers will be advised to talk participants through the information sheet and ensure that they understand it.

If unsure, researchers will request the participant to relay the key information back to them to ensure that they have understood it. Participants will also be advised that the information they provide will be held in strict confidence (see below).

Special efforts will be made to ensure that all children have given informed consent (that they are aware of the purpose and nature of the study and their involvement in it). Special care must be taken to ensure that especially vulnerable participants give informed consent. In this context, vulnerable participants may include those with disabilities or learning difficulties or those mental health issues. Informed consent could be obtained through the use of alternative, tailored communication tools and / or with the help of adults that work with the participants.

In addition to seeking consent from individual participants, it is important to seek the support of the relevant service providers. In order to achieve this, letters will be sent to the key government departments along with key NGO service providers. The letters will explain the purpose and nature of the study and the purpose of the data collection, and requests assistance from these institutions to access research participants.

### **Anonymity and data protection**

The identity of all research participants will be kept confidential throughout the process of data collection as well as in the analysis and writing up study findings. The following measures will be used to ensure anonymity:

- Interviews will take place remotely in a secure, private location (where possible, in a room within a service provider's office / government office etc.) which ensures that the participant's answers are not overheard;
- Researchers will not record the name of participants and will ensure that names are not recorded on any documents containing collected data, including on transcripts of interviews. Each participant will be assigned a number and this number will be used on the transcript. A matrix containing the participant's name and number will be stored separately on a password protected Dropbox account (in a separate file to the transcripts) to ensure that consent forms are able to be matched to each participant;
- Researchers will delete electronic records of data from laptops immediately after they are sent to Coram International (in a password-protected and secure Dropbox account);

- Coram International will store all data on a secure, locked server, to which persons who are not employed by the Centre cannot gain access. All employees of Coram International, including volunteers and interns, receive a criminal record check before employment commences;
- Transcripts will be saved on the secure server for a period of three years and will then be deleted; and
- Research findings will be presented in such a way as to ensure that individuals are not able to be identified.

All participants will be informed of their rights to anonymity and confidentiality throughout the research process, verbally and in information sheets.

It is noted that interview transcripts will be typed or handwritten in real time (where possible, interviews will be carried out with two researchers – one conducting the interview and another recording notes from the interview). All audio files (if recording is used with participants consent) will be stored on a secure, password protected Coram International Dropbox account.

Researchers will provide participants a telephone number, website, email, and contact address which participants can contact if they have questions or concerns following data collection.

## **Annex E.1: Code of Conduct for researchers employed by Coram International**

### **1. Introduction**

This Code of Conduct provides guidance on what we expect of each other at Coram International. We are all responsible for acting in a way that fits with Coram International's mission and values and the expectations in this Code of Conduct. This Code of Conduct accords with the Coram group Code of Conduct.

### **2. Scope**

This Code of Conduct covers anyone acting as a representative of Coram International. This includes all employees, consultants, interpreters, enumerators and volunteers participating in and contributing to Coram's International's activities.

### **3. Guiding principles**

Our ability to achieve our aim to promote and implement the rights of children is linked to our reputation. This reputation relies on everyone who works for us upholding and promoting high standards of conduct in line with our mission and values. We often work in situations where we are in positions of power and trust (in relation to children, other organisations and one another). We must not abuse this power and trust.

As a child-focussed organisation, we have particular obligations to protect children and their rights and promote their welfare.

### **4. Our vision and mission**

Coram International's vision is of a world where children's rights are respected, protected and fulfilled. Our mission is to promote and implement the rights of children worldwide.

## 5. Our values

**Commitment:** we are dedicated to our work, team and vision and to those benefiting from our work

**Integrity:** we don't compromise our values

**Flexibility:** we adapt to context and needs

**Team work:** we value all team members and work collaboratively internally and externally

**Quality:** we value the competence and skill of our people and the high quality of our work

**Compassion:** we act to promote equality, justice and compassion

**Fun:** we value positive interactions with each other

## 6. Our commitment

Because I respect others, I will...

- Not tolerate or take part in any form of discrimination, harassment, or abuse (physical, sexual or verbal), victimisation, intimidation or exploitation.
- Respect the rights of all others – regardless of age, gender, disability, colour, race, nationality, ethnic or national origins, creed, culture, religion or belief, sexual orientation, marital or family status, HIV status and other aspects of identity.
- Act fairly and prevent any form of discrimination.
- Respect the rights of children, young people, and others by ensuring that any information/data in my possession is saved and shared in line with principles of confidentiality and anonymity, and in line with research or ethical guidance I am required to sign as a condition of my work with Coram International.

Because I am committed to safeguarding children, young people and vulnerable adults, I will...

- Act in a way that does not in any way place children, young people and vulnerable adults at risk of harm.
- Not withhold information about any current criminal convictions, charges or civil proceedings relating to child abuse, either when I join Coram International or arising during the time I am contracted by Coram International.
- Put the best interests of the child first and 'do no harm'.
- Follow relevant referral procedures if I have any concerns about the safety of a child, young person or vulnerable adult.

Because I am professional, I will...

- Maintain high standards of personal and professional conduct, by taking responsibility for my actions and not abusing my position of power as a Coram International representative
- Follow any guidance and policies provided to me as part of my tasks, including research and ethical guidelines, training and supervision instruction.

### Because I am professional, I will not...

- Behave in a way that undermines my ability to do my tasks or is likely to bring Coram International into disrepute.
- Engage in sexual relations with service users or anyone who is vulnerable, in my care or under the age of 18, or abuse or exploit a child, young person or vulnerable adult in any way.
- Engage in any form of inappropriate or sexually explicit communication (including text, email, etc.) with any child, young person, or vulnerable adult with whom I may be involved as a result of participating or working with Coram International.
- Drink alcohol or use any other substances in a way that affects my ability to do my tasks or affects the reputation of the organisation.
- Be in possession of, nor profit from the sale of, illegal goods or substances.
- Ask for or invite any personal payment, service or favour from others, especially beneficiaries, in return for our help, support, goods or services of any kind.
- Accept bribes or significant gifts (except small tokens of appreciation) from beneficiaries, donors, suppliers or others which have been offered as a result of my employment.
- Enter into any sort of business relationship on behalf of Coram International with family, friends or other personal/professional contacts for the supply of any goods or service to Coram or any employment related matters without authorisation.
- Refuse any reasonable management request.
- Take unauthorised absence from work.
- Dress in an inappropriate manner or which may cause offence to those with whom I have contact or in the environment in which I am operating.
- Use the organisation's computer or other equipment to view, download, create or distribute inappropriate material, such as pornography.

### Because I have integrity, I will

- Raise through appropriate channels any matter which appears to break the standards contained in the Code of Conduct.

## **Annex E.2: Participant information sheet and consent form (Adult key informants)**

**Deep Dive Study:** Diversion of children in conflict with the law in Papua New Guinea

**Principal Investigator:** Kirsten Anderson

**International Researchers:** Catherine Burke and Ramyah Harrichandiran

Coram International, London, United Kingdom

Research funded by UNICEF Papua New Guinea

### **Introduction**

- Coram International is working with UNICEF Papua New Guinea to conduct a deep dive study into the use of diversion for children in conflict with the law in Papua New Guinea.
- Coram International is UK-based charity working internationally to promote and protect the rights of children; Coram International has been working on various projects in the Papua New Guinea since 2015.
- Participant Selection
- You are being invited to take part in this study because of your special knowledge and expertise on the child justice system (including diversion) in PNG.

### **Aim and Purpose of the Research**

- The study is aimed at understanding diversion and alternative sentencing measures for children in conflict with the law. The study aims to gather evidence on the barriers, bottlenecks and enablers to using diversion and other alternatives to detention in PNG as well as good practices and strategies, including for scaling up diversion in the future.

### **Type of Research Activity and Duration**

- We would like to invite you to take part in this interview
- It will take about 1 hour

### **Research Procedures**

- This interview will be about the child justice system and your role in it. It will also involve questions about the functioning, reach, accessibility and your views on the effectiveness of the child justice system, with a focus on the use of diversion.
- Two researchers will be present at the interview. One researcher will lead the discussion and the other will take written notes of the discussion; however, he/she will not record your name or any other information that can allow to track what you have said back to you. Therefore, the only person who knows that you took part is the researcher/s you met today and he/she will keep that information confidential.
- Three years after the project is completed, we will destroy all notes.

### **Anonymity**

- We would like to make an audio recording of the interview. Alternatively, and if you do not wish for us to make an audio recording, we will take notes during the interview. The notes from the interview, without your name or personal information, will be stored on a secure server that only researchers from Coram International can access.
- Should any other researchers wish to use the anonymous information, they will need to ask for

Coram International and UNICEF's permission and the information can only be used for projects to improve the situation for children and young people.

### **Uses of Information/ Sharing the Report**

- Once we have finished our research, we will write a research report so that other people can read about the results. We may also talk about the report in a conference or meeting.
- We will not include your name or any other personal information in the report, so no one will be able to know that you took part.
- We will, with your permission, state the name of your agency / institution and your location, and job title, so it may be possible to identify you. However, we will remove some of this information should you request this. Please inform the researcher if you do not wish to have any of this information recorded or reported.

### **Benefits and reimbursements**

- There are no direct benefits to you from participating in the research, such as goods or services. However, you may be happy to know that the information you provide can help the PNG Government (particularly the Department of Justice and Attorney General) and UNICEF to better protect and support children and families through improved access to diversion and alternative sentencing.
- We will cover your transport costs to / from the interview, if applicable.

### **Risks**

- We also ask that you do not talk to other people about what was discussed today, this should be confidential.
- If you feel upset, distressed or worried about anything after the discussion, we can direct you to a service or person you can talk to.

### **Voluntary Participation/Right to Refuse or Withdraw**

- It is entirely up to you if you want to take part or not.
- If you do not want to take part, you do not have to.
- If you decide to take part, you can still decide to stop at any time. If you decide that you do not want to take part any longer, just let me know or leave quietly.

### **Who to Contact**

- If you have any questions, feel free to ask them now.
- If you have any questions after the discussion, you can email [international@coramclc.org.uk](mailto:international@coramclc.org.uk)

### **Consent**

- If you agree to take part in this research, please sign the consent form, or give your verbal consent to the researcher.

### **Certificate of Informed Consent**

- I have read the above information, or it has been read to me in a language that I understand.
- The purposes of the study, the procedures, the benefits and any risks have been explained to my

satisfaction.

- I have had the opportunity to ask questions and any questions I have been asked have been answered to my satisfaction.
- I consent voluntarily to be a participant in this study.

Print Name of Participant \_\_\_\_\_

Signature of Participant \_\_\_\_\_

Date \_\_\_\_\_

Day/month/year

**Tear here**-----

To be kept by the researcher

### **Part II: Certificate of Informed Consent**

- I have read the above information (Part I), or it has been read to me in a language that I understand.
- The purposes of the study, the procedures, the benefits and any risks have been explained to my satisfaction.
  - I have had the opportunity to ask questions and any questions I have been asked have been answered to my satisfaction.
  - I consent voluntarily to be a participant in this study.

Print Name of Participant \_\_\_\_\_

Signature of Participant \_\_\_\_\_

Date \_\_\_\_\_

Day/month/year



### E.3: Participant information sheet and consent form (Children)

**Deep Dive Study:** Diversion of children in conflict with the law in Papua New Guinea

**Principal Investigator:** Kirsten Anderson

**International Researchers:** Catherine Burke and Ramyah Harrichandiran

Coram International, London, United Kingdom

Research funded by UNICEF Papua New Guinea

Hello!

1. My name is [insert researcher name] I am working with UNICEF – a global children’s organisation – to look into how the government and works with children in conflict with the law. In particular we are looking at how Papua New Guinea supports children who have broken the law which rather than putting them through the formal justice process (i.e. Courts) instead chooses to enrol them in a programme of support and services with the aim of helping them not reoffend. This is called ‘diversion’. We are also looking at children who do go through the formal justice process (i.e. go to Court) and are found to be guilty but who are given another punishment other than jail or prison. This is called ‘alternative sentencing’. We would like to understand what is currently happening, what is going well and what can be improved so that we can help UNICEF and the Government to support children.

2. As part of this study, we would love to hear children like you who have some experience of coming into conflict with the law. We would like to understand the reasons that led you to come into conflict with the law, your experiences with diversion, and the services and support you were provided with.

3. Our talk will last for 45 minutes to one hour and will be carried out in person.

4. You are free to stop the interview at any time – that will be absolutely fine, and nothing negative will happen if you say you do not want to continue. You can also refuse to answer any questions if you prefer.

5. We may like to mention some of what you tell us in a report after we have finished all of our research. This report could be read by others, but your name will not be used in this report or in any other way.

6. I will be taking notes of our conversation on my computer and I would also like to make a recording [show child recording device if using] of the conversation. This is just for me and our research team to make sure we remember what you tell us. This will not be shared with anyone else. The recording of the interview will be kept on a computer that is protected by a password that only our research team knows.

7. As we have said, we would like to make notes of our conversation in order for us not to miss out very important details of the information you are going to share. However, we would like to assure you that any information you share, including your name will be treated confidentially (that means that we will not share it with others).

8. We thank you for your participation in this conversation/interview.

9. If you have questions or concerns of anything which you do not like during the interview, you may call to report on these concerns to the following:

Email: [international@coramclc.org.uk](mailto:international@coramclc.org.uk)

Catherine Burke:

Mobile: +44 7782837265

Kirsten Anderson:

Mobile: +61 429599763

If you need help or are experiencing violence inside or outside of the home you can also call a local helpline called 'Tok Kaunselin Helpim Lain'. They will keep your call confidential. They operate 24 hours per day 7 days a week on a toll-free Digicel number.

**Helpline number: 7150 8000**

They also have a Facebook chat function available if you would prefer to contact them in this way. Please see this link: <https://www.facebook.com/1TokHelpimLain/>

**Certificate of Informed Consent**

I, \_\_\_\_\_ state and certify the following (with check mark):

- That I am informed of the reason for the interview.
- That I participate with the permission also of my parent/guardian.
- That I allow the use of an audio recorder to document the interview.
- That I understand that my name will be anonymous (i.e. will not be shared with anyone).
- That I can stop participating in the interview any time or choose not to answer certain questions.

\_\_\_\_\_

Signature of the Participant

Date:

**Tear here**-----

To be kept by the researcher

## Part II: Certificate of Informed Consent

I, \_\_\_\_\_ state and certify the following (with check mark):

- That I am informed of the reason for the interview.
- That I participate with the permission also of my parent/guardian.
- That I allow the use of an audio recorder to document the interview.
- That I understand that my name will be anonymous (i.e. will not be shared with anyone).
- That I can stop participating in the interview any time or choose not to answer certain questions.

\_\_\_\_\_  
Signature of the Participant

Date:

## **E.5 Participant information sheet and consent form (Community Member)**

Deep Dive Study: Diversion of children in conflict with the law in Papua New Guinea

Principal Investigator: Kirsten Anderson

International Researchers: Catherine Burke and Ramyah Harrichandiran

Coram International, London, United Kingdom

Research funded by UNICEF Papua New Guinea

Hello!

1. My name is [insert researcher name] I am working with UNICEF – a global children’s organisation – to look into how the government and works with children in conflict with the law. In particular we are looking at Papua New Guinea’s diversion and alternative sentencing measures for children in conflict with the law. By diversion, we mean the process of redirecting young people who have committed a criminal offence away from the formal justice system (i.e. Courts) and into a programme of support and services with the aim of helping them not reoffend. By alternative sentencing we mean a non-custodial sentence (i.e. not sending a child to jail or prison) after they have been found guilty of an offence. We would like to understand what is currently happening, what is going well and what can be improved so that we can help UNICEF and the Government to support children.

2. As part of this study, we would like to hear from members of the wider community to understand your views on the use of diversion and alternative sentencing for children.

3. Our focus group discussion will last for approximately one hour and will be carried out in person.

4. You are free to stop participating in the focus group discussion at any time – that will be absolutely fine, and nothing negative will happen as a result. You can also refuse to answer any questions.

5. We may like to mention some of what you tell us in a report after we have finished all of our research. This report could be read by others, but your name will not be used in this report or in any other way.

6. I will be taking notes of our discussion and I would also like to make a recording of the conversation. This is just for me and our research team to make sure we remember what you tell us. This will not be shared with anyone else. The recording of the focus group discussion will be kept on a computer that is protected by a password that only our research team knows.

7. As we have said, we would like to make notes of our conversation in order for us not to miss out very important details of the information you are going to share. However, we would like to assure you that any information you share, including your name will be treated as confidential.

8. We thank you for your participation in this focus group discussion.

9. If you have questions or concerns of anything which you do not like during the interview, you may call to report on these concerns to the following:

Email: [international@coramclc.org.uk](mailto:international@coramclc.org.uk)

Catherine Burke:

Mobile: +44 7782837265

Kirsten Anderson:

Mobile: +61 429599763

If you (or your child) need help or are experiencing violence inside or outside of the home you can also call a local helpline called 'Tok Kaunselin Helpim Lain'. They will keep your call confidential. They operate 24 hours per day 7 days a week on a toll-free Digicel number.

Helpline number: 7150 8000

They also have a Facebook chat function available if you would prefer to contact them in this way. Please see this link: <https://www.facebook.com/1TokHelpimLain/>

### Certificate of Informed Consent

I, \_\_\_\_\_ state and certify the following (with check mark):

- That I am informed of the reason for the focus group discussion.
- That I consent to participating in the focus group discussion.
- That I allow the use of an audio recorder to document the focus group discussion.
- That I understand that all the information that I share such as my name will be treated as confidential and remain anonymous.
  
- That I may stop/discontinue my participation in the focus group discussion any time or refuse to answer certain questions.

\_\_\_\_\_

Name and signature of the Participant

Date

Tear here-----

To be kept by the researcher

### Part II: Certificate of Informed Consent

I, \_\_\_\_\_ state and certify the following (with check mark):

- That I am informed of the reason for the focus group discussion.
- That I consent to participating in the focus group discussion.
- That I allow the use of an audio recorder to document the focus group discussion.
- That I understand that all the information that I share such as my name will be treated as confidential and remain anonymous.
- That I may stop/discontinue my participation in the focus group discussion any time or refuse to answer certain questions.
  
- \_\_\_\_\_

Name and signature of the Participant

Date

## Annex E.6: Referral process for child protection disclosures

### 1. Informing participants of the obligation to report cases of serious harm:

Before the interview, the researcher will inform the child that the interview is confidential unless the child shares information that they are being, or is at imminent risk of being, seriously harmed. This information will also be included in a participant information sheet that child interviewees will keep.

### 2. What to report:

Reporting will take place when all of the following three conditions (a, b, and c) are satisfied:

- a) The issue concerns a new case, i.e. a case/child that is not already known to a child protection agency; and*
- b) The threshold of harm has to be high, i.e. serious harm\*;<sup>428</sup> and*
- c) The abuse is ongoing or imminent.*

\*“Serious harm” includes, but is not limited to, cases where the child has sustained, as a result of abuse or neglect, any or all of the following (this list is non-exhaustive):

- A potentially life-threatening injury;
- Serious and/or likely long-term impairment of physical or mental health or physical, intellectual, emotional, social or behavioural development.<sup>428</sup>
- The researcher shall exercise judgement when determining whether a harm is serious based on the context and individual circumstances of the child and the case. Where the researcher is unclear, she or he should discuss the incident with the Coram International Team Leader at the earliest opportunity.

### 3. Reporting lines and referral pathway

Who is responsible and when do they act?

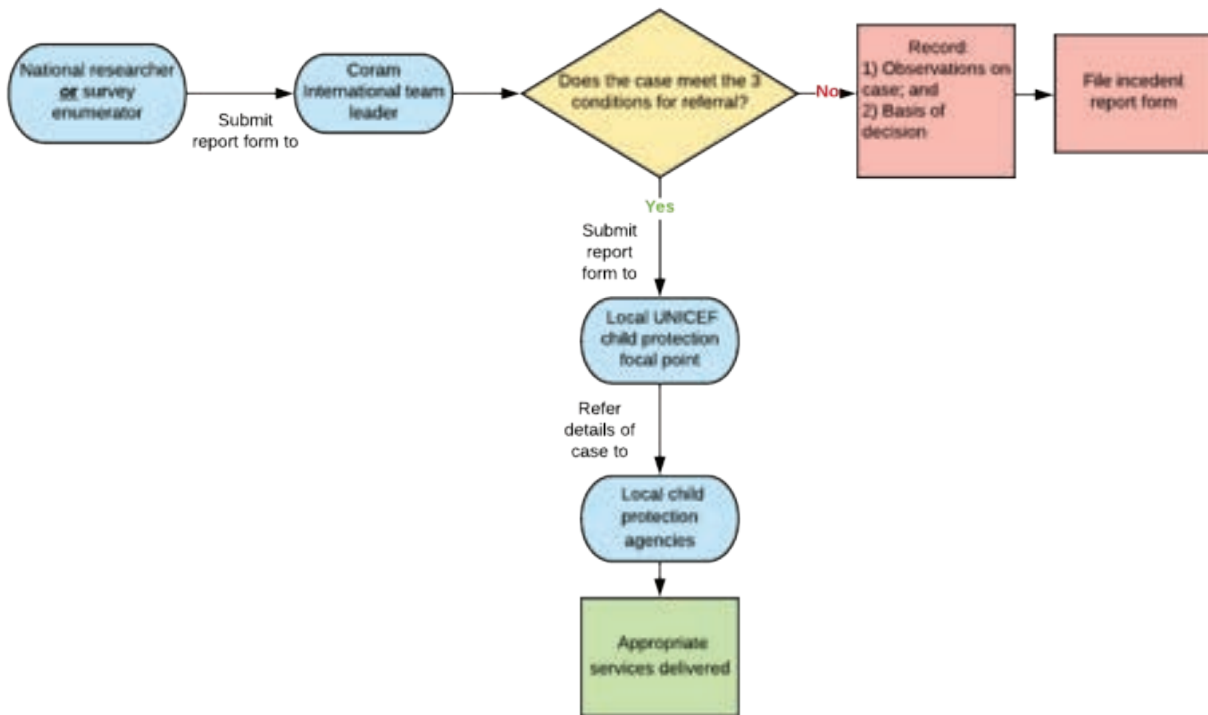
1)When a suspected child abuse case is identified by a Researcher during qualitative interviews with children, the Researcher will be required to fill in an incident report form (see below) to report the case immediately to the Coram International Team Leader.

2. Coram International’s Team Leader role: After receipt of the incident report form, the role of the Team Leader will be to record their own observations on the seriousness of the case on the incident report form, make a decision on whether this has met the threshold and thus needs to be referred and, if applicable, refer the case to UNICEF’s child protection focal point (Child Protection Specialist Ndangariro P. Moyo (ndmoyo@unicef.org)).

After receipt of the incident report form, if it is deemed necessary to take action to protect the child, the designated UNICEF child protection focal point will follow the child protection law and process in PNG and report to local child protection authorities. Where appropriate, 3)a child protection assessment will be carried out and, where necessary, the child will be placed in emergency care.

<sup>428</sup>The definition of serious harm is taken from Department for Education (2015) Working together to safeguard children: a guide to inter-agency working to safeguard and promote the welfare of children (PDF).

**Reporting lines flowchart:**



**Safeguarding incident report form:**

TYPE OF DATA COLLECTION	<input type="checkbox"/> Qualitative interview
LOCATION	Province/Autonomous Region: District: Village:
CHILD ACCESSED THROUGH?	(e.g. Government agency / organisation name) ..... .....
Brief Description of Event (include age, gender, and other important characteristics)	
RESEARCHER SIGNATURE	Signed _____ _____ First name..... Last name..... Date.....
CORAM INTERNATIONAL TEAM LEADER DECISION ON CASE REFERRAL	

<p>CORAM INTERNATIONAL TEAM LEADER OBSERVATIONS AND JUSTIFICATION FOR REFERRAL DECISION</p>	<p><b>Yes</b>, the case meets the three conditions for further action (as outlined in the Coram international referral protocol) and will be referred</p>	<p><b>No</b>, the case does not meet the three conditions for further action (as outlined in the Coram international referral protocol) and will not be referred</p>
<p>CORAM INTERNATIONAL TEAM LEADER SIGNATURE</p> <p>LOCAL CHILD PROTECTION FOCAL POINT SIGNATURE (MSSD)</p>		



