



## Juvenile Justice – ‘Diversion Officially Takes Off In Zambia!’

The Ministry of Community Development and Social Services with support UNICEF finally launched the **National Framework on Diversion** on 11<sup>th</sup> December, 2018, in Lusaka.

**Definition:** “Diversion” is the channelling of children in conflict with the law away from the formal court system by way of providing alternatives such as mediation, rehabilitation programmes, restitution and restorative measures.

**Background:** The National Diversion Framework was developed following an initial assessment of diversion and alternative sentencing practices in Zambia. The initial assessment found that diversion was being carried out across Zambia in an informal, ad hoc manner, typically by police officers mediating with a child accused 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.

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. The Ministry (MCDSS) organised a number of consultative meetings supported by UNICEF and the key stakeholders discussed and agreed on the scope and purpose of the Framework and provided input into its contents. This could not have taken shape without the tireless efforts by our local Consultant, Hon. Kenneth Mulife from the Judiciary and the international Consultants – Coram (Children’s Legal Centre).

**Context:** The Framework sets out the scope, criteria, process and options for the use of diversion in Zambia. It aims to assist all stakeholders, including the Police, Social Welfare, Public Prosecutors, Magistrates and NGO service providers to respond to child offending by way of diversion out of the formal criminal justice system, in accordance with the UN Convention on the Rights of the Child (UNCRC). 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.<sup>1</sup> 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.

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<sup>1</sup> Article 40(3)(b) UNCRC. See also Rules 6 and 11 of the Beijing Rules.

Current Situation:

- *Children often arrested for petty crimes*
- *Use of lengthy or harsh periods of confinement for adolescents*
- *Pre-trial detention common – up to 3 months*
- *No legal representation available*
- *Children appear in court without their parents or guardians resulting in cases being adjourned*
- *Children not separated from adults at police stations, remand prisons or when being ferried to and from court.*
- *Children detained in prisons and not in places of safety while awaiting trial.*
- *Large case load in courts – longer time for child cases to be heard.*
- *Legal framework – retributive language*
- *Matters not heard in camera due to limited court infrastructures*
- *Inadequate gazetted social workers*

**Why Diversion?** 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 future offending.<sup>2</sup> Diversion can be instigated 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). Though, ideally, it will take place at the earliest opportunity, to minimise a child's contact with the formal justice system, and the harm caused by this.

Options available to law enforcement agencies include community-based rehabilitation and 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.<sup>3</sup> 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. *(details in the National Diversion Framework – available for download)*

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<sup>2</sup> 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](http://www.unicef.org/policyanalysis/files/Juvenile_justice_16052011_final.pdf)

<sup>3</sup> Rule 11.4, Beijing Rules