



The Republic of Zambia

**Ministry of Community Development
and Social Services**



JUVENILE JUSTICE



National Diversion Framework

Foreword

The Ministry of Community Development and Social Services with support from UNICEF embarked on a process of developing a National Diversion Framework. The National Diversion Framework was also developed in the context of national child reform efforts, which are aimed at bringing the Zambian child justice system in line with international standards. The National Diversion Framework sets out the scope, criteria, process and options for the use of diversion in Zambia. It aims at assisting all stakeholders such as: Magistrates, Law Enforcement Agencies, Social Welfare Officers, Public Prosecutors, Non-Governmental Organizations and other service providers to respond to child offending by way of diversion from the formal court system. This is also in compliance with the United Nations Convention on the Rights of the Child (UNCRC).

The initial process of developing the Diversion Framework commenced with an assessment conducted in Lusaka and Mazabuka by an international consultant (Kirsten Anderson of the Coram International) and a national Consultant (Hon. Kenneth Mulife). The assessment established that diversion was being carried out across Zambia in an informal and ad hoc manner. Typically it was practiced by Police Officers mediating between a child-offender and complainant including their families. The assessment also found that more intensive and rehabilitative 'diversion programs were being implemented through a number of Civil Society Organizations and Non Governmental Organizations. However, the vast majority of referrals were coming from the Courts, and were not strictly diversion, but rather constituted community-based sentencing alternatives.

Stakeholders consulted in the development of the Framework, identified a need for standardisation on diversion and consistency in the implementation of diversionary measures. There is a general agreement that a National Framework on Diversion is urgently needed.

This National Diversion Framework comprises seven parts: The first part provides for definitions of core-terms used in the framework. The second part outlines the meaning and purpose of diversion. The third part is a layout of the legal framework for diversion. The fourth part outlines the scope and criteria for applying diversion. The fifth part prescribes the diversion referral process and path ways. The sixth and seventh parts outlines the diversion plan and options in the diversion process with focus on the best interest of the child.

Therefore, the Framework is a landmark achievement in the child law reform and operationalisation of the best interest principle in child well-being and protection.

It is hoped that this Diversion Framework will provide a stepping stone in the dispensation of child justice system in Zambia and implore all stakeholders to fully operationalize diversion in Zambia.



Hon. Olipa Mwansa Phiri, MP,

MINISTER

MINISTRY OF COMMUNITY DEVELOPMENT AND SOCIAL SERVICES

Acknowledgements

The development of the National Diversion Framework was led by the Ministry of Social Welfare and Community Development, with the support of UNICEF Zambia, Kirsten Anderson and Gwen Ross at Coram International and Hon. Kenneth Mulife. The Framework was developed in close collaboration with representatives from a range of key Government Ministries and NGOs / CSOs. The authors of the Diversion Framework would like to express their sincere gratitude to all of the persons who generously gave their time and expertise to the development of the National Diversion Framework.

Lastly, the Ministry will always remain indebted to the good-will and commitment exhibited by our Partners for support and provision of the much needed resources to facilitate the development of the National Diversion Framework.



Dr. Liya N. Mutale

PERMANENT SECRETARY

MINISTRY OF COMMUNITY DEVELOPMENT AND SOCIAL SERVICES

Acronyms

ACRWC	African Charter on the Rights and Welfare of the Child
CJF	Child Justice Forum
CPC	Criminal Procedure Code
CSO / NGO	Civil Society Organisation / Non-government organisation
DEC	Drug Enforcement Commission
DPP	Director of Public Prosecutions
DSW	Department of Social Welfare
MCDSS	Ministry of Community Development and Social Services
NDF	National Diversion Framework
NPA	National Prosecution Authority
UNICEF	United Nations Children's Fund
UNCRC	United Nations Convention on the Rights of the Child

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Introduction

The National Diversion Framework sets out the scope, criteria, process and options for the use of diversion in Zambia. It aims to assist all stakeholders, including the law enforcement agencies, Social Welfare, Public Prosecutors, Magistrates and NGO service providers to respond to child offending by way of diversion out of the formal court proceedings, in accordance with the UN Convention on the Rights of the Child (UNCRC). The National Framework was also developed in the context of national reform efforts, which are aimed at bringing the Zambian child justice system in line with international standards. Provisions applying specifically to children in conflict with the law are mostly contained in the Juveniles Act, Cap 53 of the Laws of Zambia which contains provisions on preliminary proceedings (including bail and remand); and the establishment and procedure of the Juvenile Courts. Other general laws will also apply to children in conflict with the law, including the Penal Code and the Criminal Procedure Code. However, the child justice system is undergoing reform. A referendum held in 2016 on the introduction of a Bill of Rights (containing provisions on children's rights) into the Constitution of Zambia was not passed due to insufficient voter turn-out; however, diversion is explicitly included in the Children Code Bill currently before Parliament.

The National Diversion Framework was developed following an initial assessment of diversion and alternative sentencing practices in Zambia, led by the Ministry of Community Development and Social Services, supported by UNICEF, and carried out by an International Consultant and a National Consultant in June 2016.

The initial assessment found that diversion was being carried out across Zambia in an informal, ad hoc manner, typically by police officers mediating with the accused child and complainant (and their families). It also found that more intensive and rehabilitative 'diversion' programmes were being implemented through a number of CSOs and NGOs. However, the vast majority of referrals into these programmes were coming from the Courts, and were not strictly diversion, but rather, constituted community-based sentencing alternatives.¹ These measures were limited to parts of the country in which links had been established to appropriate service providers (notably, Lusaka and Kitwe).

Stakeholders consulted in the process of developing the Framework identified a need for standardisation of approaches to diversion and consistency in the implementation of diversionary measures. There was general agreement that a National Framework on Diversion was needed.

Following the initial assessment of diversion practices, a three-day workshop took place, at which various key stakeholders discussed and agreed the scope and purpose of the Framework and provided input into its contents.

Furthermore, two stakeholders' workshops took place to ensure that inputs could be made on the draft Framework, prior to its finalisation.

¹ Though it is noted that under the Juveniles Act, terminology such as 'conviction' and 'sentence' are not to be used.

Part 1 | Definitions

1.1 In this National Diversion Framework, the following definitions will apply:

“Child”: someone below the age of 18 years as provided in the Zambian Constitution, Amendment NO.2 of 2016.

“Diversion” is the channelling of children in conflict with the law away from the formal court system.

“Family group/community conference” is a restorative justice measure in which the child offender, their family members, the victim/s and possibly professionals or community members address the consequences of the child’s offence, find a solution that is acceptable to all parties, and explore appropriate ways to prevent the offending behaviour from reoccurring. The conference is led by a Mediator.

“Mediation” is a restorative justice measure in which a neutral person (the Mediator) assists the child offender and the victim/s to resolve the conflict caused by the offence and find a solution that is acceptable to both sides.

“Mediator” is a trained professional (Social Welfare Officer or member of staff of a Registered Service Provider) who leads a mediation or family group / community conference process.

“Registered Service Provider”: means an organisation that provides diversion measures as set out in this National Diversion Framework, which has been registered and accredited by the Department of Social Welfare.

“Rehabilitative programme” means a programme developed by a Social Worker that is specific to an individual child offender, and includes a range of measures that are aimed at addressing the particular needs of a child offender.

“Restitution” means the act of restoring something to a victim and/or another party who has been harmed by a child’s offending behaviour. This includes: an apology, returning a stolen item, and / or making payment in cash or in kind.

“Restorative measures” means diversion measures that are aimed at achieving a resolution of matters resulting from an offence and restoring the harm caused to the victim, and the community by offending behaviour. Restorative measures must also aim to rehabilitate the child and address the causes of the child’s offending behaviour. Restorative measures includes: mediation, family group / group conferencing and restitution.

“Social Welfare Officer” means a professional social worker employed by the Department of Social Welfare.

“Social Worker” means an Officer who is explicitly mandated to implement diversion measures. A Social Worker may be a Social Welfare Officer or an employee of a Registered Service Provider.

Part 2 | Meaning and purpose of diversion

- 2.1** 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.
- 2.2** Diversion is a requirement under Regional and International law. The Government of Zambia has ratified the UN Convention on the Rights of the Child (UNCRC), and the African Charter on the Rights and Welfare of the Child (ACRWC). By ratifying these instruments, the Government committed itself to undertake all necessary steps, including legislative, administrative and other measures to implement the rights contained within the instruments.² This commitment includes the obligation to implement those rights provided to children in conflict with the law. The UNCRC requires States to develop procedures that allow children to be dealt with outside the context of judicial proceedings, provided that their human rights are protected and that legal safeguards are in place.³ A key provision in the African Charter is Article 37, which contains principles on which juvenile justice systems must be based. It provides that '[e]very child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth which reinforces the child's respect for human rights and fundamental freedoms of others.' These provisions reflect the fact that the trial process focuses on determining guilt and on punishing the offender rather than on ensuring rehabilitation and reintegration of the child or understanding and addressing the causes of the offending behaviour. International standards also provide that detention of children should be used as a last resort and for the shortest appropriate time:⁴ diversion can assist in decongesting prisons and unclogging the formal court system, making it more cost effective.
- 2.3** Diversion can be initiated any time from the apprehension of a child by police or other relevant authorities, through to any point before the final disposition of the hearing (an admission or finding of guilt following a trial). Ideally, diversion should take place at the earliest opportunity, to minimise a child's contact with the formal justice system, and the harm it causes.
- 2.4** Diversion does not mean that the offending behaviour of the child is ignored. Rather, it 'allows steps to be taken to identify the needs of the child and tackle the root causes of the child's behaviour in order to prevent further offending.'⁵
- 2.5** Options available to law enforcement agencies include community-based rehabilitation, reintegration programmes, victim –offender mediation programmes, restorative justice programmes and family focused special programmes, all of which can provide an effective alternative to prosecuting the child.⁶ These programmes can provide a key opportunity to uncover and address the reasons for the offending behaviour, to assess and target the needs of the child and to effectively rehabilitate the child, through individually targeted and group activities. Diversion from formal criminal justice proceedings allows rehabilitative work with the child to begin much sooner, without being subject to the delays of what can often be a lengthy trial process.
- 2.6** Diversion differs from 'alternative sentencing', which is a community-based disposition of a case following a trial and finding of guilt. Diversion, on the other hand, occurs any time before a trial has

² Article 4, CRC; Article 1, ACRWC

³ Article 40(3)(b) UNCRC. See also Rules 6 and 11 of the Beijing Rules.

⁴ Article 37(b), UNCRC.

⁵ UNICEF and Children's Legal Centre, 'Guidance for legislative reform of juvenile justice systems' (2011), available at http://www.unicef.org/policyanalysis/files/Juvenile_justice_16052011_final.pdf

⁶ Rule 11.4, Beijing Rules

finished. In addition, according to international standards, diversion should only be applied where the child's consent is obtained (see paragraph 4.3).⁷ An alternative sentence is imposed and does not require a child's consent.

- 2.7** Diversion also does not include cases that are dismissed or discontinued due to lack of evidence. In these cases, no charge has been substantiated, so there is no need for any criminal justice intervention. It also does not include any interventions in cases in which a child under the minimum age of criminal responsibility has engaged in offending behaviour. The reason for this is that the child is too young, according to the law, to have committed an offence, and therefore does not require a criminal justice intervention, including diversion.⁸
- 2.8** Diversion is an alternative to criminal proceedings. It does not include responses or interventions for children who are considered 'out of control' or generally displaying 'bad behaviour' or disobedience, and should not be used to prevent possible future offending (though specific interventions and services should be made available to meet the needs of children at risk of offending). In order to apply diversion, a child must have been charged and made an admission of guilt in relation to a specific offence clearly defined by a written law.
- 2.9** Diversion is not applicable to a child who is in need or at risk of harm (e.g. where a child is living or working on the street). In such cases, children should be referred to Social Welfare for a child protection assessment and, where necessary, for the provision of services, support or alternative care.



⁷ See below – section on legal safeguards – for a fuller discussion

⁸ See generally Marie Wareham – Diversion Guideline for the UNICEF Toolkit on Diversion (2011), available at: http://www.unicef.org/tdad/index_56037.html;

Part 3 | Legal framework for diversion

- 3.1** The UNCRC requires States to develop measures and mechanisms for dealing with children in conflict with the law outside the court system. They are required to ensure that children who are alleged to have, or accused of, or recognised as having infringed the penal law can be dealt with without resorting to judicial proceedings, wherever appropriate and desirable, provided that human rights and legal safeguards are fully respected.⁹
- 3.2** International law provides that diversion should only be used subject to certain conditions and safeguards being met, which include the following:
- Convincing evidence that the child has committed the alleged offence. Diversion must never be used where there is insufficient evidence for charges to be brought or prosecution to be achieved.
 - A child voluntarily admits to committing an offence. An admission of guilt must never be achieved through the use of force, threats, or other undue pressure or duress.
 - The child and / or the child's parent(s) / Guardian(s) must consent to the nature, content and duration of the diversion measure. Consent must not be obtained through the use of force, threats or undue pressure or duress.
 - The diversion measures must be acceptable to the child and /or parents/guardian. Where these have not been accepted or where there are no suitable options, the case should be referred back to the criminal justice system., Where no diversion measures is acceptable to the child and /or their parents, or where no suitable option exist, the case should be referred back to the criminal justice system.
 - Where the case is referred back into criminal justice system, the child's statement of guilt made at the beginning of the diversion process should not be used as evidence against the child in subsequent legal proceedings.
 - The child (and their parents/guardian) must fully understand the consequences of failure to comply with the conditions of the diversion measure.
 - Diversion must not include deprivation of liberty.
 - The child (and / or the child's family) has the right to seek legal assistance before making any decisions in relation to the application of diversion.
- 3.3** There is no explicit provision on diversion in the law in Zambia. However:
- 3.3.1 Law Enforcement Agencies have inherent discretion to decide how individual cases are disposed.
- 3.3.2 Prosecutors have discretion to decide whether or not to prosecute a particular case, following approval by the Director of Public Prosecutions, or a successful application to the Court to have the case withdrawn.¹⁰
- 3.3.3 Where the case is fit for diversion, fingerprints should not be lifted.
- 3.3.4 Zambia is undergoing child law reform and diversion is one of the critical aspects that will be included in the Children's Code.
- 3.4** The UNCRC, the African Charter and Juveniles Act of Zambia contain a number of other relevant provisions that should be used to guide the application of diversion. These include:

⁹ Article 40(3)(b) CRC, Rule 6 and 11 Beijing Rules, s.7 Recommendation (2003)20of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice

¹⁰ Sections 81, 88 and 89, Criminal Procedure Code Act, Chapter 88 of the Laws of Zambia

- 3.4.1 Use of detention a last resort: The UNCRC requires States to ensure that detention of children is only used as a last resort and for the shortest appropriate period of time.¹¹ The Juveniles Act prohibits children (those aged under 16 years) being sentenced to imprisonment. It also provides that young persons (those aged under 19 years) shall not be sentenced to imprisonment where they can be reasonably dealt with in another suitable manner.¹²
- 3.4.2 Best interests of the child: The UNCRC provides that, ‘in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.’¹³ According to the African Charter, in all actions concerning the child, their best interests shall be *the* primary consideration.¹⁴ The best interests principle should be applied throughout the diversion process, including in making a decision on whether to apply diversion, through to deciding on a diversion option(s) and taking action in the event of non-compliance.

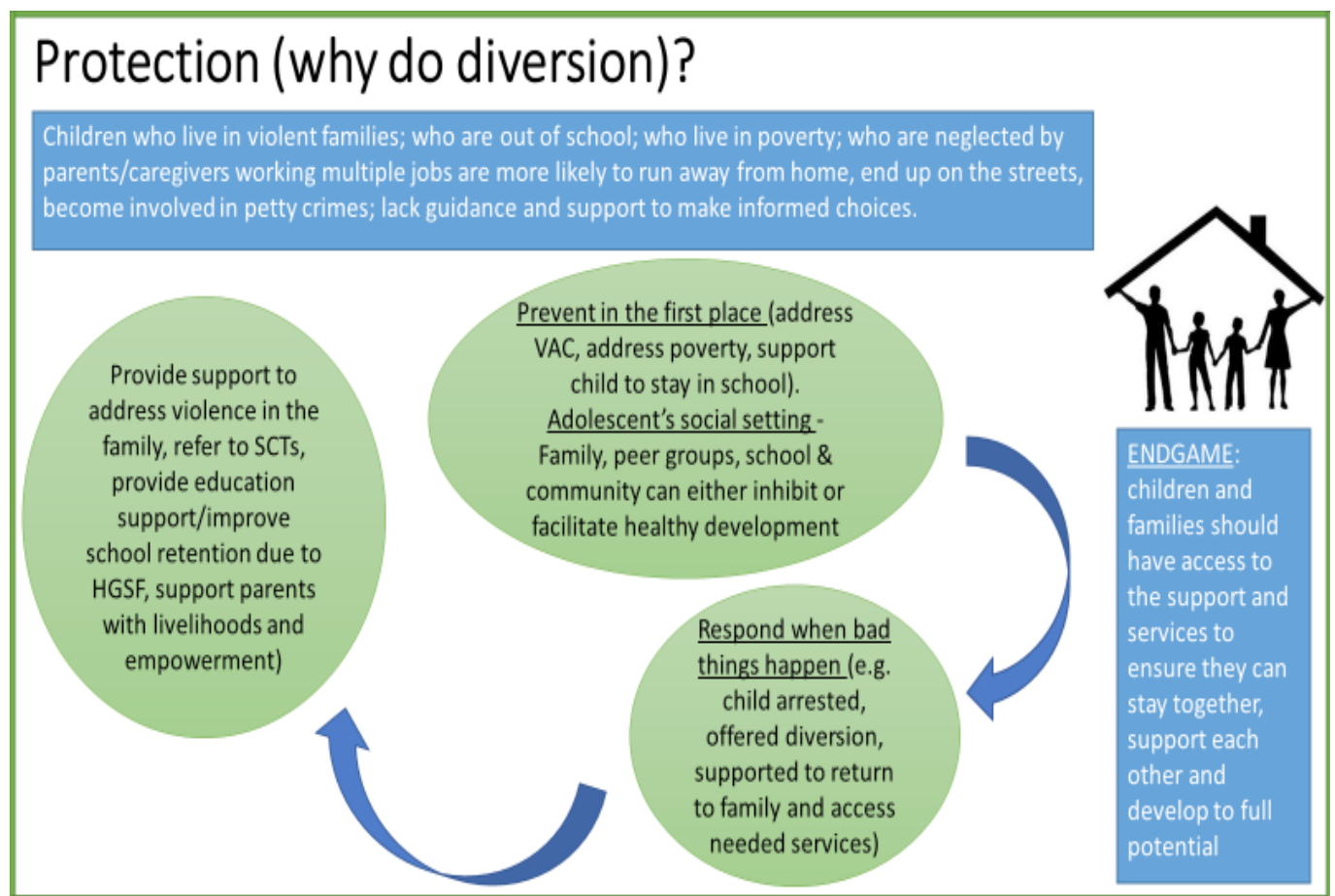
11 Article 37(b) UNCRC; Rule 19.1 Beijing Rules.

12 Section 72, Juveniles Act

13 Article 3(1), UNCRC;

14 Article 4, African Charter on the Rights and Welfare of the Child

Part 4 | Applying diversion: scope and criteria



- 4.1** Diversion shall be considered in all cases involving a child offender, provided the criteria set out in paragraphs 4.2 and 4.3 are satisfied. The application of diversion is not limited to particular types of offences.
- 4.2** Diversion may be applied to any offender above the minimum age of criminal responsibility up to the age of 18 years.¹⁵ The minimum age of criminal responsibility is eight years, unless it can be proven that, at the time of doing the act, the child had the capacity to do the act or make the omission, in which case the minimum age of criminal responsibility is 12 years. It is presumed that a male under the age of 12 years is incapable of having carnal knowledge.¹⁶
- 4.3** Diversion shall only be applied where:
- There is sufficient evidence for criminal charges to be laid;
 - The child freely admits to committing the offence;
 - The child and their parent(s) freely consent to the nature, content and duration of the diversion measure; and
 - The child and their parent(s) fully understand the consequences of failure to comply with the diversion measure.
- 4.4** Diversion is most effective when carried out while the child is living with their parent(s) / guardian, a child who does not have parental care is not excluded from diversion.

¹⁵ This is in accordance with the UNCRC and the (amended) Constitution of the Republic of Zambia.

¹⁶ Section 14, Penal Code

- 4.5 While the views and interests of the victim(s) / complainant(s) are relevant and should be taken into consideration, diversion may nonetheless be applied without the consent or involvement of the victim(s) / complainant(s) or their families. However, the consent of the victim must be obtained before carrying out mediation (see para. 7.12).
- 4.6 The decision to divert must be made on a case-by-case basis, taking into account the circumstances of the offence. The decision shall be guided by the criteria set out in paragraph 4.7.
- 4.7 The following criteria are relevant to the decision of whether or not to apply diversion. This list is not exhaustive:
- **Circumstances of the offence:** Aggravating circumstances of the case will weigh against diversion, whereas less aggravating circumstances will tilt in *in favour* of diversion.
 - **Degree of harm caused:** where the degree of harm caused by the offender to the victim / community was minor, particularly where it was caused by an error in judgement, this is a factor *in favour* of diversion. Where the offence involved imposes extensive personal harm on a victim, particularly where the harm is likely to be repeated, this will be a factor going *against* diversion.
 - **Repeat offending:** where the child is a first-time offender, and/or where the offence is unlikely to be repeated, this is a factor *in favour* of diversion. Where the child is a repeat or habitual offender, this is a factor going *against* diversion; however, it shall not automatically exclude the child from diversion. Particularly where offences are of a non-serious nature, cases of repeat offending shall be considered for diversion. Evidence of repeat offending must be proven.
 - **Culpability:** where the offence was the result of an accident or lapse in judgement, this is a factor *in favour* of diversion. Where there was a significant degree of pre-meditation, this is a factor *against* diversion.
 - **Extent of involvement in offence:** where the offence was committed by two or more persons and the child played a minor role, this is a factor *in favour* of diversion; where the child was a ring leader and / or led in the planning of the offence, this is a factor going *against* diversion.
 - **Commission of offence with adult:** Where the child commits an offence under any degree of influence by an adult, this will be a factor *in favour* of diversion.
 - **Extent of remorse:** where the offender shows genuine remorse for the offence, this is a factor *in favour* of diversion.
 - **Cooperation with authorities:** where the offender has demonstrated good cooperation with the Law Enforcement agencies throughout the interviewing and other processes, this is a factor *in favour* of diversion.
 - **Vulnerability of the victim:** the age and vulnerability of the victim, particularly where the offence involved deliberately targeting the victim based on this vulnerability, this will be a factor going *against* diversion including sexual offences.
 - **Targeting of victim:** Where the offence was motivated by hostility against a person because of their age, race, ethnicity, gender, disability, religion, social position or any other personal status, this will be a factor going *against* diversion.
 - **Failure to respond to previous diversion measure:** Where a child has received one or more diversion measures previously, this is a factor going *against* diversion. However, it shall not automatically exclude a child from diversion.

Part 5 | Diversion referral process and pathways

- 5.1** The decision to divert shall be made by law enforcement agencies as soon as possible following the arrest of the child, provided that the criteria in paragraphs 4.2 and 4.3 are met. However, Diversion may be applied at any point prior to the final disposition of a case./finding of guilty)
Law Enforcement Agencies (Police or DEC)
- 5.2** The Arresting Officer shall carry out an initial assessment in the presence of the child's parent(s) / guardian(s),¹⁷and shall decide either to divert a child, or to charge the child and refer him or her to the National Prosecutions Authority for further action. This decision shall be made as soon as possible following the arrest of a child, but in any case, within 24 hours following the arrest.
- 5.3** Where a child's parent(s) / guardian(s) are unable to be located or attend the Police Station within 24 hours, a DSW Social Worker must be contacted. The DSW Social Worker must attend the Police Station immediately to accompany the child during police questioning.
- 5.4** An initial assessment will involve determining whether the child meets the mandatory criteria for diversion set out in paragraphs 4.2 and 4.3 and if so whether the case is suitable for diversion. This decision must be made on a case-by-case basis, according to the criteria set out in paragraph 4.7.
- 5.5** If, following an initial assessment, the Officer decides to use diversion, the officer shall apply any one or more of the following options:
a. a warning;
b. restorative measure; and/or
c. rehabilitative measure.
- 5.6** The decision to apply Diversion and the nature of the particular diversion measure(s) being applied shall be clearly explained to the child and their parent(s) / guardian(s).
- 5.7** The Arresting Officer shall clearly set out in writing the reasons for his or her decision to apply diversion, and if so, the suggested type diversion measure(s) (warning; restorative measure; and/or rehabilitative measure), or not to apply diversion.
- 5.8** The decision to divert a child or to refer a matter for prosecution should be reviewed by the Officer in Charge/supervising officer at the arresting office of the law enforcement agency. The Officer in Charge / Supervising Officer may agree or disagree with the decision to apply diversion. If the Officer in Charge / Supervising Officer disagrees with the diversion decision he or she may: make the decision to apply a diversion measure; or reverse a decision to apply a diversion measure, or refer the matter for prosecution. This decision should be made by applying the criteria set out in paragraph 5.2, 5.3 and 5.7.
- 5.9** The review by the Officer in Charge / Supervising Officer must be carried out as soon as possible, but shall be within 12 hours of receiving the initial decision by the Arresting Officer.
- 5.10** Where it is decided that a rehabilitative measure is required, and the Officer in Charge / Supervising Officer is in agreement, the Arresting Officer shall refer the matter to the Social Welfare Office to carry out an assessment and devise a Diversion Plan, as set out in Part 6.

¹⁷ Where a child's parent(s) cannot be immediately located, a Social Welfare Officer should be present.

National Prosecutions Authority (NPA)

Prosecutors have discretion to decide whether or not to prosecute a particular case, following approval by the Director of Public Prosecutions (DPP).

Where a case involving a child offender is submitted before, the Prosecutor shall first review the Officer in Charge / Supervising Officer's decision not to apply diversion.

Where the prosecutors feels otherwise on the Officer in Charge / Supervising Officer's decision, the prosecutor may refer the matter back to the Officer in Charge / Supervising Officer and shall advise that a diversion measure be applied.

Notification to Department of Social Welfare

- 5.13** The District Social Welfare Office must be notified by the arresting officer upon confirmation by the officer in charge/ supervising officer as soon as possible but shall be within 24hours of making the decision to divert the child.

Part 6 | Diversion plan

- 6.1** The requirement(s) of the diversion programme shall be set out in a Diversion Plan. The Diversion Plan shall include: the particular measures that the child is required to complete; the roles of other parties (including the child's parent(s) and the victim(s), if relevant); the timeframe for completion of actions; how the child's compliance with the Plan will be monitored and by which institution; and the implications of non-compliance with the Plan.

DIVERSION

- 'Divert' children away from the formal court system towards:
 - a) community-based rehabilitation and reintegration programmes,
 - b) victim – offender mediation programmes,
 - c) family focused special programmes.
- Use programmes to find out why the child committed a crime and address the reasons
- Requires child's consent.
- Diversion - offending behaviour of child is ignored. BUT steps taken to identify child's needs and tackle root causes of child's behaviour in order to prevent further offending.
- Social context plays critical role in psychological development. Diversion program where adolescent placed becomes developmental setting and can have a substantial impact—positive or negative—on the youth's future developmental path in ways that may affect reoffending.

- 6.2** The measure(s) chosen in the Diversion Plan shall be aimed at addressing the causes of the child's offending behaviour, in order to prevent future offending. This shall be determined following an initial or in-depth assessment of the child's circumstances, including living arrangements and conditions, family relationships, school attendance and performance, and any additional challenges or needs (including, for instance, substance abuse or mental health condition).
- 6.3** The measure(s) included in the Diversion Plan must be proportionate to the offence.
- 6.4** The Diversion Plan shall include one or more diversion measures set out in Part 7. However, if the measure selected is a warning, a Diversion Plan is not necessary.
- 6.5** The Diversion Plan shall take into account the particular needs and circumstances of the child and shall be drafted by the arresting officer, a DSW - Social Worker and /or a Registered Service Provider (see Part 7).
- 6.6** The Diversion Plan shall set out the particular requirements that the child must fulfil in order to complete the diversion measure, and the services and support to be provided to the child and his or her parent(s) / guardian(s). The Child and the parent(s) / guardian(s) must consent to the Diversion Plan. The Diversion Plan must not exceed a six months period.

Part 7 | Diversion options

- 7.1 There shall be three types of diversion options. These are: warnings, restorative and rehabilitative measures.
- 7.2 A Diversion Plan may include one type of diversion measure or combination of different measures.

Warnings

- 7.3 Warnings include an informal, on-the-spot reprimand by Arresting Officer, or a formal, recorded caution in the presence of the child's parent/guardian(s).
- 7.4 An informal warning involves an Arresting Officer immediately verbally cautioning the child at the time of apprehension and releasing the child.
- 7.5 A formal warning is issued to the child and the child's parent(s) / guardian(s). It must be administered in a private space at the Law Enforcement Office, immediately following the decision to divert and review of this decision by the Officer in Charge.
- 7.6 The formal warning shall be issued by the Arresting Officer, who shall: explain to the child the impact of their offending behaviour on victims and the community, make clear the responsibility of the parent(s) / guardian(s) to supervise their child effectively, and set out the consequences of any future offending.
- 7.7 A formal warning shall be recorded on the child's record for a period of 12 months, after which it shall be removed from the child's record.

Restorative measures (mediation, family group / community conferencing, restitution)

- 7.8 A restorative justice process is any process in which a child offender and a victim/s and, where appropriate, other individuals affected by offending behaviour, participate together in the resolution of matters arising from the offence.
- 7.9 Restorative measures are aimed at achieving a resolution of matters resulting from an offence, and restoring the victim and / or the community in the position in which they were before the harm was caused. Restorative measures must also aim to rehabilitate the child and address the causes of the child's offending behaviour.
- 7.10 Restorative measures shall include: mediation between the victim and offender (and other relevant parties); or family group / community conferencing; and can also include the making of restitution through payment in cash or in kind.
- 7.11 Restorative justice measures can be applied at any stage of the diversion process, as one component of a Diversion Plan. However, if a restorative justice measure is the only component, it should be applied at the earliest opportunity: immediately following approval of the diversion decision by the Officer in Charge/Supervising Officer.
- 7.12 The decision to apply restorative measures shall be made by the Arresting Officer, in consultation with a Social Welfare Officer.
- 7.13 Restorative measures can be carried out by: Registered Service Providers specialising in mediation or family group / community conferencing; or a DSW Social Worker (trained or experienced in mediation or family group / community conferencing).
- 7.14 The procedure for arranging a **mediation process** is as follows:
- A Mediator should be appointed by the District Social Welfare Officer. A Mediator could be a specially trained Social Welfare Officer or trained staff member of a Registered Service Provider.
 - The Mediator shall clearly explain the procedure for mediation to the child and their parent(s) / guardian(s) and ensure that they understand. The Mediator shall obtain a written consent from the child and / or their parent(s) / guardians(s) to a mediation process being undertaken.
 - The Mediator shall then contact the victim (and the victim's family if the victim is a child)

and explain the mediation procedure to them. They will then seek the consent of the victim (and their family) to attend a mediation session.

- A date, time and location will be set for the mediation and communicated with all parties. The mediation shall take place as soon as possible following an arrest.
- The Mediation shall be carried out in a privacy where confidentiality of the parties to the mediation is guaranteed.

7.15 During mediation, the Mediator shall:

- Provide an introduction to the mediation process, including its aims and expected outcomes.
- The offender and victim shall then both be given the opportunity to relate the circumstances surrounding the offence.
- The victim shall be given the opportunity to speak about the personal dimensions of the offence and of their victimisation and loss.
- The offender shall be given the opportunity to respond, express remorse and explain the circumstances surrounding his or her behaviour.
- The parties shall then attempt to assess the extent of the harm caused by the crime and identify acts necessary to repair the harm.
- The Mediator shall then draft a Mediation Agreement, setting out the acts necessary for the offender to repair the harm caused by the offence. The Mediator must ensure that the actions required of the offender are proportionate to the offence. The Mediator shall also ensure that the offender consents to carrying out the actions specified in the Mediation Agreement.

7.16 The procedure for facilitating family group / community conference is as follows:

- A Mediator should be appointed by the District Social Welfare Officer. A Mediator could be a specially trained/experienced Social Welfare Officer or trained staff member of a Registered Service Provider.
- The Mediator shall clearly explain the family group / community conference procedure to the child and their parent(s) / guardian(s). The Mediator shall confirm that the child and their parent(s) / guardians(s) consent to a family group / community conference being undertaken.
- The Mediator shall then contact the victim (and the victim's family if the victim is a child) and explain the family group / community conference procedure to them. They will then seek the consent of the victim (and their family) to attend a family group conference.
- The Mediator shall, following an assessment of the child's offending behaviour, identify all other parties to the family group / community conference. This should include all parties affected by the offending behaviour and / or who have a key role in supporting the child to take restorative measures or addressing the causes of the offending behaviour. The particular individuals will be selected on a case-by-case basis and could include immediate family members; extended family members; teachers; community leaders; and any other stakeholders.
- A date, time and location will be set for the family group / community conference and communicated to all parties. The family group / community conference shall take place as soon as possible following an arrest.
- The family group / community conference shall be carried out in a privacy, which is in which confidentiality of the parties to the mediation can be guaranteed.

7.19 During the family group / community conference, the Mediator shall:

- Provide an introduction to the family group / community conference process, including its aims and expected outcomes.

- The offender and victim shall be given the opportunity to relate the circumstances surrounding the offence.
- The victim shall be given the opportunity to speak about the personal dimensions of the offence and of their victimisation and loss.
- The other participants (where relevant) will be given an opportunity to speak about the impact of the offending behaviour on the community.
- The offender shall be given the opportunity to respond, express remorse and explain the circumstances surrounding his or her behaviour.
- The parties shall then attempt to assess the extent of the harm caused by the crime and identify acts necessary to repair the harm.
- The Mediator shall then draft a Mediation Agreement, setting out the acts necessary for the offender to repair the harm caused by the offence. The Mediator must ensure that the actions required of the offender are proportionate to the offence. The Mediator shall also ensure that the offender consents to carrying out the actions specified in the Mediation Agreement.

7.20 The acts required for the offender to provide restitution may include:

- An apology;
- Returning a stolen item; and / or
- Making a payment in cash or in kind.

7.21 Restitution cannot include community service

7.22 It shall be the responsibility of the Mediator to monitor the child's progress in carrying out the acts specified in the Mediation Agreement, and to provide a written report on the child's completion of the Agreement. The Mediator must provide the report to the Arresting Officer and the District Social Welfare Office.

Rehabilitative programme

7.24 Where an Arresting Officer is of the view that a child offender requires a more intensive diversion measure, in order to respond effectively to the causes of the child's offending, he or she shall refer the matter to the DSW.

7.25 The case shall be allocated to a DSW, specially trained in implementing diversion measures or alternatively, referred to a trained and /or experienced (minimum of one year) member of a Service Provider.

7.26 The Social Worker shall carry out a full social background assessment and draft a report that determines the child's needs, the reasons for offending, and the capacity of the child, and identifies the programmes and services required to meet those needs. The social background assessment shall be completed as soon as possible, and shall be completed within one week.

7.27 While the Social Worker carries out the social background assessment, it may be necessary to remove the child from their home environment. Where this is necessary, a child should be placed in a place of safety until the family circumstances of the child are assessed by the DSW. Where this is required, the DSW shall follow the existing laws and standards relating to alternative care.

7.28 On completion of the social welfare report, the Social Worker shall meet with the child and his or her parent(s) / guardian(s) in order to develop a Diversion Plan.

7.29 It is the responsibility of the DSW to ensure that a range of measures and services are available to meet the needs of the child in each District. Services may be provided by DSW and / or a range of Registered Service Providers. Registered Service Providers may include NGOs, CSOs, or faith-based organisations that meet Diversion Quality Standards and have undergone an accreditation process.

7.30 Services that shall be made available include the following: one-to-one and group counselling; family counselling; life skills programmes; remedial education and assistance with getting into



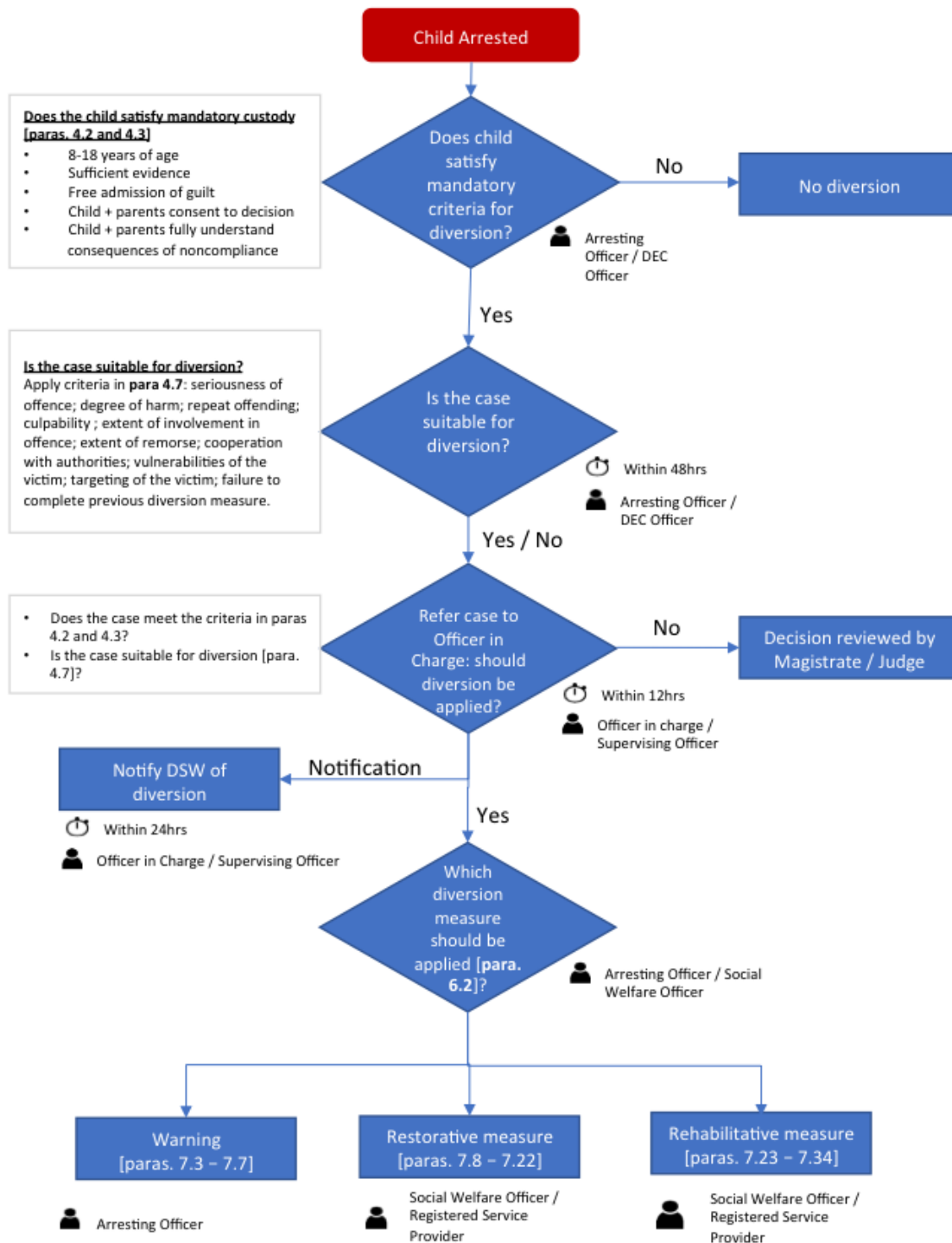
school; a range of vocational training programmes; activity-based therapy; sports therapy; and specialist services, including drug treatment programmes and psychotherapy.

- 7.31** It shall be the responsibility of the DSW to monitor the child’s progress in carrying out the acts specified in the Diversion Plan, and to provide a written report every month on the child’s progress. The Reports shall be provided to the Arresting Officer and shared with other relevant stakeholders.
- 7.32** Where a child breaches a requirement(s) of the Diversion Plan, the matter must be promptly dealt with by the child’s case worker (from the DSW or Registered Service Provider, as appropriate). Explanations must be sought from the child. Actions that may be taken in the event of non-compliance include a warning or, in the event of ongoing non-compliance, the matter could be referred back to the Arresting Officer and taken for prosecution.
- 7.33** A rehabilitative programme shall be completed within a maximum timeframe of 6 months. The programme shall be for a minimum timeframe of 4 months.
- 7.34** A range of aftercare or follow-up services shall be available for a child where a decision is made that a child requires aftercare or follow-up following the completion of a rehabilitative programme.

REFLECTION

- Poverty, lack of parental care, out of school, violence (schools & communities) contribute to adolescent vulnerability and raise inclinations to engage in delinquent behavior
- In the spirit of ‘Leave No One Behind’ interventions should be structured to help adolescents acquire skills that are essential for fulfilling conventional adult roles.
- Interventions should include educational and vocational skills + social skills that allow individuals to form close relationships and cooperate in groups, as well as the ability to act responsibly.
- Need to develop tools to deal with the challenges they face in their families, peer groups, and neighborhoods—the social context of their future lives.
- Many successful juvenile justice programs adopt an ecological approach in which parents, families, peers, schools, and communities play a prominent part.
- Expand diversion piloting to include probation which is in effect the alternative measure to a post trial detention /prison sentence.
- Promote programmes that provide child victims/witnesses protection

ANNEX: DIVERSION PROCESS FLOW CHART





United Nations
Z A M B I A



Irish Aid
Rialtas na hÉireann
Government of Ireland



FORNIN.FINLAND.FI
MINISTRY FOR FOREIGN
AFFAIRS OF FINLAND



Sweden
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UKaid
from the British people

