



## **DIVERSION NOT DETENTION:**

A study on diversion and other alternative measures for children in conflict with the law in East Asia and the Pacific



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Design and layout: QUO Bangkok, Thailand

Published by UNICEF East Asia and the Pacific Regional Office

Suggested citation: 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 EAPRO, Bangkok, 2017.

ISBN: 978-974-685-156-5

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# FOREWORD

The Convention on the Rights of the Child stipulates that detention of a child be used only as a measure of last resort and for the shortest appropriate period of time. Nevertheless, studies conducted in East Asia and the Pacific reveal a number of disturbing facts.\* Most children who are detained are accused or convicted of relatively minor crimes, often linked to their family's socio-economic conditions. It is common that their cases are pending for a long period of time – at times even longer than the child's actual sentence if found guilty. Very few of them talk to lawyers prior to arraignment. While awaiting trial, many children share cells with adults in deplorable conditions. Children in detention are often bullied by adults and forced into joining gangs. Almost all of them stop formal schooling and very few alternative forms of education are offered. Many suffer from respiratory and skin diseases due to overcrowded detention and limited access to health services.

There has been a number of recent advances on the legislative front, with several countries enacting justice laws that promote diversion of juveniles from formal criminal proceedings and alternatives to detention. Despite a legal framework being in place, these alternatives are not always used. Decision-makers lack adequate knowledge and resources to implement alternative programmes to detention. Investments are focused on building juvenile facilities instead of developing non-residential programmes for children. While there is a rich history of informal justice systems in the region that can be tapped for alternative measures for children in conflict with the law, these mechanisms must be brought in line with international standards on juvenile justice and the restorative justice approach.

The case for a specialized system for juvenile justice and for an appropriate minimum age of criminal responsibility is increasingly informed by neuroscientific research.\*\* We know that the neocortex, the portion of the brain responsible for reasoning and self-regulation, is the last part of the brain to develop. This is why excessive risk-taking and impulsive behaviour are typical in adolescence, and often lead to the commission of offences. On the other hand, several studies have shown that the experience of toxic stress in early childhood can result in abnormalities in the structure and chemical activity of the brain. Recent systematic reviews of evidence across a range of international contexts consistently reveal high levels of neurodevelopmental disorders among incarcerated young people, with rates that are grossly disproportionate to equivalent levels among the general youth population.

Jail is no place for a child. Depriving children of their liberty has a long-lasting effect on a child's physical, mental and emotional health and development. There is no credible evidence showing that detaining children will contribute to improving security or decreasing criminality in society. Putting them in jail actually increases their chance of reoffending. There is, however, evidence on the drivers or predictors of juvenile offending. Amongst others, these include childhood experiences of maltreatment and exposure of violence in the home and in the community. A range of project reviews, evaluations and meta-analyses has shown that alternatives to detention can substantially reduce reoffending. Diversion and other alternative measures to judicial proceedings and detention are more effective, not only from a rights perspective but also from an economic perspective. Detaining children wastes both their childhood and valuable public resources that could be put to better use.

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\* Amongst others, see Raoul Wallenberg Institute's "Measure of Last Resort?: The current status of Juvenile Justice in ASEAN Member States".

\*\* This case is well summarized in Frances Jensen's "The Teenage Brain: A Neuroscientist's Survival Guide to Raising Children and Young Adults".



As we discover through this regional study, there are alternative measures and promising practices that exist, both within and beyond the region, to ensure that children are not detained. We all have important roles to play – as law enforcers, judges, prosecutors, civil servants, civil society organizations and as parents. The social welfare and justice systems should work together in developing alternative programmes to prevent the detention of children. The education and health systems have important roles to play in ensuring that a child who comes into conflict with the law continues to have access to these basic services.

Goal 16 of the Sustainable Development Agenda commits States to promote peaceful and inclusive societies for sustainable development, provide access to justice, and build effective, accountable and inclusive institutions at all levels. A specialized justice system for children is an integral element of this vision.

Enjoy reading.

A handwritten signature in blue ink, appearing to read 'Hulshof', with a long horizontal stroke extending to the right.

**Karin Hulshof**  
Regional Director

# ACKNOWLEDGEMENTS

This report was written by Ingrid van Welzenis under the guidance of Grace Agcaoili, Child Protection Specialist on Child Rights and Justice at the UNICEF East Asia and the Pacific Regional Office. This study would not have been possible without the assistance of the following child protection staff from our Country Offices.

Vanna Lim – Cambodia

Wenying Su – China

Ali Aulia Ramly – Indonesia

Khamsay lemsouthi – Lao PDR

Sivaselvi Supramaniam – Malaysia

Amaraa Dorjsambu – Mongolia

Teona Aslanishvili and Soe Moe Oo – Myanmar

Salote Kaimacuata, Tupepepa Esera Aumua, Tinia Rakenang, Anika Kingmele and Joemela Simeon – Pacific Island Countries

Ana Janet Sunga and Josephine Mill – Papua New Guinea

Margarita Ardivilla (with Tricia Oco of the Juvenile Justice and Welfare Council) – Philippines

Santi Siritheerajesd – Thailand

Antonia Luedeke – Timor-Leste

Vijaya Ratnam Raman and Nguyen Thanh Truc – Viet Nam

I would also like to thank our counterparts from Fiji, Indonesia, Papua New Guinea, the Philippines, Samoa and Thailand for accommodating Ingrid's visits; thank all the participants in the Regional Workshop held in Bangkok on 16-18 August, 2016; and thank our Research Assistant, Natcha Chutinthararuk, for the support provided to the overall study process and associated Workshop.

Finally, I would like to recognize the contributions of UNICEF interns Chelsea Caldwell, Ha Ryong Jung and Graham Adria.



**Stephen Blight**  
Regional Child Protection Advisor

# ACRONYMS AND ABBREVIATIONS

Within the scope of this regional study on diversion and other alternative measures for children in conflict with the law we use the following abbreviations:

BCPC	Barangay Council for the Protection of Children
CBO	community-based organization
CJJ	community juvenile justice
CJS	community justice supervisors
CO	Country Office
CRC	Convention on the Rights of the Child (1989)
CRC Committee	Committee on the Rights of the Child
CRIN	Child Rights International Network
CSO	civil society organization
FBO	faith-based organization
IDR	Indonesia Rupiah
JJWA	Juvenile Justice and Welfare Act
JJWC	Juvenile Justice and Welfare Council
JOPC	Juvenile Observation and Protection Center
LSWDO	local social welfare and development officers
MACR	minimum age of criminal responsibility
MoSA	Ministry of Social Affairs
MoSDHS	Ministry of Social Development
NGO	non-governmental organization
PGK	Papua New Guinean Kina
PHP	Pilipino Peso
PTA	parent-teacher association
RJJ	Restorative Juvenile Justice
THB	Thai Baht
UNICEF	United Nations Children's Fund
UNICEF Toolkit	UNICEF Toolkit on Diversion and Alternatives to Detention
US\$	United States Dollar
VOM	victim offender mediation
WCPD	Women and Children's Protection Desk
WST	Samoan Tala

# DEFINITIONS USED IN THIS REPORT

Within the scope of this regional study on diversion and other alternative measures for children in conflict with the law the following definitions have been used:

- **Alternatives to pre-trial detention:** Measures that may be imposed on children who are being formally processed through the criminal (juvenile) justice system and that provide an alternative means of supervising the child pending his/her trial rather than detention in police station cells, pre-trial detention centres or remand homes. [UNICEF Toolkit]
- **Alternatives to post-trial detention:** Measures at the disposition/sentencing stage that may be imposed on children who are being formally processed through the criminal (juvenile) justice system and that provide community-based options for the reintegration, supervision and rehabilitation of children, rather than sending them to any form of detention centre. [UNICEF Toolkit]
- **Child:** Every human being below the age of 18 years, unless under the law applicable to the child the majority is attained earlier. [article 1 of the CRC]
- **Children in conflict with the law:** Any boy/girl who comes in contact with law enforcement authorities because he/she is alleged as, accused of, or recognized as having infringed the criminal law. [≈CRC General Comment No.10]
- **Deprivation of liberty:** Any form of detention or imprisonment or the placement of a child in a public or private custodial setting, from which the child is not permitted to leave at will, by order of any judicial, administrative or other public authority. [Rule 11 of the JDLs] In this report 'deprivation of liberty', 'detention' and 'placement in a closed institution' are used as synonyms. Pre-trial detention is the period when children in conflict with the law are deprived of their liberty between the moment of being charged and the moment of being sentenced. Post-trial detention is the period that children in conflict with the law are sentenced to deprivation of liberty and stay in a detention facility.
- **Diversion:** The conditional channelling of children in conflict with the law away from formal judicial proceedings towards a different way of resolving the issue that enables many – possibly most – to be dealt with by non-judicial bodies, thereby avoiding the negative effects of formal judicial proceedings and a criminal record, provided that human rights and legal safeguards are fully respected. [UNICEF Toolkit]
- **Informal justice:** Informal justice is used as a synonym for non-state justice and refers to the resolution of disputes and the regulation of conduct by a neutral third party that is not a part of the judiciary as established by law and/or whose substantive, procedural or structural foundation is not primarily based on statutory law. [UN Women, UNICEF and UNDP]
- **Juvenile justice system:** Legislation, norms, standards, guidelines, policies, procedures, mechanisms, provisions, institutions and bodies specifically applicable to children in conflict with the law who are at or above the minimum age of criminal responsibility. [UNICEF Toolkit]
- **Minimum age of criminal responsibility:** This is the lowest age at which the criminal justice system deems a child can be held responsible for his/her own behaviour and can therefore be found guilty in court. Children under this age are not considered to have the capacity to infringe the penal law. [UNICEF Toolkit]

- **Protective detention/custody:** Protective detention/custody of boys and girls is used by police, prosecutors and judges with a view to protecting them from a dangerous person or situation, such as revenge by the victim(s) or victim's family. [UNICEF]
- **Rehabilitation:** Restoring a child to good health or finding them a place in society, often through therapy and education. [UNICEF Toolkit]
- **Reintegration:** Re-establishing of roots and a place in society for children who have been in conflict with the law so that they feel a part of, and accepted by, the community. [UNICEF Toolkit]
- **Restorative juvenile justice approach:** An approach in which the victim(s)<sup>1</sup> 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. [UNICEF Toolkit]
- **Semi-open or semi-closed institution:** An institution from where children are not allowed to leave at their own will, but they may have access to certain activities in the community, most often education, but sometimes leisure time activities and visits to parents/guardians or family.
- **Social inquiry report:** An assessment of the child's current and past social circumstances relevant to understanding why he/she committed the offence(s) and his/her needs and motivation for reintegration, rehabilitation, restoration and other alternative measures. A social inquiry report, also called 'pre-sentencing report' or 'pre-disposition report', is often a pre-requisite to enable (juvenile/child) judges to use their discretion in disposing of children's cases in the most appropriate way. [UNICEF Toolkit]
- **Status offences:** Acts that would not be criminal acts if they were committed by adults, such as school truancy, school and family disobedience, running away from home, begging, curfew violations, etc. Instead of criminalizing these children, the United Nations promotes the enactment of legislation to ensure that status offences are not considered an offence and not penalized if committed by a child. [Riyadh Guideline 56]

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<sup>1</sup> In this study, the term 'victim(s)' is used instead of the preferred term 'victim(s)/survivor(s)'. The term 'survivor(s)', which is widely used in relation to gender-based violence, acknowledges and reinforces resilience, can assist in psychological recovery and can reduce re-victimization by continued labelling with the term 'victim(s)' which many people consider as disempowering and stigmatizing. The term 'victim(s)' is used because it has a specific legal meaning in the (juvenile) justice context.

# INTRODUCTION

## **Introduction to the Regional Study on Diversion and Other Alternative Measures for Children in Conflict with the Law in East Asia and the Pacific**

Throughout the region, legislative frameworks are being strengthened in order to protect the rights of boys and girls in conflict with the law. However, many provisions of these laws remain unimplemented, while diversion and alternatives to pre- and post-trial detention are not used to their fullest potential. In some countries in the region, particularly in Papua New Guinea and the Pacific Island countries, cases of children in conflict with the law are settled in an informal/traditional manner. Not much is known about these practices, including whether they comply with international standards and the best interests of the children are safeguarded. In the East Asia and Pacific region, many alternative measures for children in conflict with the law are at the pilot stage and/or only implemented in a few locations at the local level, often using models from outside the region and more developed countries. The Committee on the Rights of the Child (CRC Committee) has emphasized the need to put mechanisms in place for diversion and/or alternatives to pre- and post-trial detention for children in conflict with the law in almost all of its recent reports related to the East Asian and Pacific Island countries.







# EXECUTIVE SUMMARY

## Main aims and data collection process

The 'Study on diversion and other alternative measures for children in conflict with the law in East Asian and Pacific' aims to support relevant national and local authorities, juvenile justice and social welfare professionals, and all other stakeholders in their efforts to implement, replicate and scale-up alternative measures and to harmonize their practices with international juvenile justice standards. This regional study focuses on children in conflict with the law who are at, or above, the minimum age of criminal responsibility ( $\geq$ MACR) in 12 East Asian countries and 14 Pacific Island countries. The information on diversion and other alternative measures was collected through a combination of four research methods (i.e., desk review, questionnaires, interviews and in-country visits) and validated through a regional workshop.

## Juvenile justice context

The regional study has shown that there are more differences than similarities with regard to the juvenile justice context between the East Asian region and Pacific Island region.

### Main differences:

- ✓ **Legal systems:** All 14 Pacific Island countries have a plural legal system, while only six of the East Asian countries have a plural legal system. The other six East Asian countries have an exclusively civil legal system.
- ✓ **Specialization:** The East Asian region has more specialized juvenile justice systems (10 countries) than the Pacific Island region (four countries). Most East Asian and Pacific Island countries have established child courts (10 countries) and child police units (seven countries). Less than half of the countries have specialized professionals appointed to deal with cases of children in conflict with the law (eight East Asian and three Pacific Island countries). Most East Asian and Pacific Island countries have specialized child judges (eight countries), child probation officers (five countries) and child social workers (five countries). Ten Pacific Island countries have neither juvenile justice institutions nor juvenile justice professionals, while that is only the case in one East Asian country.
- ✓ **Institutionalization:** Open residential institutions exist in six East Asian countries and one Pacific Island country. Facilities where children are deprived of their liberty exist in 15 East Asian and Pacific Island countries, i.e., closed care/rehabilitation facilities in six East Asian countries and one Pacific Island country, and juvenile detention facilities in nine East Asian and four Pacific Island countries.
- ✓ **Coordination:** The vast majority of East Asian countries have established a mechanism to coordinate the activities between the juvenile justice sector and social welfare sector (10 countries) and four East Asian countries have developed inter-agency/sectoral protocols. There is no clear picture of the Pacific Island countries in this regard, except that two Pacific Island countries have an inter-sectoral coordination mechanism, as well as inter-agency protocols.
- ✓ **Implementation and monitoring:** The vast majority of East Asian countries have mechanisms in place to implement and monitor diversion and other alternative measures for children in conflict with the law (10 countries), while that is only the case in half of the Pacific Island countries (seven countries).
- ✓ **Guidelines/SOPs:** Guidelines or standard operating procedures (SOPs) that provide guidance to professionals when applying diversion and other alternative measures for children in conflict with the law are developed in 11 East Asian countries and five Pacific Island countries.

- ✓ **Statistics:** Statistics on juvenile justice in general, and alternative measures for children in conflict with the law in particular, are available in six East Asian countries and two Pacific Island countries. In some East Asian and Pacific Island countries reliable statistics on juvenile justice are systematically collected, while in other countries information is provided by one juvenile justice partner.

#### **Main similarities:**

- ✓ **Centralization:** The vast majority of the countries in the East Asian and Pacific region have a centralized (juvenile) justice system (17 countries) and five East Asian countries and three Pacific Island countries have a decentralized (juvenile) justice system. In Indonesia, the juvenile justice system is partly centralized and partly decentralized.
- ✓ **Minimum age of criminal responsibility (MACR):** The majority of East Asian and Pacific Island countries have more than one MACR (16 countries) and four East Asian and Pacific Island countries have a single MACR that is below the internationally accepted minimum age of 12 years. The MACR in five East Asian countries and one Pacific Island country complies with international standards.
- ✓ **Legislation:** More than half of the East Asian and Pacific Island countries have adopted child-specific legislation that incorporates provisions on juvenile justice, including alternative measures for children  $\geq$ MACR (15 countries). The other four East Asian countries and seven Pacific Island countries regulate juvenile justice, diversion and alternatives to detention through their general laws.
- ✓ **Community-based organizations:** There are insufficient community-based organizations (CBOs) and services for children in conflict with the law in the East Asian and Pacific region. Only one East Asian country and four Pacific Island countries have mentioned that such organizations and services are available to a degree to tailor children's alternative measures to their needs and to prevent them from reoffending.

### **Main recommendations on the juvenile justice context:**

- Sharing juvenile justice experiences, promising/good practices, systematically collected pilot outcomes, lessons learned, enablers and barriers for using alternative measures in cases of children in conflict with the law.
- Increasing a low MACR to an internationally acceptable age level ( $\geq$  12 years) and, if there is more than one MACR, increasing the lowest MACR to the level of the highest MACR so that there is only one MACR.
- Establishing institutions within the police, prosecution office and court system that are specifically applicable to children in conflict with the law. Specializing professionals working in the juvenile justice system in dealing with children in conflict with the law. Specializing staff from the social welfare sector in assisting child police units, child prosecution offices and child courts.

## Informal/community justice

The regional study has provided interesting information on informal (juvenile) justice mechanisms in cases of children in conflict with the law ≥MACR. Because various stakeholders consider the term 'informal' to be a value judgement, UNICEF uses the term 'community juvenile justice'. Almost all East Asian and Pacific Island countries apply some form of community juvenile justice (CJJ) (nine East Asian and 14 Pacific Island countries). In the East Asian region, the proportion of cases of children in conflict with the law that are dealt with by community leaders, religious leaders or community committees varies from 0 to 10 to 91 to 100 per cent. In the Pacific Island region, the vast majority of these cases are dealt with through CJJ mechanisms (more than 73 per cent of all cases in 11 Pacific Island countries). In 18 East Asian and Pacific Island countries there are legislations that regulate or recognize that cases of children in conflict with the law may be dealt with through community justice mechanisms. UNICEF has not been able to systematically collect detailed information on CJJ practices. In general, the data suggest that community justice actors do not hold children in conflict with the law responsible for their offending behaviour. Most conflicts are solved through financial or material compensation of the victim/victim's family by the child's parents/guardians. The regional study includes six promising/good practices of CJJ that have been developed in the East Asian and Pacific region (Lao PDR, Myanmar, Papua New Guinea, the Philippines, Samoa and Timor-Leste).

### Main recommendations on informal/community juvenile justice:

- Building juvenile justice programming on community (juvenile) justice mechanisms that respect basic human rights principles and standards.
- Recognizing CJJ mechanisms through legislation.
- Developing guidelines on dealing with children in conflict with the law for community justice actors.
- Training community justice actors on the guiding principles of the Convention on the Rights of the Child (CRC), juvenile justice standards and restorative justice standards.
- Collecting comprehensive data on CJJ, including whether basic human rights principles and standards are respected. Exploring the nature and potential of collaboration between community (juvenile) justice actors and juvenile justice professionals.
- Tailoring agreements between the parties to the needs of the victim(s) as well as the needs of the child in conflict with the law, and holding the child responsible for restoring the consequences of the offence.

## Continuum of six alternative measures

The main tool that UNICEF has used to analyse the alternative measures applied in cases of children in conflict with the law  $\geq$ MACR is the continuum of six family/community-based alternative measures that are based on international juvenile justice standards promoted by the CRC and other international child-specific instruments. Ideally, the six alternative measures are explicitly regulated by national (child-specific) laws and are implemented nationwide, including restorative justice approaches. Therefore, deprivation of liberty is only used as a last resort and for the shortest appropriate period of time, and responses to children in conflict with the law  $\geq$ MACR are tailored to the needs and circumstances of the children and in proportion to the circumstances and the gravity of the offence.

### ✓ **Unconditional diversion:**

Unconditional diversion, usually in the form of a police warning, is more often used in practice (10 East Asian and 13 Pacific Island countries) than it is incorporated in the national legislation of the East Asian and Pacific Island countries (five East Asian and two Pacific Island countries). Unconditional diversion is often applied in 14 East Asian and Pacific countries. The regional study describes two promising/good practices of police warning that have been developed in the East Asian and Pacific region, i.e., in Samoa and Papua New Guinea.

### ✓ **Diversion from formal judicial proceedings:**

Diverting children in conflict with the law implies that they are referred to appropriate community-based organizations and social services, thereby avoiding the negative effects of formal judicial proceedings and a criminal record. The vast majority of East Asian and Pacific countries have provisions that regulate or justify diversion in their child-specific laws (13 countries) or general laws (11 countries). Most East Asian and Pacific countries regulate diversion at the court level (eight East Asian and 13 Pacific Island countries). While diversion at the police level and prosecution level does not exist in the Pacific Island region. In the East Asian region, four countries regulate diversion at the three levels of the juvenile justice process. In practice, almost all East Asian and Pacific countries apply diversion (11 East Asian and 14 Pacific Island countries), of which 17 East Asian and Pacific countries divert children in conflict with the law rather often or often. Examples of diversion conditions children may have to comply with are: school attendance, vocational training, life skills programme, religious activities, community work hours, counselling, curfew. In the East Asian and Pacific region it is very common for the parents/guardians of children in conflict with the law to have to compensate the victim(s) when their child is diverted (six East Asian and 14 Pacific Island countries). The regional study discusses seven promising/good practices of diversion from formal judicial proceedings that have been developed in the East Asian and Pacific region, i.e., in Cambodia, Indonesia, Kiribati (two practices), Myanmar, the Philippines and Thailand.

## Main recommendations on diversion:

- Incorporating unconditional diversion at the police level, as well as the kinds of offences and cases in which unconditional diversion may be used in national (child-specific) law. Incorporating diversion from formal judicial proceedings in national (child-specific) law as a measure of first resort, both with and without a restorative justice approach, as well as the kinds of offences and cases in which diversion may be used and which juvenile justice actors may initiate and decide on diversion. Ensuring that children in conflict with the law can still be diverted without a restorative justice approach if victim(s) do not give their consent to a restorative justice diversion process.
- Developing guidelines on how to use diversion by (child) police, (child) prosecutors and/or (child) courts as well as the procedures for decision making, implementation and monitoring.
- Harmonizing practices of unconditional diversion and diversion from formal judicial proceedings with international standards on juvenile justice/restorative justice.
- Preparing quality social inquiry reports in order to ensure that diversion measures are tailored to the child's needs and circumstances, focus on the child's reintegration and rehabilitation, address the root causes of the child's offending behaviour and are proportionate to the offence.
- Encouraging collaboration between the juvenile justice sector and social welfare sector and an interdisciplinary approach in cases of children who are subject to diversionary measures.

### ✓ Alternatives to pre-trial detention:

Alternatives to pre-trial detention provide family/community-based options for the supervision of children pending their trial rather than detaining them. All 26 East Asian and Pacific countries have incorporated provisions on alternatives to pre-trial detention in their child-specific laws (14 countries) or general laws (12 countries) and almost all countries apply the alternatives in practice (25 countries), both without and with specific release conditions. The practices in the East Asian and Pacific Island region differ slightly. Half of the East Asian countries hardly use alternatives at the pre-trial stage (six countries), while the vast majority of Pacific Island countries allow children to await their trial in their communities 'rather often' or 'often' (12 countries). All 25 East Asian and Pacific countries release children in conflict with the law to their parents/guardians at the pre-trial level, but they can also be released to family members (17 countries), other respected adults (16 countries) or civil society organizations (CSOs) or faith-based organizations (FBOs) (four countries). The regional study includes seven promising/good practices of alternatives to pre-trial detention in the East Asian and Pacific region, i.e., in Fiji (two practices), Malaysia, Samoa, Thailand and Vanuatu.

### ✓ Minimizing time in pre-trial detention:

If detention at the pre-trial stage is unavoidable, the time children spend in detention should be limited to the shortest appropriate period of time. The vast majority of East Asian and Pacific countries have incorporated provisions on release from pre-trial detention in their child-specific laws (10 countries) or general laws (10 countries). In most East Asian and Pacific countries, children's pre-trial detention is regularly reviewed (five East Asian and 11 Pacific Island countries), but only four East Asian and Pacific countries released children 'often' or 'rather often' from pre-trial detention.

## Main recommendations on alternatives to pre-trial detention:

- Incorporating pre-trial/trial detention in national (child-specific) law as a measure of last resort and for the shortest appropriate period of time as well as the criteria to (conditionally) release children at the pre-trial stage, the obligation for the (child) prosecution office or (child) court to continuously explore the possibilities of diversion and (conditional) release from pre-trial detention and the criteria to release children from pre-trial/trial detention.
- Releasing children in conflict with the law at the pre-trial/trial stages as soon as possible and as much as possible into the care of their parents/guardians, (extended) family members, other respected adults and designated CSOs/NGOs, both without and with specific release conditions. Reviewing children's pre-trial detention by the (child) court on a regular basis and immediately.
- Limiting financial bail and financial compensation of the victim(s) as conditions to release children at the pre-trial/trial stages, because those conditions discriminate against children from poor backgrounds and children without parental/family care.
- Preparing quality social inquiry reports in order to ensure that children in conflict with the law are only deprived of their liberty in exceptional cases at the pre-trial stage and, if they can be released, to decide on the need to impose release conditions and which kinds of release conditions.

### ✓ Alternatives to post-trial detention:

Alternatives to post-trial detention, also called 'non-custodial sentences', provide family/community-based options for children's reintegration, rehabilitation and supervision, rather than sentencing them to any form of detention centre or closed care, treatment or re-education institution. All 26 East Asian and Pacific countries have incorporated provisions on alternatives to post-trial detention in their child-specific laws (14 countries) or general laws (12 countries). Ten East Asian and Pacific countries have a rather significant variety of such alternatives (between four to seven measures) in their laws. In actual practice, the vast majority of East Asian and Pacific countries apply alternatives to post-trial detention 'rather often' or 'often' in cases of children in conflict with the law (seven East Asian and 13 Pacific Island countries), especially probation (19 countries), community service (14 countries) and participation in a specific reintegration programme (12 countries). In the East Asian region, these decisions are most often based on a social inquiry report (eight countries), while in the Pacific Island region such reports are only requested by the court in two countries. The regional study could not verify the quality of the social inquiry reports and whether social workers/probation officers have received training in order to prepare quality reports. Nine promising/good practices of alternatives to post-trial detention are incorporated in the regional study, i.e., alternatives developed in Fiji, Kiribati, Malaysia, Papua New Guinea, Samoa, Thailand (two practices), Vanuatu and Viet Nam.

### ✓ Measures to minimize time in post-trial detention:

Almost all East Asian and Pacific countries regulate the early (conditional) release of children from post-trial detention through their child-specific laws (14 countries) or general laws (10 countries). Children's post-trial detention is regularly reviewed by the court or other authority in six East Asian countries and 12 Pacific Island countries, and in six East Asian countries and 10 Pacific Island countries children are 'rather often' or 'often' early (conditionally) released from post-trial detention. The vast majority of the East Asian and Pacific countries monitor children who are released from detention facilities and other closed institutions (seven East Asian and 12 Pacific Island countries).

## Main recommendations on alternatives to post-trial detention:

- Incorporating post-trial detention and deprivation of liberty in closed institutions in national (child-specific) law as a measure of last resort. It should be enforced for the shortest appropriate period of time, with the (child) court being obligated to regularly review children's detention and the criteria to take into account when deciding on early (conditional) release from post-trial detention. Incorporating a wide variety of community/family-based alternatives to post-trial detention, both with and without a restorative justice approach, in national (child-specific) law as well as the criteria to apply alternatives as much as possible in cases of children in conflict with the law.
- Developing guidelines on how to use alternatives to post-trial detention by (child) courts and how to develop, implement and monitor reintegration/rehabilitation plans.
- Ensuring that the (child) court receives, in all cases of children in conflict with the law, well-founded recommendations on the most appropriate family/community-based measure(s)/sentence(s) through a quality social inquiry report/pre-sentencing report or pre-sentencing meeting of the parties involved in the offence.
- Ensuring legal assistance of children in conflict with the law, free of charge, throughout the juvenile justice process, including during the trial and sentencing stages, as well as a well-trained probation service to allow for the maximum and effective use of alternatives to sentencing and alternatives to post-trial detention. Ensuring that credit is given to the time children have spent awaiting their trial in pre-trial/trial detention or other closed institutions.
- Limiting fines and financial compensation of the victim(s) by the child's parents/guardians as an alternative to post-trial detention, because these measures/sentences are not considered to have rehabilitative value and discriminate against children from poor backgrounds and without parental/family care. Developing long-term special therapeutic and/or rehabilitation programmes for child offenders of sexual and other serious offences that enable them to move on in a positive way.
- Encouraging collaboration between the juvenile justice sector and social welfare sector, and an interdisciplinary approach in cases of children who are subject to alternatives to post-trial detention and children released from post-trial detention facilities/closed institutions.

## Restorative juvenile justice approaches

In the East Asian and Pacific region, many terms are used to refer to restorative (juvenile) justice approaches, such as reconciliation, mediation, conferencing, compensation and settlement. Within the framework of the regional study, community service is considered an indirect restorative justice approach. A significant number of East Asian and Pacific countries do not regulate restorative juvenile justice approaches through their national laws (10 countries). The other 16 East Asian and Pacific countries incorporate provisions on restorative justice in either their child-specific laws (seven East Asian and four Pacific Island countries) or general laws (four East Asian and one Pacific Island country). More than half of these countries have legal provisions on restorative juvenile justice regarding both diversion and alternatives to post-trial detention (nine East Asian and Pacific countries). In actual practice, a restorative juvenile justice approach is most often used with regard to diversion (eight East Asian and 13 Pacific Island countries), but restorative alternatives to post-trial detention are also rather common (five East Asian and 13 Pacific Island countries). The regional study describes seven promising/good practices of restorative juvenile justice that have been developed in the East Asian and Pacific region, i.e., in Indonesia, Kiribati, Papua New Guinea (two practices), the Philippines, Samoa and Thailand.



## Main recommendations on restorative juvenile justice:

- Incorporating restorative juvenile justice approaches, including pre-sentencing meetings, in national (child-specific) law as well as the kinds of offences and cases in which these responses may be used and at which stages of the juvenile justice process.
- Developing guidelines on how to apply restorative (juvenile) justice approaches at the different levels of the juvenile justice process and procedures for decision making, implementation and monitoring.
- Holding children in conflict with the law accountable for their offending behaviour and for restoring the harms caused to the victim(s). Preparing child-centred restorative agreements between the parties that address the root causes of the child's offending behaviour in order to prevent reoffending.
- Ensuring that facilitators of restorative juvenile justice processes are trained.

## General overview of alternative measures for children in conflict with the law

The regional study shows a rather positive picture of diversion and other alternative measures for children in conflict with the law ≥MACR. Indonesia, Lao PDR, Papua New Guinea, Viet Nam and Solomon Islands have the continuum of six alternative measures, both regulated by their laws and implemented in actual practice. Malaysia, Mongolia, Thailand, Cook Islands, Fiji, Marshal Islands, Micronesia, Nauru, Niue, Palau, Tokelau, Tonga and Tuvalu apply the entire continuum, but have not regulated the six measures in their laws. Vanuatu does not apply the entire continuum in practice, because there are no detention facilities for children in conflict with the law and, therefore, children cannot be released from pre-trial and post-trial detention. Cambodia, China, Myanmar, the Philippines, Timor-Leste, Kiribati and Samoa have the continuum of six alternative measures, neither incorporated in their laws nor implemented in actual practice. This is mainly because 'unconditional diversion' is not regulated by their laws. A restorative justice approach is very often applied with regard to diversion (eight East Asian and 13 Pacific Island countries) and alternatives to post-trial detention (five East Asian and 13 Pacific Island countries). This general overview only provides information on the extent to which East Asian and Pacific countries legally regulate and implement alternative measures in cases of children in conflict with the law ≥MACR and not whether international standards on juvenile justice and restorative juvenile justice are respected in actual practice.

## Main recommendations on the continuum of alternative measures:

- Regulating the continuum of six alternative measures in national (child-specific) law in order to increase the use of such measures.
- Ensure that responses to children in conflict with the law can be tailored to their needs and circumstances and in proportion to the offence.
- Organizing nationwide awareness-raising initiatives to inform the general public and civil society stakeholders on the benefits of the various alternative measures for children in conflict with the law that are in line with international standards.
- Calculating the running costs of alternative measures for children in conflict with the law.
- Ensuring the systematic collection of detailed and segregated data on cases of children in conflict with the law who are subject to diversion, alternatives to pre-trial and post-trial detention and restorative juvenile justice approaches.

## Main enablers and barriers for using diversion and other alternative measures

The stakeholders involved in cases of children in conflict with the law ≥MACR have mentioned the following enablers and barriers for using diversion, alternatives to pre- and post-trial detention and restorative juvenile justice approaches. Only those that have been mentioned by five or more East Asian and Pacific countries are listed.

### Main enablers and barriers due to shortages:

- ✓ (Lack of) Child-specific legislation on diversion, alternatives to pre-trial, alternatives to post-trial detention and/or restorative justice approaches.
- ✓ (Lack of) Guidelines, SOPs, rules and/or policies on how to implement diversion and other alternative measures.
- ✓ (Lack of) Awareness, understanding and commitment of juvenile justice professionals and stakeholders involved in diversion and other alternative measures.
- ✓ (Lack of) Support and acceptance of diversion and other alternative measures by the general public, parents/guardians and communities.
- ✓ (Lack of) Coordinating mechanisms, implementing mechanisms and monitoring mechanisms for diversion and other alternative measures.
- ✓ (Lack of) Sufficient human resources, especially social workers/probation officers, and specialized juvenile justice professionals and/or volunteers.
- ✓ (Lack of) Specific community-based services and programmes for children in conflict with the law.

**Main enablers:**

- ✓ Capacity building of juvenile justice professionals (and other stakeholders) on diversion and other alternative measures.
- ✓ Pilots and practices of diversion and other alternative measures that prove the effectiveness and provide lessons learned for rolling-out and scaling-up such measures.
- ✓ Support and commitment of national and local governments to diversion and other alternative measures.
- ✓ Existing traditions, customs and practices that support diversion and other alternative measures.

**Main barriers:**

- ✓ Opinion among juvenile justice professionals and the general public that crime should be punished.
- ✓ No leadership.
- ✓ No funding for diversion and other alternative measures.

**Main recommendations on barriers and enablers:**

- The enablers and barriers for using diversion and other alternative measures in cases of children in conflict with the law should be taken into account when developing juvenile justice policies, conducting awareness initiatives and implementing, replicating and scaling-up pilots/projects.





# PART I: DATA COLLECTION PROCESS

## 1.1 Regional assignment on alternative measures for children in conflict with the law

The main purpose of this regional study is to carry out an analytic assessment of promising/good practices as well as enablers and barriers for using diversion and other alternative measures for boys and girls in conflict with the law in line with international standards on juvenile justice. The study aims to support relevant national and local authorities, juvenile justice professionals, social welfare professionals, informal justice providers, practitioners, community-based organizations (CBOs), civil society organization (CSOs) and non-governmental organizations (NGOs) in their efforts to apply diversion and other alternative measures and to harmonize their practices with international juvenile justice standards. This final report describes the continuum of promising/good practices in the East Asian and the Pacific region that may function as a guide for implementing, replicating and scaling-up diversion, alternatives to pre-trial and post-trial detention and restorative juvenile justice approaches in the East Asian and Pacific countries.

The regional study focuses on children in conflict with the law who are at, or above, the minimum age of criminal responsibility ( $\geq$ MACR). The MACR varies significantly among East Asian and Pacific countries and remains markedly low in some countries according to international standards, which promote a minimum age of no less than 12 years (paragraph 32 of CRC General Comment No.10). The assessment of existing promising/good practices, enablers and barriers for using diversion and other alternative measures has been carried out in all 26 East Asian and Pacific countries,<sup>2</sup> while the detailed documentation of some of those promising/good practices has been limited to Fiji, Indonesia, Papua New Guinea, the Philippines, Samoa and Thailand. However, not all boys and girls in conflict with the law in the 26 East Asian and Pacific countries are included in this regional study. The following three groups have not been examined:

- ✓ Children below the MACR;
- ✓ Children who are in conflict with the law due to status offences; and
- ✓ Children who are deprived of their liberty through so-called 'protective detention/custody'

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<sup>2</sup> The 12 East Asian countries are: Cambodia, China, Indonesia, Lao PDR, Malaysia, Mongolia, Myanmar, Papua New Guinea, the Philippines, Thailand, Timor-Leste and Viet Nam. DPR Korea is not part of the study, because they do not have a UNICEF child protection programme. The 14 Pacific Island countries are: Cook Islands, Fiji, Kiribati, Marshall Islands, Micronesia, Niue, Nauru, Palau, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu.



## 1.2 Data collection methods and process

The information on diversion and other alternative measures has been collected through a combination of quantitative and qualitative research methods (desk review of relevant documents, questionnaire, interviews, in-country visits) and was presented, discussed and validated during the regional workshop. The assessment process consists of four consecutive phases. These are:

- ✓ Phase 1: Preparing the methodology and templates for the desk review, questionnaire and interviews.
- ✓ Phase 2: Collecting data on diversion and other alternative measures through the desk review, questionnaire and interviews.
- ✓ Phase 3: Sampling of the countries for in-country visits and collecting detailed information about promising/good practices in the five selected East Asian and Pacific countries, including the running costs of the promising/good practices.
- ✓ Phase 4: Conducting the regional workshop to exchange and validate the study on diversion and other alternative measures in the East Asian and Pacific region.

## 1.3 Desk review of relevant documents

The desk review has been the first methodological step of the study. The main purpose was to obtain an overall picture of existing national legislation and practices with regard to diversion and other alternative measures for children in conflict with the law in the East Asian and Pacific region as well as potential enablers and barriers for using these measures in line with international standards on juvenile justice. The desk review findings have also informed the three subsequent methodological steps of the study, i.e., the questionnaire, interviews and in-country visits. Relevant information that could not be collected through the desk review was compiled through the subsequent methods. For example, information that was not available in writing or only available in local languages.



**Table 1: Number of documents reviewed per country**

Country	Initial documents	CRC concluding observations	Access to Justice CRIN	Additional documents	Total documents
<b>East Asian countries [12 countries]</b>					
Cambodia	5	1	1	--	7
China	--	1	1	2	4
Indonesia	18	1	1	1	21
Lao PDR	4	1	1	1	7
Malaysia	2	1	1	2	6
Mongolia	1	1	1	2	5
Myanmar	3	1	1	1	6
Papua New Guinea	5	1	1	2	9
Philippines	2	1	1	4	8
Thailand	6	1	1	--	8
Timor-Leste	2	1	1	3	7
Viet Nam	4	1	1	5	11
<b>Total East Asian countries</b>	<b>52</b>	<b>12</b>	<b>12</b>	<b>23</b>	<b>99</b>
	<b>76</b>				
<b>Pacific Island countries [14 countries]</b>					
Cook Islands	--	1	--	1	2
Fiji	4	1	1	8	14
Kiribati	9	1	1	6	17
Marshall Islands	--	1	1	2	4
Micronesia	--	1	1	1	3
Niue	--	--	--	1	1
Nauru	--	--	1	1	2
Palau	--	1	1	2	4
Samoa	1	1	1	4	7
Solomon Islands	1	1	1	5	8
Tokelau	--	--	--	1	1
Tonga	1	--	1	1	3
Tuvalu	--	1	1	1	3
Vanuatu	3	1	1	7	12
<b>Total Pacific Island countries</b>	<b>19</b>	<b>10</b>	<b>11</b>	<b>41</b>	<b>81</b>
	<b>40</b>				
<b>East Asian and Pacific region [26 countries]</b>	<b>71</b>	<b>22</b>	<b>23</b>	<b>64</b>	<b>180</b>
	<b>116</b>				



On 24 November 2015, UNICEF has requested the UNICEF Country Offices (COs) to share the relevant documents on informal juvenile justice, diversion, alternatives to pre- and post-trial detention and restorative juvenile justice.<sup>3</sup> This initial request resulted in a significant number of documents (see overview 'Number of Documents Reviewed'). Initially, 71 documents were received, i.e., 52 documents relating to East Asian countries and 19 documents relating to Pacific Island countries.<sup>4</sup> These include two regional documents that cover various countries.<sup>5</sup> In addition to the documents shared by the UNICEF COs, UNICEF has also reviewed the most recent CRC Concluding Observations and the Child Rights International Network (CRIN) reports on Access to Justice for Children for each East Asian and Pacific Island country.<sup>6</sup> Altogether, the initial desk review covered 116 documents, i.e., 76 documents relating to East Asian countries (66 per cent) and 40 documents relating to Pacific Island countries (34 per cent). After the interviews were conducted in January and February 2016, some UNICEF COs shared additional documents. UNICEF also downloaded additional legislation from the Internet. In total, 64 additional documents have been reviewed, i.e., 23 documents relating to East Asian countries (36 per cent) and 41 documents relating to Pacific Island countries (64 per cent). These numbers include three regional documents that cover various countries.<sup>7</sup> The average number of documents reviewed per East Asian and Pacific Island country is 6.9 documents, i.e., 8.2 documents for the 12 East Asian countries and 5.8 documents for the 14 Pacific Island countries. The largest number of reviewed documents concerns Indonesia (21 documents), followed by Kiribati (17 documents) and Fiji (14 documents). Three or less documents were reviewed for one East Asian country and seven Pacific Island countries. The total of 180 desk review documents, i.e., 99 documents relating to East Asian countries (55 per cent) and 81 documents relating to Pacific Island countries (45 per cent), are reflected in the country level summaries of the findings. All desk review documents are listed in Annex 1.

The 71 initial desk review documents were predominantly of a descriptive nature (32 documents/45 per cent), including project/pilot descriptions and proposals, child protection programmes, PowerPoint presentations and policy documents. The other initial documents were of an evaluative nature (23 documents/32 per cent), including situation analyses and baseline reports, and legislative nature (16 documents/23 per cent). The additional 64 documents were a mix of 23 descriptive documents (36 per cent), 17 evaluative documents (27 per cent) and 24 legislative documents (37 per cent). The relevance of the various desk review documents varied significantly, although there were a number of extremely relevant evaluation reports that discuss alternative measures for children in conflict with the law in detail, as well as interesting background documents on child protection.

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<sup>3</sup> There are 12 UNICEF COs for the 12 East Asian countries and five UNICEF COs for five Pacific Island countries, i.e., Fiji, Kiribati, Samoa, Solomon Islands and Vanuatu. The UNICEF Pacific Office covers the nine remaining Pacific Island countries.

<sup>4</sup> Not all received documents are included in the overview 'Number of Documents Reviewed'. Four documents in local languages and one case study have not been reviewed. With those five documents the actual number of originally received desk review documents is 76.

<sup>5</sup> The document 'A Measure of Last Resort? The Current Status of Juvenile Justice in ASEAN Member States' (Raoul Wallenberg Institute) covers eight East Asian countries and the document 'Jurisdictional/Operational Summary of South Pacific Council of Youth and Children's Court' (South Pacific Council of Youth and Children's Court) covers six Pacific Island countries. Both regional documents have been incorporated in the overview as many times as it covers a country, i.e., respectively eight times and six times.

<sup>6</sup> The 'Concluding Observations' of the CRC Committee can be found on: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?lang=en&TreatyID=5&TreatyID=10&TreatyID=11&DocTypeID=5](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?lang=en&TreatyID=5&TreatyID=10&TreatyID=11&DocTypeID=5) and the CRIN reports on 'Access to Justice for Children' on: <https://www.crin.org/en/home/law/access>.

<sup>7</sup> The document 'Traditional Justice Systems' (UNICEF Papua New Guinea) covers eight East Asian and Pacific countries; the document 'Child Protection Baseline Reports' (UNICEF) covers four Pacific Island countries and the document 'Child Protection Programme in the Pacific' (UNICEF-Pacific) covers five Pacific Island countries. These regional documents have been incorporated in the overview as many times as it covers a country, i.e., respectively eight, four and five times.

The initial desk review carried out in December 2015 was very useful in obtaining an overview of the kind of existing alternative measures for children in conflict with the law in the various East Asian and Pacific countries. The review aided in the development and tailoring of the questionnaire template to the different realities in the East Asian and Pacific region and helped form a general idea of the potential enablers and barriers for using diversion and other alternative measures in the region. The desk review also showed that the concepts of diversion, alternatives to detention, restorative juvenile justice and informal juvenile justice are not used in a similar manner throughout the East Asian and Pacific region, and are not always implemented in line with international accepted definitions. For example, in some East Asian and Pacific countries, diversion is confused with informal juvenile justice and alternatives to pre-trial detention; placement in a closed rehabilitation or care institution is considered diversion; and financial compensation of the victim(s) by parents/guardians is considered a restorative juvenile justice approach. Despite the significant number of initial and additional documents, the desk review did not provide sufficient details to understand whether existing alternative measures for children in conflict with the law are in line with international standards on juvenile justice. Moreover, few desk review documents provide information about alternatives to pre-trial detention and measures to minimize the time children spend in pre-trial and/or post-trial detention. One of the frequently repeated recommendations of the CRC Committee in its Concluding Observations concerning the East Asian and Pacific countries is to ensure that pre-trial as well as post-trial detention are used as a measure of last resort and for the shortest possible period of time.

## 1.4 Structured questionnaire

The questionnaire was the second methodological step of the regional study. The main purpose of the questionnaire was to obtain insight into the various components of existing practices of diversion and other alternative measures for children in conflict with the law. Particularly whether national legislation regulates alternative measures, whether existing practices of alternative measures comply with international standards and which factors enable or obstruct the use of diversion and other alternative measures (see section 6.3 of the Inception Report). The questionnaire findings have also informed the two subsequent methodological steps of the assessment, i.e., the interviews and in-country visits. Relevant information that could not be collected through the questionnaires has been compiled through the subsequent methods and unclear information has been verified through the interviews. For example, some UNICEF COs stated that they do not have national laws on particular alternative measures, but provided concrete answers on questions about legal details of the alternative measures.

On 3 December 2015, UNICEF requested the UNICEF COs to complete the questionnaire on the juvenile justice context, informal juvenile justice, diversion, alternatives to pre- and post-trial detention and restorative juvenile justice in their respective countries. The questionnaire totalled 84 questions, which took the COs about 1 to 1.5 hours to complete. Eighteen completed questionnaires were received, i.e., 12 questionnaires from the 12 East Asian countries and six questionnaires from the 14 Pacific Island countries (see overview 'Number of Questionnaires Analysed'). All questionnaires were completed by UNICEF staff, i.e., by 10 child protection officers and eight child protection specialists. The questionnaires from Solomon Islands and Vanuatu were completed by UNICEF Pacific and not by staff from the respective COs. Only the child protection officer from Samoa and the child protection specialist from the Philippines requested local partners to assist.

**Table 2: Number of questionnaires analysed per country**

<b>12 East Asian countries</b>	
1. Cambodia	1
2. China	1
3. Indonesia	1
4. Lao PDR	1
5. Malaysia	1
6. Mongolia	1
7. Myanmar	1
8. Papua New Guinea	1
9. Philippines	1
10. Thailand	1
11. Timor-Leste	1
12. Viet Nam	1
	<b>12 questionnaires</b>
<b>14 Pacific Island countries</b>	
13. Fiji	1
14. Kiribati	1
15. Samoa	1
16. Solomon Islands	1
17. Vanuatu	1
18. Cook Islands	The same questionnaire (1) used for the nine Pacific Island countries
19. Marshall Islands	
20. Micronesia	
21. Niue	
22. Nauru	
23. Palau	
24. Tokelau	
25. Tonga	
26. Tuvalu	
	<b>6 questionnaires</b>
<b>East Asian and Pacific region [26 countries]</b>	
	<b>18 questionnaires</b>

Like the desk review documents, the completed questionnaires gave the impression that the concepts of informal juvenile justice, diversion from formal judicial proceedings, alternatives to pre-trial detention, alternatives to post-trial detention and restorative juvenile justice are not defined or used in a similar manner across the region. For example, some answers suggest that diversion, restorative juvenile justice and/or informal juvenile justice are confused with one another.

The completed questionnaires have provided insight into the compliance of alternative measures for children in conflict with the law with international juvenile justice and restorative justice standards. Various COs do not have information on informal juvenile justice and could not answer the relevant questions.

The questionnaires did not provide a complete picture of the legal framework and the actual practice of diversion and other alternative measures for children in conflict with the law in the 26 East Asian and Pacific countries. The results based on the completed questionnaires had to be verified and completed through the subsequent interviews. To ensure that all the required data was collected, a list of tailored open answer questions were shared with each CO by email, well in advance of the Skype interview.

## 1.5 Semi-structured interviews through Skype

The Skype interviews have been the third methodological step of the assessment of diversion and other alternative measures for children in conflict with the law. The main purpose of the interviews was to obtain an overview of the juvenile justice context of each East Asian and Pacific Island country and a detailed picture of the existing promising/good practices of informal juvenile justice, diversion, alternatives to pre-trial detention, alternatives to post-trial detention and restorative juvenile justice approaches, including whether the existing practices comply with international standards. Through the interviews the discrepancies between desk-review findings and questionnaire findings were checked at country level and collected information that could not be obtained through the desk review and questionnaires. The Skype interviews also ensured that UNICEF was able to make an accurate selection of East Asian and Pacific countries that could be considered for in-country visits (see section 6.4 of the Inception Report).

From 26 January to 15 February 2016, UNICEF conducted Skype interviews with the COs in the region. Nineteen interviews were conducted, i.e., 13 interviews relating to the 12 East Asian countries and six interviews relating to the 14 Pacific Island countries (see overview 'Skype Interviews Conducted'). Most interviews were with one UNICEF staff member, i.e., 12 interviews, and two interviews with two UNICEF staff members (Lao PDR and Myanmar). The other three interviews were conducted with UNICEF staff and their juvenile justice consultant (Malaysia) or local partners (Papua New Guinea and Kiribati). One interview was with local partners only (the Philippines/Juvenile Justice and Welfare Council (JJWC)). Three UNICEF COs (Indonesia, Thailand and the Philippines) answered the questions sent through email by UNICEF in advance and shared their answers before the start of the Skype interview. Samoa shared the interview questions with justice colleagues who clarified some of the answers. The interviews lasted between 50 minutes and 1 hour and 40 minutes.

The interviews clarified the juvenile justice context of the countries, as well as to what extent the various alternative measures for children in conflict with the law are regulated by national law, i.e., child-specific and/or general laws, and which alternative measures are implemented in actual practice. The country-specific and general enablers and barriers for using diversion and other alternative measures are also clearer as a result of the interviews. However, the Skype interviews did not fully reveal to what extent diversion and other alternative measures are implemented in practice and whether the measures are in line with international standards on juvenile justice and/or restorative juvenile justice. The main reason for this is that the COs did not have detailed information and/or do not have quantitative data on the existing practices in their respective countries. The proportion of cases of children in conflict with the law that are dealt with through informal justice mechanisms versus cases reported to the formal juvenile justice system in all 26 East Asian and Pacific countries was not ascertained.

**Table 3: Number of Skype interviews conducted per country**

Country	Number of interviews	UNICEF staff	Partners
<b>East Asian countries [12 countries]</b>			
1. Cambodia	1	1	
2. China	1	1	
3. Indonesia	1	1	
4. Lao PDR	2	2	
5. Malaysia	1	1	1
6. Mongolia	1	1	
7. Myanmar	1	2	
8. Papua New Guinea	1	1	2
9. Philippines	1		2
10. Thailand	1	1	
11. Timor-Leste	1	1	
12. Viet Nam	1	1	
	<b>13 interviews</b>	<b>13</b>	<b>5</b>
<b>Pacific Island countries [14 countries]</b>			
13. Fiji	1	1	
14. Kiribati	1	1	1
15. Samoa	1	1	
16. Solomon Islands	1	1	
17. Vanuatu	1	1	
18. Cook Islands	The same questionnaire (1) used for the nine Pacific Island countries	1	
19. Marshall Islands			
20. Micronesia			
21. Niue			
22. Nauru			
23. Palau			
24. Tokelau			
25. Tonga			
26. Tuvalu			
	<b>6 interviews</b>	<b>6</b>	<b>1</b>
<b>East Asian and Pacific region [26 countries]</b>	<b>19 interviews</b>	<b>19</b>	<b>4</b>

## 1.6 Summaries of the findings per country

The country-level summaries of the findings of the desk review, questionnaires and interviews were not part of the original methodology. However, due to the many differences between the information provided through the questionnaires and through the Skype interviews, the summaries were prepared to ensure the correctness of the information on alternative measures for children in conflict with the law. The draft summary on the findings of the desk review, questionnaires and interviews were shared with each CO for their feedback and completion. Only the draft summary from the Philippines was shared with UNICEF's local partners, i.e., JJWC, with whom UNICEF had conducted the Skype interview. A similar structure for the 18 summaries has been used in order to facilitate the analysis of the information at the regional level.

All COs have provided feedback on the summary concerning the juvenile justice context and existing alternative measures for children in conflict with the law in law and practice. Some COs contacted their international juvenile justice consultant (Cambodia and Malaysia) or local partners (Indonesia, Papua New Guinea, Thailand, Samoa and Vanuatu) in this stage of the study. Except for completing some missing details, the majority of UNICEF COs provided additional explanation on the implementation of alternative measures for children in conflict with the law in their respective countries. Only the 'continuum of alternative measures at country level' (see *Annex 2*), promising/good practices and quotes are included in this report.<sup>8</sup>

## 1.7 In-country visits to six selected countries

The in-country visits to six selected countries was the fourth methodological step of the assessment of diversion and other alternative measures for children in conflict with the law in the region. The main purpose of the in-country visits was to obtain insight into the various components of identified promising/good practices of diversion and other alternative measures, such as human resources, results and factors for success, challenges and solutions, potentials for replication and scaling up, running costs (see section 6.5 of the Inception Report). Before the start of the actual data collection, UNICEF asked the various COs whether they were interested in taking part in this phase of the study. China, Lao PDR, Indonesia, the Philippines, Samoa and Thailand were initially selected. The final selection of six countries based on the findings of the desk review, questionnaires and interviews differs from the original selection.

## 1.8 Case studies of alternative measures for children in conflict with the law

As UNICEF could only visit six East Asian and Pacific countries, some COs were asked to provide a specific case study of their promising/good practices of alternative measures for children in conflict with the law (China, Lao PDR, Mongolia, Papua New Guinea, Fiji and Kiribati) or a case study of a measure or service that is country specific (Myanmar, Thailand, Viet Nam and Vanuatu). The overview 'Case studies collected by the UNICEF Country Offices' shows that seven of the 10 requested case studies were received. Two case studies feature other alternative measures for children in conflict with the law other than the one requested (Mongolia and Myanmar).

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<sup>8</sup> The final country-level summaries are brought together in an internal UNICEF document: UNICEF Regional Office for East Asia and the Pacific (EAPRO), Country-Level Summaries of Diversion and Other Alternative Measures for Children in Conflict with the Law in East Asian and Pacific Island Countries, UNICEF EAPRO, 2016, 157p. (Internal UNICEF Report).



**Table 4: Case studies collected by the UNICEF Country Offices**

<b>East Asian countries</b>	
1. China	Requested: Aftercare and support to children released early from post-trial detention. Not received.
2. Lao PDR	Requested: Mediation at the community/village level (CJJ) Received: A case study incorporated into the report 'Assessment of Existing Mediation Practices Involving Children in Lao PDR (2013)'.
3. Mongolia	Requested: Probation as an alternative to post-trial detention. Received: Diversion of a reoffender from pre-trial detention.
4. Myanmar	Requested: Release of a child to his/her neighbour/friend at the pre-trial stage. Received: Diversion by police, relying on community justice mechanisms.
5. Papua New Guinea	Requested and received: Community-based conferencing at the court level for the purpose of providing sentencing recommendations.
6. Thailand	Requested: Short-term placement in a Buddhist Temple as alternative to post-trial detention. Received: Description of 'Juvenile Ordination Programme'.
7. Viet Nam	Requested: Grandfather and grandchildren club as reintegration programme for released children. Not received.
<b>Total</b>	<b>5 case studies relating to the East Asian region</b>
<b>Pacific Island countries</b>	
8. Fiji	Requested and received: Release to a community leader as an alternative to pre-trial detention.
9. Kiribati	Requested and received: Parental skills programme for parents/guardians of diverted and sentenced children.
10. Vanuatu	Requested: Probation or community service as an alternative to post-trial detention in the case of a very serious offence. Not received.
<b>Total</b>	<b>2 case studies relating to the Pacific Island region</b>

# PART II: REGIONAL FINDINGS

## 2.1 Regional findings of the juvenile justice context

The desk review, questionnaires and interviews have provided insight into the juvenile justice context of the 26 East Asian and Pacific countries. The findings are discussed at the regional level in the following sections.

### Legal systems

There are stark differences in the East Asian and Pacific Island region's legal systems. All 14 Pacific Island countries have a plural legal system. In the South Pacific countries, the English common law system runs parallel to customary laws used by local lay magistrates who are less versed in the formal legal system (Cook Islands, Niue, Nauru, Tokelau, Tonga and Tuvalu). The North Pacific countries have a combination of the United States' common law system and a customary legal system (Palau, Micronesia and Marshall Islands). Six of the East Asian countries have a plural legal system. Indonesia has a combined civil, customary and religious legal system, while Malaysia has a common law system, although Sharia law applies for certain in some states. Myanmar's legal system has been largely shaped by the English common law system with incorporated elements of the civil system. However, due to the country's ethnic diversity, some customary religious laws have been codified as laws applicable to certain religions groups. Papua New Guinea uses a combined common and customary legal system. The Philippines has a civil law system with strong reference to jurisprudence/American common law tradition. Timor-Leste uses a civil and customary legal system. The other six East Asian countries have exclusively civil legal systems (Cambodia, China, Lao PDR, Mongolia, Thailand and Viet Nam). None of the countries have an exclusively common, customary or religious legal system.

**Table 5: Legal systems in East Asian and Pacific Island countries**

Region	Common Law	Civil Law	Customary Law	Religious Law	Plural Law System
<b>12 East Asian countries</b>	0	6 Cambodia, China, Lao PDR, Mongolia, Thailand, Viet Nam	--	--	6 Indonesia, Malaysia, Myanmar, Papua New Guinea, Philippines, Timor-Leste
<b>14 Pacific Island countries</b>	--	--	--	--	14 Cook Islands, Fiji, Kiribati, Marshal Islands, Micronesia, Niue, Nauru, Palau, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu
<b>East Asian and Pacific region</b>	<b>0</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>20</b>

## Centralized and decentralized (juvenile) justice systems

The vast majority of the 26 East Asian and Pacific countries have a centralized (juvenile) justice system (six East Asian and 11 Pacific Island countries). Five East Asian countries and three Pacific Island countries have a decentralized (juvenile) justice system. Vanuatu's (juvenile) justice system is not fully decentralized, while Indonesia has a mixed centralized and decentralized system.

**Table 6: Centralized and decentralized (juvenile) justice systems in East Asian and Pacific Island countries**

Region	Centralized	Decentralized	Mixed
<b>12 East Asian countries</b>	6 Cambodia, China, Malaysia, Myanmar, Timor-Leste, Viet Nam	5 Lao PDR, Mongolia, Papua New Guinea, Philippines, Thailand	1 Indonesia
<b>14 Pacific Island countries</b>	11 Cook Islands, Kiribati, Marshall Islands, Micronesia, Niue, Nauru, Palau, Solomon Islands, Tokelau, Tonga, Tuvalu	3 Fiji, Samoa, Vanuatu (but not fully)	--
<b>East Asian and Pacific region</b>	<b>17</b>	<b>8</b>	<b>1</b>

## Minimum age of criminal responsibility

It was found that 16 East Asian and Pacific countries have more than one minimum age of criminal responsibility (MACR). The MACR refers to the age of the child at the time of the alleged commission of the offence. In most countries with more than one MACR, the lowest MACR is below the internationally accepted minimum age of 12 years (13 countries), i.e., Myanmar and Tonga (7 and 12 years); Solomon Islands (8 and 12 years); Malaysia and Samoa (10 and 12 years); Fiji (10, 12 and 14 years); and Cook Islands, Kiribati, Marshall Islands, Palau, Tokelau, Tuvalu and Vanuatu (10 and 14 years). On the other hand, China (14 and 16 years) and Mongolia (16 and 14 years) also have two MACRs, but both ages comply with the internationally accepted minimum age of 12 years. There are two minimum ages in Viet Nam, i.e., the minimum age of criminal responsibility is 14 years and the minimum age of administrative liability is 12 years.

**“To date, no specific legislation dealing with juvenile justice exists in Timor-Leste. The Penal Code states that a special regime for children above the MACR (16-21) shall be established, however that draft regime is still pending approval. Therefore, children in conflict with the law who are above 16 years are processed by the adult criminal justice system”.**

UNICEF Timor-Leste

The CRC Committee states in this regard that “the system of two minimum ages is often not only confusing, but leaves much to the discretion of the court/judge and may result in discriminatory practices” (paragraph 30 of CRC General Comment No.10). Out of the other 10 East Asian and Pacific countries, four East Asian and Pacific countries have a MACR that does not comply with international standards, i.e., two East Asian countries and two Pacific Island countries, and six East Asian and Pacific countries have a MACR that complies with international standards, i.e., five East Asian countries and one Pacific Island country. Timor-Leste has the highest MACR at 16 years.

**Table 7: Minimum age of criminal responsibility in East Asian and Pacific Island countries**

Region	Not in line with internationally accepted MACR						Total
	7 years	8 years	9 years	10 years	11 years	≥1 MACR	
12 East Asian countries	–	–	–	2 Papua New Guinea, Thailand	–	5 China, Malaysia, Mongolia, Myanmar, Viet Nam	7
14 Pacific Island countries	–	–	–	2 Nauru, Niue	–	11 Cook Islands, Fiji, Kiribati, Marshall Islands, Palau, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu	13
<b>East Asian and Pacific region</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>16</b>	<b>20</b>
Region	In line with internationally accepted MACR					Total	
	12 years	13 years	14 years	15 years	16 years		
<b>12 East Asian countries</b>	1 Indonesia	–	1 Cambodia	2 Lao PDR, Philippines	1 Timor-Leste	5	
<b>14 Pacific Island countries</b>	–	–	1 Micronesia	–	–	1	
<b>East Asian and Pacific region</b>	<b>1</b>	<b>0</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>6</b>	

The case study below illustrates a good practice regarding MACR outside the East Asian and Pacific region.

#### **Box 1: Case study on a boy below the minimum age of criminal responsibility in Jordan**

A boy below the minimum age of criminal responsibility – which is 12 years old in Jordan – was forced into crime by two adult criminals. Between the ages of 10 and 11 years two men used him for 21 burglaries, they used him for another eight burglaries when he was 12 years old. They forced the boy to crawl through the windows of houses and open the doors so that they could steal valuables.

The boy was from a poor gypsy family, his parents did not supervise him and he was not enrolled in school. When the case came to the attention of the prosecution office, the prosecutor decided that the boy did not have criminal responsibility for his involvement in the 21 burglaries when he was below 12 years of age. A detailed social inquiry report was requested from the social worker to decide how to deal with the case of the burglaries in which the boy was involved in when he was 12 years old.

During the pre-trial proceedings the boy was placed in a care institution and a local NGO got involved. An NGO lawyer represented the boy in court. Based on the social inquiry report from the social worker and the additional information provided by the lawyer, the court decided not to sentence the boy for his involvement in the eight additional burglaries. He was considered a child in need of special protection because he was forced into crime by adults who threatened to beat him up and harm his family if he did not help them. The judge extended the boy's placement in the care institution where he participated in vocational training.

UNICEF Jordan

## Legislation on juvenile justice

More than half of the East Asian and Pacific countries have adopted child-specific legislation that incorporates provisions on juvenile justice (eight East Asian and seven Pacific Island countries). The majority of the eight child-specific juvenile justice laws in the East Asian region incorporate provisions on diversion, alternatives to detention and restorative juvenile justice. These include Indonesia, Lao PDR, Papua New Guinea, the Philippines and Thailand. Only Malaysia and Myanmar's child-specific laws lack provisions on diversion. Malaysia's Child Act (2001) and Myanmar's Child Law (1993) are currently under revision.

**“UNICEF Mongolia has been supporting the Government's initiatives on legal reform concerning child rights and protection. For example, the Law on Crime and the Law on Offence were approved recently by Parliament, where a number of provisions were added and amended to address gaps/align with articles 37 and 40 of the CRC. These laws will become effective on 1 September 2016”.**

UNICEF Mongolia

**“Children in conflict with the law in Viet Nam are dealt with through either the administrative or the criminal system. The administrative system is used for petty offences, whereas the criminal system is reserved for more serious offences”.**

UNICEF Viet Nam

Myanmar’s draft Child Law introduces diversion without specifying at what stage of the proceedings it may be applied. During the course of the study, Cambodia, Mongolia and Viet Nam adopted new child-specific legislation. Cambodia has enacted the Juvenile Justice Law (2016) that incorporates police warnings, diversion by police, prosecutors and judges with a restorative justice approach (apology to victim(s)), alternatives to pre-trial detention and conditional release from post-trial detention. Mongolia has adopted the Child Protection Law (2016) which incorporates provisions on juvenile justice, but not on diversion and other alternative measures. Viet Nam's Child Law (2016) reflects the guiding principles of the CRC and the United Nations Secretary General, and provides safeguards and protection for the rights of children throughout the judicial process. However, a child is still defined as someone at the age of 16 despite advocacy to increase this age.

There are three draft laws in Timor-Leste that are relevant to juvenile justice, i.e., two draft juvenile justice laws (draft Special Regime of Young Offenders for those aged 16 to 21 and draft Tutelar Educative for Minors for those aged 12 to 16) and the draft Child Protection Law. Fiji, Kiribati, Samoa and Solomon Islands’ child-specific juvenile justice laws incorporate provisions on diversion, alternatives to detention and restorative juvenile justice. The Juvenile Offender Act (1996) of Solomon Islands is currently under review. The child-specific laws of Cook Islands, Marshall Islands and Micronesia incorporate general provisions on children in conflict with the law that may justify diversion and other alternative measures, but all three laws predate the CRC. The Parliament of Nauru has enacted a child-specific law, i.e., the Child Protection and Welfare Act (2016), which is the first comprehensive child protection legislation for the country. It covers all children, including asylum seekers and refugees, but does not regulate alternative measures for children in conflict with the law.

The 11 other East Asian and Pacific countries regulate juvenile justice through general laws, i.e., four East Asian and seven Pacific Island countries. All four East Asian countries regulate diversion, alternatives to detention and restorative juvenile justice through their general laws (Cambodia, China, Mongolia, Timor-Leste and Viet Nam). The general laws of six of the seven Pacific Island countries include provisions that justify diversion and alternatives to detention for children in conflict with the law, but none of these laws regulate restorative juvenile justice. The laws of Vanuatu do not regulate diversion, but alternatives to detention and restorative juvenile justice are incorporated. However, alternatives to detention in Vanuatu only apply to children between 16 and 18 years of age.



**Table 8: Legislation on juvenile justice**

Country	General legislation on juvenile justice, including provisions on			Child-specific legislation on juvenile justice, including provisions on		
	Diversion	Alternatives to detention	Restorative justice	Diversion	Alternatives to detention	Restorative justice
<b>East Asian countries [12 countries]</b>						
Cambodia	[Yes]	[Yes]	[Yes]	Yes	Yes	Yes
China	Yes	Yes	Yes			
Indonesia				Yes	Yes	Yes
Lao PDR				Yes	Yes	Yes
Malaysia	[Yes]			No	Yes	Yes
Mongolia	Yes	Yes	Yes			
Myanmar	[No]			No	Yes	No
Papua New Guinea				Yes	Yes	Yes
Philippines				Yes	Yes	Yes
Thailand				Yes	Yes	Yes
Timor-Leste	Yes	Yes	Yes			
Viet Nam	Yes	Yes	Yes			
<b>Total East Asian region</b>	<b>4</b>			<b>8</b>		
<b>Pacific Island countries [14 countries]</b>						
Cook Islands			[No]	Yes	Yes	No
Fiji			[No]	Yes	Yes	Yes
Kiribati				Yes	Yes	Yes
Marshall Islands			[No]	Yes	Yes	No
Micronesia			[No]	Yes	Yes	No
Niue	Yes	Yes	No			
Nauru	Yes	Yes	No			
Palau	Yes	Yes	No			
Samoa				Yes	Yes	Yes
Solomon Islands				Yes	Yes	Yes
Tokelau	Yes	Yes	No			
Tonga	Yes	Yes	No			
Tuvalu	Yes	Yes	No			
Vanuatu	No	Yes	Yes			
<b>Total Pacific Island region</b>	<b>7</b>			<b>7</b>		
<b>Total East Asian and Pacific region</b>	<b>11</b>			<b>15</b>		

## Mandatory legal assistance, special groups of children and status offences

Child-specific laws on juvenile justice in the 14 East Asian and Pacific countries incorporate mandatory legal assistance, special groups of children and status offences. Mandatory legal assistance is provided by 10 of the 15 child-specific laws, i.e., in all eight East Asian laws and two of the seven Pacific Island laws (Samoa and Solomon Islands). Special groups of children, such as stateless children, migrant children, refugee children and children with different nationalities, are incorporated in the child-specific laws of at least 11 East Asian and Pacific countries; however, information for Cook Islands, Marshall Islands and Micronesia is not available. Only two of the 15 child-specific laws that deal with juvenile justice issues include status offences (Malaysia and Fiji).

**“Where a juvenile court is satisfied that a juvenile is beyond the control of his parent or guardian, and (a) that it is in his interest so to deal with the juvenile; and (b) that the parent or guardian understands the results which will follow from and consents to the making of the order, the court may place him under the supervision of a probation officer or some other person appointed by the court, for a period not exceeding three years, or may make a care order in respect of the juvenile”.**

Section 44(2) of the Juvenile Act (2003) – Fiji

## Specialized juvenile justice institutions

The CRC Committee promotes specialization, both of juvenile justice institutions and juvenile justice professionals. “A comprehensive juvenile justice system further requires the establishment of specialized units within the police, the judiciary, the court system, the prosecutor’s office, as well as specialized defenders or other representatives who provide legal or other appropriate assistance to the child” (paragraph 92 of CRC General Comment No.10). “The Committee recommends that the States parties establish juvenile courts either as separate units or as part of existing regional/district courts. Where that is not immediately feasible for practical reasons, the States parties should ensure the appointment of specialized judges or magistrates for dealing with cases of juvenile justice” (paragraph 93 of CRC General Comment No.10). “In addition, specialized services such as probation, counselling or supervision should be established together with specialized facilities including for example day treatment centres and, where necessary, facilities for residential care and treatment of child offenders” (paragraph 94 of CRC General Comment No.10).

It was found that the juvenile justice systems in the East Asian region are more specialized than those in the Pacific Island region. Only Cambodia and the Philippines do not have specialized institutions, while in the Pacific Island region that is the case for 10 countries. Only Cook Island, Fiji, Samoa and Solomon Islands have established one or more specialized juvenile justice institutions. Child courts (10 countries) and child police units (seven countries) are the most frequently established specialized institutions, which does not mean that they exist nationwide.



**“There are only two Juvenile Courts in two cities. Their mandate does not extend to the whole country. There are also Child Protection Task Forces under the Anti-Trafficking in Persons Division of Myanmar Police Force, which exist in three locations”.**

UNICEF Myanmar

Child prosecution (four countries), child probation (three countries) and child legal aid (two countries) are established in the minority of the East Asian and Pacific countries. Four East Asian countries have mentioned other specialized institutions that work with children in conflict with the law, i.e., Village Child Mediation Units in Lao PDR, Juvenile Justice Committees in Mongolia, Juvenile Justice Welfare Committees and Department of Juvenile Observation and Protection in Thailand and Juvenile Justice and Welfare Council, Women and Children’s Police Desk and Diversion Committees in the Philippines. In some East Asian and Pacific countries, the law requires the establishment of child-specific institutions, but they do not yet exist in actual practice. For example, juvenile courts in Timor-Leste are incorporated in the Juvenile Justice Act (2015) but are not yet established.

**Table 9: Specialized juvenile justice institutions**

Region	Child police units	Child prosecution	Child courts	Child legal aid	Child probation
<b>10 East Asian countries</b>	5 Indonesia, Mongolia, Myanmar, Thailand, Timor-Leste	2 China, Thailand	7 China, Lao PDR, Malaysia, Myanmar, Papua New Guinea, Thailand, Viet Nam	2 China, Lao PDR	1 Papua New Guinea
<b>4 Pacific Island countries</b>	2 Fiji, Samoa	2 Fiji, Samoa	3 Fiji, Samoa, Solomon Islands		2 Samoa, Cook Islands
<b>East Asian and Pacific region</b>	<b>7</b>	<b>4</b>	<b>10</b>	<b>2</b>	<b>3</b>

## Specialized juvenile justice professionals

The regional study has brought to light that less than half of the East Asian and Pacific countries have specialized juvenile justice professionals. ‘Specialized’, in this regard, means that the professionals have participated in training on juvenile justice and have been appointed to deal with cases of children in conflict with the law either in a specialized child institution or general institution. Nine countries have specialized child judges, five have child probation officers and five have child social workers.

Child lawyers and paralegals are only found in China. However, China has very few pro bono institutionalized child social workers. Papua New Guinea has juvenile justice volunteers and Thailand has the specialized staff of the Juvenile Observation and Protection Centre. The data on the juvenile justice professionals in Lao PDR, Timor-Leste and Cook Islands is unclear, due to receiving information from multiple sources. Eleven East Asian and Pacific countries have neither juvenile justice institutions nor juvenile justice professionals, i.e., one East Asian country (Cambodia) and 10 Pacific Island countries (Kiribati, Vanuatu, Marshall Islands, Micronesia, Niue, Nauru, Palau, Tokelau, Tonga and Tuvalu).

**“The Law on Juvenile Criminal Procedures (2014) requires the establishment of Child Investigation-Interrogation Units, Child Prosecution and Child Courts. However, this has not happened yet due to various factors. At the moment, there are judges assigned to Child Court Chambers at the central and provincial levels. Many of them have received training on child court proceedings (three to five days)”.**

UNICEF Lao PDR

**Table 10: Presence of specialized juvenile justice professionals**

Region	Child police	Child prosecutors	Child judges	Child lawyers/ paralegals	Child probation officers	Child social workers
<b>8 East Asian countries</b>	3 Indonesia, Myanmar, Philippines	4 China, Indonesia, Timor-Leste, Thailand	7 China, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Thailand	1 China	4 Indonesia, Malaysia, Myanmar, Papua New Guinea	3 Indonesia, Papua New Guinea, Philippines
<b>3 Pacific Island countries</b>	1 Fiji	–	2 Samoa, Cook Islands (?)	–	1 Samoa	2 Fiji, Samoa
<b>East Asian and Pacific region</b>	<b>4</b>	<b>4</b>	<b>9</b>	<b>1</b>	<b>5</b>	<b>5</b>

However, not having specialized juvenile justice professionals does not mean that the professionals who work with children in conflict with the law have not participated in any capacity building initiative on juvenile justice and/or justice for children. All COs in the region have organized capacity building initiatives for professionals working with children in conflict with the law or support their partners with such initiatives.



**“The child protection officers have received training on dealing with children in conflict with the law and judiciary officers have undergone pre-service training on the administration of child-justice, but I would not consider any of them as subject matter experts”.**

UNICEF Timor-Leste

## Open and closed residential facilities for children in conflict with the law

Only seven East Asian and Pacific countries have open residential facilities for children in conflict with the law (six East Asian countries and one Pacific Island country). Closed residential facilities for children in conflict with the law (seven countries) and juvenile detention facilities (13 countries) are much more established. In total, 11 East Asian countries and four Pacific Island countries have facilities where children in conflict with the law are deprived of their liberty. Vanuatu is the only country that has neither open nor closed residential facilities. In Cambodia and the nine Pacific Island countries, children in conflict with the law are deprived of their liberty in adult detention facilities.

**“There is one open centre, run by Friend International, where children in street situations, including those who came in conflict with the law, can come for services such as temporary shelter, basic education, vocational training, etc”.**

UNICEF Lao PDR

**“It is a challenge for UNICEF Vanuatu that there are no institutions for children in conflict with the law at all. But at the same time it is an opportunity, because all children in conflict with the law have to be sent back to their communities to be supervised by community leaders and/or probation officers”.**

UNICEF Vanuatu



**Table 11: Number of open and closed residential facilities for children in conflict with the law**

Region	Open facilities	Closed facilities	Juvenile detention centres
<b>12 East Asian countries</b>	6 Cambodia (NGO-run centre), Indonesia, Lao PDR (centre for children in street situations), Philippines (Onesimo), Thailand (residential programmes Booth Camp and Buddhist Temple), Viet Nam (children without parental/family care or identified residence)	6 Indonesia (Social Welfare Centers), Malaysia (Probation Hostels, STBs and Henry Gurney Schools), Myanmar (Training Schools), Papua New Guinea (shelter for children without parental care), Thailand (Juvenile Training Centres), Viet Nam (Reform Schools)	9 Cambodia (Correctional Center 2), China, Indonesia, Malaysia (Juvenile Correction Centres), Mongolia (Juvenile Prison), Papua New Guinea (Juvenile Detention Centres), Philippines (Youth Detention Homes and Youth Rehabilitation Centres), Thailand (Juvenile Observation and Protection Centres), Timor-Leste (separate block for boys of adult prison)
	<b>6 East Asian countries</b>	<b>11 East Asian countries</b>	
<b>14 Pacific Island countries</b>	1 Fiji (home for girls and Development Centre for boys)	1 Kiribati (Alcohol Awareness and Family Recovery Programme)	4 Fiji (Juvenile Rehabilitation Development Centre for boys), Kiribati (separate wing of the adult prison), Samoa (Youth Rehabilitation Centre for boys), Solomon Islands (Rove Correctional Centre in the adult prison)
	<b>1 Pacific Island country</b>	<b>4 Pacific Island countries</b>	
<b>East Asian and Pacific region</b>	<b>7 countries</b>	<b>15 countries</b>	

UNICEF explored to what extent ‘protective detention/custody’ is used in the region. The overview ‘Protective Detention of Children in Conflict with the Law’ shows that in 19 East Asian and Pacific countries protective detention or custody is not practiced (this information for Thailand was not available). In four East Asian countries (China, Indonesia, Myanmar and Papua New Guinea) and two Pacific Island countries (Kiribati and Solomon Islands) children in conflict with the law may be deprived of their liberty in a detention facility or in other closed institutions to protect them from revenge or threats by the victim(s) or victim(s)'s family. This happens in all stages of the juvenile justice process, i.e., pre-charge stage (four countries), pre-trial stage (three countries) and post-trial stage (one country).

**“The new Juvenile Justice Law (No.11 year 2012) prohibits detention for anyone under 14 years of age and those above 14 whose crime is punishable with less than seven years, or obtain guarantee from parents/caregivers. In practice, however, police and parents of the offenders often agree to ‘put the children in detention’ to avoid revenge of the victim or victim’s family, even though the children are in the criteria above”.**

UNICEF Indonesia

**Table 12: Protective detention of children in conflict with the law**

Region	Non-existent	Existing		
		Pre-charge	Pre-trial	Post-trial
<b>East Asian countries</b>	7 Cambodia, Lao PDR, Malaysia, Mongolia, Philippines, Timor-Leste, Viet Nam	3 China, Indonesia, Myanmar	2 Myanmar, Papua New Guinea	1 Myanmar
<b>Pacific Island countries</b>	12 Cook Islands, Fiji, Marshal Islands, Micronesia, Niue, Nauru, Palau, Samoa, Tokelau, Tonga, Tuvalu, Vanuatu	1 Kiribati	1 Solomon Islands	0
<b>East Asian and Pacific region</b>	<b>19 countries</b>	<b>4</b>	<b>3</b>	<b>1</b>
		<b>6 countries</b>		

## Coordination mechanisms and inter-agency/sectoral protocols/memorandums of understanding

The ‘United Nations Common Approach to Justice for Children’ states that: “In parallel to strengthening the justice system, the social welfare/protection system should also enhance its ability to help ensure that child parties, victim(s), witnesses and offenders receive full respect for their rights. As they are inter-related, both the justice and social sectors will need to be strengthened and their interaction enhanced in order to bring lasting results for children”. The social welfare system has an important role to play at several levels: in the prevention of conflict with the law (e.g., supporting families at risk); during the judicial or extra-judicial process (e.g., preparing and/or assisting the child during the interview or conducting a social inquiry); in diversion programmes and the provision of alternatives to the deprivation of liberty (e.g., providing orientation, supervision or probation services); and at the reintegration stage (including preparing the family for their child’s return). Therefore, it is crucial to enable the full involvement of the social welfare sector in juvenile justice issues as well as justice for children issues, and strengthen coordination between the social and justice sectors. With regard to the existence of coordination mechanisms, there is a significant

**“JJWC has enhanced the inter-agency process flowcharts in implementing the Juvenile Justice and Welfare as amended last 2015. The flowcharts discuss the standard procedures to be observed by inter-agency duty bearers from initial contact up to the point of reintegration of the children in conflict with the law to the family”.**

JJWC – the Philippines

difference between the East Asian and Pacific Island countries. The vast majority of East Asian countries have established a mechanism to coordinate the activities of the social welfare sector and juvenile justice sector (10 countries). Only Cambodia and Malaysia have no coordination mechanism. Four East Asian countries have also developed inter-agency or inter-sectoral protocols (Indonesia, Mongolia, the Philippines and Viet Nam). There is no clear picture of the Pacific Island countries in this regard. Fiji and Vanuatu have coordinating mechanisms, while Kiribati, Samoa and Solomon Islands do not have a mechanism that coordinates the activities between the social welfare sector and the juvenile justice sector. Some of the remaining nine Pacific Island countries have National Coordinating Committees for Children, but only Cook Islands has some form of a social welfare sector. Fiji and Vanuatu have inter-agency protocols.

## **Implementing and monitoring mechanisms and implementation guidelines/standard operating procedures**

The vast majority of East Asian and Pacific countries have mechanisms in place to implement and monitor diversion and other alternative measures for children in conflict with the law (16 countries). In the East Asian region, 9 countries have such mechanisms (China, Indonesia, Lao PDR, Malaysia, Mongolia, Myanmar, Papua New Guinea, the Philippines and Viet Nam). Ten East Asian countries have developed guidelines or standard operating procedures (SOPs) to guide the implementation of diversion and other alternative measures (China, Indonesia, Lao PDR, Mongolia, Myanmar, Papua New Guinea, the Philippines, Thailand, Timor-Leste and Viet Nam). In the Pacific Island region, seven countries have established implementing and monitoring mechanisms (Cook Islands, Fiji, Kiribati, Marshall Islands, Micronesia, Palau and Vanuatu), and five countries have designed implementation guidelines or SOPs (Fiji, Kiribati, Samoa, Solomon Islands and Vanuatu).

**“Section 23 ‘Regulations’ of the Young Offenders Act states that (1) ‘The Head of State, acting on the advice of Cabinet, may from time to time, make such regulations as are necessary or convenient for the purpose of carrying out or giving full effect to the provisions of this Act’. One of the examples mentioned in article 23(2) of the Act is (b) prescribing procedures required for the purpose of carrying out pre-sentence meetings”.**

Young Offenders Act – Samoa

## Community-based organizations and services for children in conflict with the law

The CRC Committee emphasizes that “States parties should also develop community-based services and programmes that respond to the special needs, problems, concerns and interests of children, in particular of children repeatedly in conflict with the law, and that provide appropriate counselling and guidance to their families” (paragraph 10 of CRC General Comment No.10). Only Thailand has sufficient community-based organizations (CBOs) and services for children in conflict with the law. In six East Asian countries the services are available; however, they are not sufficient or are limited to particular locations (Indonesia, Malaysia, Papua New Guinea, the Philippines, Timor-Leste and Viet Nam). In the other five East Asian countries, there are insufficient CBOs and services for children in conflict with the law. In the Pacific Island region, four countries have mentioned that they have sufficient CBOs and services in order to tailor children’s diversion measures and other alternative measures to their needs and to prevent them from reoffending (Fiji, Kiribati, Samoa and Vanuatu).

**“Community-based services for children in conflict with the law are available in the country’s capital, like vocational training, life skills programmes, etc. However, in the provinces there are none or hardly any of these services at the community level”.**

UNICEF Papua New Guinea

**“The role of taking care of people with problems has fallen upon the shoulders of the NGOs. Many have arisen from the concerns of small groups of individuals or church groups. The names of these organizations usually give an indication of the type of service they render. A major setback for most of these NGOs is the shortage of manpower, as they are dependent on volunteers to carry out their work”.**

UNICEF Samoa

## Statistics on juvenile justice and children in conflict with the law

Statistics on juvenile justice in general and alternative measures for children in conflict with the law in particular are available in eight East Asian and Pacific countries, i.e., in six East Asian countries (Indonesia, Myanmar (to some extent), Papua New Guinea, the Philippines, Thailand and Viet Nam) and two Pacific Island countries (Samoa and Vanuatu). In some countries reliable statistics are systematically collected, while in other countries data on juvenile justice are collected by one juvenile justice partner.

## 2.2 Regional findings of informal juvenile justice

The desk review, questionnaires and interviews provided information on informal justice mechanisms used in cases of children in conflict with the law in the 26 East Asian and Pacific countries. The findings will be discussed at the regional level in the following sections.

### Defining informal juvenile justice

UNICEF systematically explored the informal juvenile justice mechanisms in the East Asian and Pacific countries. The 'United Nations Common Approach to Justice for Children' mentions informal and traditional justice in the same breath as restorative justice, diversion and alternatives to deprivation of liberty. Guiding principle eight states: "Deprivation of liberty of children should only be used as a measure of last resort and for the shortest appropriate period of time. Provisions should therefore be made for restorative justice, diversion mechanisms and alternatives to deprivation of liberty. For the same reason, programming on justice for children needs to build on informal and traditional justice systems as long as they respect basic human rights principles and standards, such as gender equality".

However, any attempt to define informal justice systems must acknowledge that no definition can be very precise and sufficiently broad enough to encompass the range of systems and mechanisms that play a role in delivering rule of law and access to justice. Informal justice systems vary considerably, encompassing many mechanisms of differing degrees and forms of formality. In some settings, the term 'informal' may sound like a value judgement, i.e., as if informal (juvenile) justice systems are held in lower esteem than formal (juvenile) justice systems. UNICEF does not use the term 'informal' justice in that way, but follows its colleagues in using it rather than the term 'non-state' justice. Many forms of informal (juvenile) justice systems exist, partially state-linked or recognized along the formal-informal continuum.

**“Traditional’ justice systems are found in many post-colonial countries where the legacies of small self-regulating ‘stateless’ societies have survived and adapted to the cumulative impacts of colonialism, modernization and the establishment of the modern state and its national legal system. ‘Tradition’ refers to customs that derive their popular authority from practices and beliefs that pre-date the arrival of the modern state. However, ‘tradition’ is not a static or absolute phenomenon, but one that is inherently dynamic, fluid and subject to change. ‘Traditional’ justice systems are as multiple and varied as the local societies they derive from. Their primary 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 children and women”.**

UNICEF Papua New Guinea

Like UN Women, UNDP and UNICEF's earlier research, this study looks at a wide range of systems outside classic state mechanisms, such as customary and tribal structures, religious authorities, local administrative authorities, specially constituted state customary courts and community forums trained in conflict resolution, particularly in mediation. The definition of informal justice systems used in this study is: "the resolution of disputes and the regulation of conduct by adjudication or the assistance of a neutral third party that is not a part of the judiciary as established by law and/or whose substantive, procedural or structural foundation is not primarily based on statutory law". 'Traditional juvenile justice practice' has also been included as a form of informal juvenile justice.

While discussing informal juvenile justice practices with the COs' staff and their local partners, they used various terms such as 'non-formal justice', 'community justice', 'customary justice', 'traditional justice', 'village justice', 'community mediation', 'informal mediation', 'traditional mediation' and 'conflict settlement'. Some colleagues used 'community diversion' and 'social worker diversion' to refer to similar practices at the community level. These terms are not advisable, as in order to refer to a practice as a form of diversion there needs to be an initial contact with the formal juvenile justice system. This is not always the case if the conflict is dealt with through informal juvenile justice mechanisms. Moreover, diversion is always carried out in the community, mainly through non-judicial bodies and actors such as social workers, CSOs, NGOs, etc. Given the negative and confusing connotations of informal juvenile justice for some UNICEF colleagues (and their local partners), the term 'community juvenile justice' (CJJ) will be used from now on in this report.<sup>9</sup>

**Figure 1: Differences between diversion and community/village justice**

<b>Diversion:</b>	<b>Community/village justice:</b>
<ul style="list-style-type: none"> <li>• Part of the formal juvenile justice system</li> <li>• Regulated by law</li> <li>• Has legal safeguards</li> <li>• Requires informed consent</li> <li>• The child participates in the decision making process</li> <li>• The child has to comply with agreed upon conditions</li> <li>• The child's compliance with the agreement is monitored</li> <li>• The root causes of the offending behaviour/prevention of reoffending are tackled</li> </ul>	<ul style="list-style-type: none"> <li>• Part of the non-State justice system</li> <li>• Not necessarily regulated by law and/or written procedures available</li> <li>• Legal safeguards are not guaranteed</li> <li>• The child does not have the right to be heard or participate in the decision making process</li> <li>• Parents/guardians may fulfil the conditions</li> <li>• There is no monitoring of the child and the agreement</li> <li>• It is unlikely to tackle the root causes of the offending behaviour and the prevention of reoffending</li> </ul>

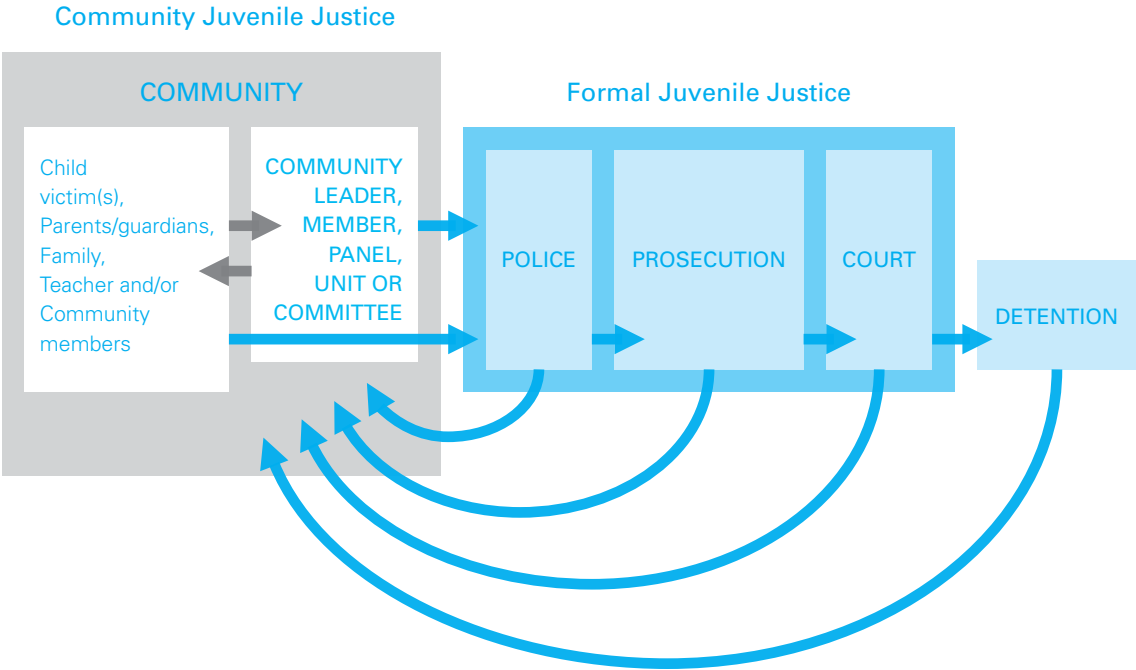
<sup>9</sup> In the country level summaries, the term 'informal juvenile justice' is still used, as the documents were finalized before the preparation of this report and the decision was made to change the terminology.



The main criteria within the framework of the study was to identify a certain practice with regard to children in conflict with the law as CJJ or 'formal juvenile justice' is whether there has been any contact with the formal juvenile justice system. CJJ implies that a community leader/member or community panel/committee/unit brings together the child in conflict with the law, his/her parents/legal guardians, the victim(s) and sometimes others who are part of the social support systems or communities of the child and victim(s) in order to discuss what has happened and how the conflict can be resolved. This process is referred to as 'community mediation' or 'community conferencing'.

There is no contact with the formal juvenile justice system before or during the mediation or conferencing process. If the process is successful, i.e., the parties have reached an agreement and have complied with the conditions agreed upon, there is no contact with the formal juvenile justice system afterwards. Only when the parties cannot reach an agreement or the parties do not comply with the conditions agreed upon, the case may be referred to the formal juvenile justice system (see Figure 2). There is no CJJ if a case of a child in conflict with the law is known by the formal juvenile justice system and is diverted back to the community by the police, prosecution or court. The child may await his/her trial in the community, serve his/her sentence/measure in the community, or the child is released early from detention or a closed residential institution and may serve the remaining part of his/her sentence in the community. These are all formal juvenile justice responses that are carried out in the community, which have to be distinguished from CJJ.

**Figure 2: The mechanisms of formal juvenile justice**



## Community juvenile justice in the region

When using ‘no contact with the formal juvenile justice system’ as the main criterion, almost all East Asian and Pacific countries apply some form of CJJ (23 countries), i.e., nine East Asian countries and 14 Pacific Island countries. Only China and Mongolia have no CJJ and sufficient information was not collected on the matter in Malaysia’s case.

**“Distrust of the formal justice system is one of the reasons people resort to informal justice”.**

UNICEF Cambodia

Six COs could not provide an estimation of the proportion of children in conflict with the law that are dealt with through CJJ mechanisms, i.e., Indonesia, Lao PDR, Myanmar, the Philippines, Viet Nam and Fiji. In the East Asian region, the proportion of cases dealt with by community leaders, members, panels, committees or units varies from 0 to 10 per cent in Thailand, to 91 to 100 per cent in Timor-Leste. In the Pacific Island region, on the other hand, the vast majority of cases of children in conflict with the law are dealt with in the community, i.e., more than 73 per cent of all cases in 11 Pacific Island countries. In Samoa (70 per cent) and Kiribati (40 per cent) the proportion is smaller, but still significant.

**“The ‘Law on Grassroots Mediation’ deals with ‘informal sanctions’ for adults as well as children in conflict with the law. The Penal Procedure Code lists a number of offences which will be prosecuted only upon request of the victims, thus allowing informal mediation”.**

UNICEF Viet Nam

In 18 of the 23 East Asian and Pacific countries that practice CJJ there is legislation that regulates or recognizes that cases of children in conflict with the law may be dealt with by community leaders, members, panels, committees or units. In three East Asian countries (Cambodia, Myanmar and Thailand) and two Pacific Island countries (Kiribati and Solomon Islands) there is no such legislation. In Thailand, there is a draft bill on ‘Community Justice’.

**Table 13: Community juvenile justice**

Country	No CJJ	Proportion of cases of children in conflict with the law dealt with through CJJ							
		> 0-10%	> 11-25%	> 26-50%	51-75%	76-90%	91-100%		
<b>East Asian countries [12 countries]</b>									
Cambodia				CJJ					
China	No CJJ								
Indonesia		No estimation: "It is certain that CJJ is practiced in some regions, like in Aceh, but different regions and community groups have different practices".							
Lao PDR		No estimation: "Child cases are often solved at the family or Naiban level, but Naibans refer cases to VMUs/VCMUs if they cannot solve the case themselves. VMUs and VCMUs mediate a small number of cases involving children".							
Malaysia		Unknown: "There has been no study of CJJ practices relating to children. UNICEF Malaysia has no information on CJJ".							
Mongolia	No CJJ								
Myanmar		No estimation: "Anecdotal evidence suggests that CJJ is practiced in many regions of Myanmar, particularly in areas with strong community mechanisms linked to ethnic groups. Frequency of resorting of CJJ and respective practices vary across regions".							
Papua New Guinea						CJJ			
Philippines		No estimation, but used in actual practice.							
Thailand		CJJ							
Timor-Leste							CJJ		
Viet Nam		No estimation: "UNICEF Viet Nam assumes CJJ is used to a very limited extent".							
<b>Total East Asian region</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>1</b>		
<b>Pacific Island countries [14 countries]</b>									
Cook Islands						CJJ [≥ 73%]			
Fiji		No estimation: "CJJ is applied to indigenous children and children from any other ethnic group".							
Kiribati				CJJ [40%]					
Marshall Islands						CJJ [≥ 73%]			
Micronesia							CJJ [≥ 73%]		
Niue								CJJ [≥ 73%]	
Nauru									CJJ [≥ 73%]
Palau						CJJ [≥ 73%]			
Samoa					CJJ [70%]		CJJ [80-90%]		
Solomon Islands								CJJ [80-90%]	
Tokelau									CJJ [80-90%]
Tonga						CJJ [80-90%]			
Tuvalu							CJJ [80-90%]		
Vanuatu								CJJ [80-90%]	
<b>Total Pacific Island region</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>				<b>11</b>
<b>Total East Asian and Pacific region</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>2</b>	<b>1</b>	<b>12</b>			<b>1</b>

## Characteristics of community juvenile justice and promising practices

UNICEF was unable to systematically collect detailed information on CJJ, mainly due to the COs not having sufficient information on what happens during these community processes. The UNICEF questionnaires provide some insight into the various practices at the community level. From the 23 East Asian and Pacific countries that practice CJJ, Cambodia, Indonesia, Lao PDR, Myanmar, Papua New Guinea, Timor-Leste, Viet Nam, Fiji, Kiribati, Solomon Islands, Vanuatu and the nine remaining Pacific Island countries (collectively) have answered the questions about international standards and the kind of community agreements (seven East Asian and 13 Pacific Island countries).

**Table 14: Characteristics of community juvenile justice from the UNICEF questionnaire**

Region	Child present	Child participation	Compensation by parents/guardians	Apology by child
<b>7 East Asian countries</b>	4 Indonesia, Lao PDR, Papua New Guinea, Timor-Leste	1 Lao PDR	7 Cambodia, Indonesia, Lao PDR, Myanmar, Papua New Guinea, Timor-Leste, Viet Nam	6 Indonesia, Lao PDR, Myanmar, Papua New Guinea, Timor-Leste, Viet Nam
<b>13 Pacific Island countries</b>	1 Solomon Islands	0	13 Cook Islands, Fiji, Kiribati, Solomon Islands, Marshal Islands, Micronesia, Niue, Nauru, Palau, Tokelau, Tonga, Tuvalu, Vanuatu	13 Cook Islands, Fiji, Kiribati, Solomon Islands, Marshal Islands, Micronesia, Niue, Nauru, Palau, Tokelau, Tonga, Tuvalu, Vanuatu
<b>East Asian and Pacific region</b>	<b>5</b>	<b>1</b>	<b>20</b>	<b>19</b>

**“The child offender may work in the paddy field of the victim’s family as compensatory payment”.**

UNICEF Myanmar

It was found that the child in conflict with the law is only present during the discussions in five countries and only participates in the discussions in one country. One thing that has become clear through both the questionnaires and interviews is that the most frequent outcome of CJJ processes is that the parents/guardians of the child in conflict with the law have to compensate the victim(s) or victim(s)’s family financially or materially (20 countries). According to the questionnaires, many children in conflict with the law have to apologize to the victim(s) (19 countries), although it is not clear how that happens in actual practice if the child is not present during the discussions. It is unclear to what extent children in conflict with the law have to comply with other conditions as an outcome of CJJ processes. From the interviews, it is understood that that is only the case in Lao PDR (re-education), Myanmar (symbolic compensation by the child), the Philippines (rehabilitation plan in victimless cases), Timor-Leste (counselling and advice) and Viet Nam (written declaration that the child will not return to crime).

**“The outcome may be that the family of the child in conflict with the law has to give traditional customary items of value to the victim’s family and an apology”.**

UNICEF Solomon Islands

Overall, practices at the community level seem to suggest that the child in conflict with the law is not held responsible for the consequences of his/her offending behaviour, and most conflicts are solved between the child’s parents/guardians and the victim(s) or victim(s)’s family.

**“The community leader may try Adat, which is a traditional community conflict resolution mechanism that is invoked to resolve cases of child offenders. The Chefe Suco (Community Leader) will sit with the child and parents, and provide counselling and advice”.**

UNICEF Timor-Leste

In Lao PDR, the Ministry of Justice developed the Child Mediation Guidelines that set out specific steps for involving children in mediation. In Thailand, the Ministry of Interior has developed guidelines for village headmen and local community leaders on how to mediate. In the Philippines, the National Juvenile Justice and Welfare Council, in close collaboration with their local partners, has developed the ‘*Barangay* Protocol’ (final draft) that describes in detail the procedures that have to be followed when handling cases of children in conflict with the law at the community level. In Vanuatu, training on child rights has been conducted for lay magistrates.

**“Training on the human rights of children (boys and girls) under the CRC and those of women under CEDAW, including the rights of persons with disabilities was carried out for lay magistrates in August this year. For some participants this was the first training they had been to since their appointment 15 years ago! They are in the provinces and rural remote areas”.**

UNICEF Vanuatu

## Examples of promising/good practices of community juvenile justice

The 23 East Asian and Pacific countries that apply CJJ have developed some promising/good practices. We discuss four such practices in this section, i.e., from Lao PDR, Myanmar, Timor-Leste and Samoa; one case study of Lao PDR; and two additional promising/good practices in Papua New Guinea and the Philippines.

- ✓ **Village Child Mediation Units in Lao PDR:** Mediation is firmly embedded within the traditions and cultures of Lao PDR and has been practised in the country for centuries. In 1997, the Ministry of Justice of Lao PDR formalized these practices by establishing Village Mediation Units. The Ministry of Justice's Child Mediation Guidelines set out specific steps for mediation involving children. For example, the requirement that children and their parents/guardians are present, that children have an opportunity to speak during the session and that the Village Child Mediation Units need to educate the child as well as mediate the dispute. At the end of the mediation session, there are several potential outcomes for children in conflict with the law, which are agreed upon by both parties during the mediation process, including apologies, compensation and re-education by parents/guardians or social organizations.
- ✓ **Respected community members in Myanmar:** Myanmar's society is still regulated by customs and anecdotal evidence strongly suggests that informal justice systems are used more frequently at the local level than the formal system, particularly in regions where community mechanisms are linked with strongly represented ethnic groups. Often the most serious cases of offence are dealt with by parents/guardians and respected community members, without resorting to formal mechanisms. This also occurs with crimes perpetrated by adults, including grave criminal cases perpetrated against children. These community mechanisms aim to 'correct' and reprimand the child and/or impose fines/compensation for the victim's family. Usually, the outcome of an informal mediation process is that the child's parents/guardians compensate the victim(s) or victim's family for the damages and/or costs that were caused by the offence and the child apologizes to the victim(s). The parties may also agree on a symbolic settlement. For example, the child has to work in the paddy field of the victim(s)/victim's family. The child's compliance with the agreement is monitored by his/her parents/guardians or the community leader. The level of the child's participation in informal mediation processes is not clear. In general, anecdotal evidence suggests that community-based mechanisms tend to be handled by families and respected community members, often leaving victims and perpetrators out of discussions. If cases are serious or if the settlement through community justice mechanisms is not considered satisfactory, they may come to the attention of police, Department of Social Welfare or the Township Committee on the Rights of the Child (a governmental inter-agency child protection body at the township level).
- ✓ **Traditional mediation in Timor-Leste:** Traditional mediation means that the community leader sits with the parties, i.e., the victim(s), the child in conflict with the law and his/her parents/guardians, and discusses how to solve the conflict. For example, '*Nahe biti bot*' ('Spreading the Carpet') means that the parties are brought together, either at the '*Sede Suco*' (mediation house) or the house of a traditional/community leader, and the parties sit together on a carpet. The traditional/community leader hears both sides of the story and mediates an agreement. Another form of mediation is '*Tarabandu*'. It means that spiritual items, like a sword and an arrow, are put in the middle of a circle to find the solution. When the child, his/her parents/guardians and the victim(s) agree on the solution, the victim(s) promises to pardon and the child promises not commit an offence again. This practice carries a lot of weight and meaning within communities. If the child reoffends they will have to pay a fine, e.g., two buffalos. The most common outcomes of traditional mediation are that the child's parents/guardians financially or materially compensate the victim(s) or victim's family and that the child apologizes to the victim(s). Some traditional/community leaders also use community service.



- ✓ **Traditional mediation in Samoa:** Community leaders, also referred to as 'chiefs' or 'village council', deal with the majority of cases of children in conflict with the law. Only serious cases and those that the community leaders are not able to settle or do not want to settle, are referred to the formal juvenile justice system. The community leader brings the parties together, i.e., the victim(s), the child in conflict with the law, the child's parents/guardians and others who belong to the family or social support system/community of the victim(s) and the child. They discuss what happened and how the victim(s) or victim's family can be compensated and how peace can be restored in the community. This is called 'traditional mediation'. Usually, the child is present during the mediation process, except in cases of very young children of 10 to 12 years old. The outcome of 'traditional mediation' is usually a fine to pay for the damage done or financial or material compensation, such as a pig or a cow, to be paid by the parents/guardians to the victim(s). The child has to apologize or is given a job so the child understands that he/she has misbehaved, e.g., clean or prepare the house for the next mediation meeting.

## One case study on community juvenile justice

### Box 2: Case study on community juvenile justice in Lao PDR

In one village, a 14 year old boy was accused of raping a three year old girl. This was reported to the *Naiban* by the girl's mother and a doctor who had examined the girl. The *Naiban* spoke to the victim's parents and invited the boy and his mother for a discussion in the *Naiban's* home (there was no village administration office). The boy apparently admitted his offence. After the incident the victim and her mother left the area, however, the *Naiban* planned to invite them back for mediation by the VCMU.

The VCMU members admitted that they were unsure about how they were going to mediate the case as they had no experience of any similar cases. The Village Mediation Unit (VMU) had called the District Justice Office for help, but was informed that the case would be extremely challenging to mediate. One of the VCMU members highlighted the fact that even if they were able to mediate the case, it would not help the child victim, who should be referred to the village. It was apparent that the VCMU members were concerned that they did not have sufficient training or guidance to take on such a complex case. Even though the VMU was committed to following the Child Mediation Guidelines carefully, it could not have prepared them for what was certain to be an extremely challenging mediation case. One of the members from this VMU highlighted the fact that even if they were able to mediate the case, this would not help the child victim, who would most likely need counselling support and a lot of assistance: "in a rape case, working or paying can't make up for the damage".

Source: *Assessment of Existing Mediation Practices Involving Children in Lao PDR (2013)*.

The case study illustrates that the members of the Village Child Mediation Units in Lao PDR sometimes deal with very serious cases of children in conflict with the law. Unfortunately, the final outcome of the mediation process is not known.

## 2.3 Regional findings of alternative measures

The desk review, questionnaires and interviews have provided information on many components of alternative measures for children in conflict with the law in the 26 East Asian and Pacific countries. The findings at the regional level are discussed in the next 10 sections.

### CRC Concluding Observations with regard to diversion and other alternative measures

The CRC Concluding Observations are authoritative documents that guide the East Asian and Pacific governments in implementing juvenile justice. There are no CRC Concluding Observations for four Pacific Island countries (Niue, Nauru, Tokelau and Tonga). The CRC reports of Papua New Guinea (2004), Solomon Islands (2003), Micronesia (1998), Kiribati (2006), Palau (2001) and Samoa (2006) are more than 10 years old. Twelve CRC reports include recommendations that explicitly mention diversion and/or alternatives to detention for children in conflict with the law (Cambodia (2011), Indonesia (2014), Malaysia (2007), Mongolia (2010), Myanmar (2012), the Philippines (2009), Thailand (2012), Timor-Leste (2008), Viet Nam (2012), Fiji (2014), Kiribati (2006) and Tuvalu (2013)). Only three CRC reports mention a restorative justice approach in cases of children in conflict with the law (China (2013), Timor-Leste (2008) and Kiribati (2006)). Alternatives to pre-trial detention are explicitly promoted in reports for Myanmar (2012) and Kiribati (2006), and a regular review of detention of children in conflict with the law was mentioned in reports for Timor-Leste (2008), Fiji (2014) and Cook Islands (2012). The CRC reports of Lao PDR (2011), Samoa (2006), Solomon Islands (2003), Cook Islands (2012) and Marshall Islands (2007) mention detention as a measure of last resort and/or for the shortest appropriate period of time but not specifically diversion and/or alternatives to detention.

**“The Committee recommends in particular that the State party: ... (e) Set up regulations for the police to use diversion and alternatives to punishment; (f) Revise laws to grant probation and parole in cases where sentences of deprivation of liberty are imposed”.**

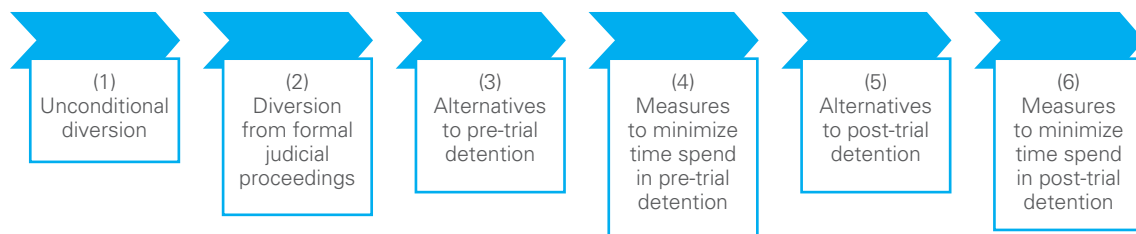
Recommendation 63 – Tuvalu

### Continuum of six kinds of alternative measures for children in conflict with the law

The main tool that UNICEF uses to analyse the alternative measures for children in conflict with the law at country and regional level is the continuum of six kinds of alternative measures that applies to the formal juvenile justice system (*see Figure 2*). The division of the continuum into six categories of alternative measures is based on international juvenile justice standards promoted by the CRC and CRC General Comment No.10. They are:

- ✓ “The development and implementation of measures for dealing with children in conflict with the law without resorting to judicial proceedings, whenever appropriate and desirable” (article 40(3)(b) of the CRC and paragraph 24 of CRC General Comment No.10):
  - Category 1 ‘Unconditional diversion/police warning’
  - Category 2 ‘Diversion from formal judicial proceedings’
  
- ✓ “The use of deprivation of liberty only as a measure of last resort” (article 37(b) of the CRC and paragraph 28 of CRC General Comment No.10):
  - Category 3 ‘Alternatives to pre-trial detention’
  - Category 5 ‘Alternatives to post-trial detention’
  
- ✓ “The use of deprivation of liberty for the shortest appropriate period of time” (article 37(b) of the CRC and paragraph 28 of CRC General Comment No.10):
  - Category 4 ‘Measures to minimize time spend in pre-trial detention’
  - Category 6 ‘Measures to minimize time spend in post-trial detention’

**Figure 3: Continuum of alternative measures for the formal juvenile justice process**



The ideal situation is that national law regulates alternative measures of each of the six categories, and that they are implemented nationwide on a structural basis. Preferably, restorative justice approaches with regard to diversion and alternatives to post-trial detention will also be incorporated in national laws and applied in actual practice. CRC General Comment No.10 encourages restorative juvenile justice as follows: “the protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders. This can be done in concert with attention to effective public safety”.

The continuum of alternative measures incorporates only community and family-based options and no measures that imply deprivation of liberty – e.g., in a remand home, reformatory, prison, closed psychiatric hospital, closed drug treatment facility – and no residential measures – e.g., placement in an open or semi-open/closed care institution, re-education institution, treatment institution or diagnostic centre.

## Unconditional diversion/police warning in the region

### The concept of unconditional diversion/police warning

Within the framework of the regional study, diversion is defined as “the conditional channelling of children in conflict with the law away from formal judicial proceedings towards a different way of resolving the issue that enables many – possibly most – to be dealt with by non-judicial bodies, thereby avoiding the negative effects of formal judicial proceedings and a criminal record, provided that human rights and legal safeguards are fully respected”. This definition implies that diversion from formal judicial proceedings is conditional. In actual practice in the region, police, prosecutors and judges give children in conflict with the law a formal warning/caution without any further conditions for the child to comply with.

This form of unconditional diversion/police warning has been included in the continuum of formal alternative measures, because the ‘United Nations Standard Minimum Rules for the Administration of Juvenile Justice’ (1985) (Beijing Rules) states in the ‘Commentary on Rule 11 on Diversion’ that: “In many cases, non-intervention would be the best response. Thus, diversion at the outset and without referral to alternative (social) services may be the optimal response. This is especially the case where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner”. Police officers may give a verbal warning/caution directly to the child on the spot, or a verbal or written warning/caution in the presence of the parents/guardians at the police station. A formal warning/caution may include an explanation of the reason for the warning/caution, exploration of the impact of the offence on the victim(s) and the child, including consequences of future offending and how to avoid future offending. Prosecutors and judges (before the first trial hearing) may also give children in conflict with the law a formal warning/caution.

### Unconditional diversion/police warning in national law and practice

Unconditional diversion/police warning is much more often used in practice (23 countries) than the measure is incorporated in national legislation of the East Asian and Pacific countries (7 countries). In five East Asian countries and two Pacific Island countries the measure is regulated by law, while in almost all East Asian and Pacific countries (10 East Asian countries and 13 Pacific Island countries) unconditional diversion/police warning is applied in cases of children in conflict with the law. Cambodia’s new Juvenile Justice Law incorporates police warning into its mechanisms. In China, the Philippines and Kiribati, unconditional diversion/police warning is neither regulated by law nor practiced. In actual practice, the police in 23 countries use unconditional diversions/police warnings. The prosecutors in Cambodia and Viet Nam, and the judges in Timor-Leste, Viet Nam and Solomon Islands give unconditional warnings to children in conflict with the law. The majority of countries know to what extent unconditional diversion/police warning is used in practice (17 countries), despite the fact that police warnings are usually not registered. The measure is ‘hardly’ applied at all in three countries and ‘rather often’ or ‘often’ in 14 countries.

**“An unconditional diversion/police warning is not applicable in China within the framework of this study, but only because the MACR is high and the minor offenses committed by younger children do not enter the criminal justice system in China. For the eight most violent crimes that the 14 years MACR is applied to, clearly an unconditional warning is not appropriate. For the general MACR of 16 years the crime threshold is relatively high. The unconditional warning often applies to children below the MACR in minor administrative penalty cases”.**

UNICEF China

**Table 15: Unconditional diversion/police warnings in national law and in practice**

Region	In national law	In actual practice		
		Scale unknown	Hardly used	Rather often or often used
<b>East Asian countries</b>	5 Cambodia, Indonesia, Lao PDR, Papua New Guinea, Viet Nam	5 Indonesia, Lao PDR, Malaysia, Mongolia, Thailand	3 Cambodia, Myanmar, Timor-Leste	2 Papua New Guinea, Viet Nam
<b>Pacific Island countries</b>	2 Samoa, Solomon Islands	1 Vanuatu	0	12 Cook Islands, Fiji, Marshal Islands, Micronesia, Nauru, Niue, Palau, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu
<b>East Asian and Pacific region</b>	<b>7 East Asian and Pacific countries</b>	<b>23 East Asian and Pacific countries</b>		







## Example of promising/good practices of unconditional diversion

The 22 East Asian and Pacific countries that use unconditional diversion have developed some promising/good practices. One such practice, from Samoa, is presented in this section.

- ✓ **Stern warning by police in Samoa:** Diversion measures are implemented nationwide in cases of petty offences, misdemeanours, first-time offenders and some reoffenders. Very often, police officers give children in conflict with the law a stern warning. Sometimes they also impose minor conditions, especially in cases of reoffenders, like going to school for five days a week, apologizing to the victim(s), doing a few hours of homework, doing a small job for the victim(s). These diversion practices are not registered.

## Diversion from formal judicial proceedings

### The concept of diversion from formal judicial proceedings

The CRC and CRC General Comment No.10 strongly promote diversion. Article 40(3)(b) of the CRC states that “States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular ... whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected”. Diverting children in conflict with the law away from formal judicial proceedings means that they are dealt with by non-judicial bodies and referred to community-based or social services, thereby avoiding the negative effects of formal judicial proceedings and a criminal record.<sup>10</sup>

The human rights and legal safeguards that have to be fully respected, are (paragraph 27 of CRC General Comment No.10):

- ✓ Diversion should be used only when there is compelling evidence that the child committed the alleged offence, that he/she freely and voluntarily admits responsibility, and that no intimidation or pressure has been used to get that admission and, finally, that the admission will not be used against him/her in any subsequent legal proceeding.
- ✓ The child must freely and voluntarily give consent in writing to the diversion, a consent that should be based on adequate and specific information on the nature, content and duration of the measure, and on the consequences of a failure to cooperate, carry out and complete the measure. With a view to strengthening parental involvement, State parties may also consider requiring the consent of parents/guardians, in particular when the child is below the age of 16 years.
- ✓ The law has to contain specific provisions indicating in which cases diversion is possible, and the powers of the police, prosecutors and/or other agencies to make decisions in this regard should be regulated and reviewed, in particular to protect the child from discrimination.
- ✓ The child must be given the opportunity to seek legal or other appropriate assistance on the appropriateness and desirability of the diversion offered by the competent authorities and on the possibility of review of the measure.

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<sup>10</sup> Article 49(2)(3) ‘discontinuance of proceedings’ of the Model Law on Juvenile Justice (2013) may be relevant in this regard as well. It states: “(2) Prior to the commencement of court proceedings against the child, the court must satisfy itself that alternative measures to judicial proceedings [diversionary measures] have been fully considered by the police or the prosecutor’s office. (3) Where the police or prosecutor have failed to consider the use of alternative measures to judicial proceedings, the court should have the power – depending on the legal system of the State concerned – either to decide itself on applying measures alternative to judicial proceedings or to refer the case back and require the relevant authority to reconsider its original decision to take the case to trial”.

- ✓ The completion of the diversion by the child should result in a definite and final closure of the case. Although confidential records can be kept of diversion for administrative and review purposes, they should not be viewed as ‘criminal records’ and a child who has been previously diverted must not be seen as having a previous conviction. If any registration takes place of this event, access to that information should be given exclusively and for a limited period of time, e.g., for a maximum of one year, to the competent authorities authorized to deal with children in conflict with the law”.

When applying diversion in cases of children in conflict with the law, juvenile justice professionals (and volunteers) have to keep in mind the following principles:

- ✓ Diversion is a measure of first resort and preferred over alternatives to pre- and post-trial detention, as it spares the child the potential detrimental effects of formal judicial proceedings and possibly the stigma of conviction and having a criminal record.
- ✓ Diversion can be instigated from the time of apprehension (before arrest) to any point up until the first trial hearing<sup>11</sup> (including during pre-trial detention when new information comes to light that enables the child to be diverted away from judicial proceedings, for example an extended family member is located or community leader is willing to act as caregivers) – either as a generally applicable procedure or on the case-by-case decision of the police, prosecutor,<sup>12</sup> court<sup>13</sup> or similar body.
- ✓ Ideally, diversion is initiated as soon as possible after the child comes into conflict with the law.
- ✓ Diversion should be made available as much as possible and, in theory, can be used for children committing any kind of offence.

According to the definition UNICEF uses in this study, diversion is conditional: “Conditions must give the child an opportunity to prove his/her capacity and qualities and must contribute positively to the child’s development by encouraging him/her to take responsibility for the harm caused, but in ways that reintegrate them into society”. [UNICEF Toolkit] The conditions that may be included in the child’s diversion plan or diversion agreement<sup>14</sup> are varied. The four categories of diversion conditions are:

- ✓ Constructive diversion conditions: These conditions focus on the child’s reintegration and/or rehabilitation and the child’s assuming a constructive role in society with the ultimate goal of preventing recidivism. Some examples of constructive conditions are: a written essay on the effects of the crime committed; regular school attendance; vocational skills training; participation in a life skills programme; participation in a competency development programme like responsible decision making; communication skills; problem solving; anger management; participation in constructive leisure time; regular attendance of prayers/religious ceremonies; and individual or group counselling with or without parents/guardians/family members.

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<sup>11</sup> Diversion implies ‘avoiding formal judicial proceedings’. The ‘first trial hearing’ is identified as the start of formal judicial proceedings.

<sup>12</sup> In civil law systems, there is no police discretion to apply diversion without the authority of the prosecutor. In some countries, the arresting police officer (or designated colleague at the police station) is obliged to first contact the prosecutor who then instructs the police officer on the course of action to take on a case-by-case basis, while in other countries the prosecutor approves the decision of the police officer rather than instructing. Within the regional study, these forms of diversion are still considered ‘diversion at the police level’.

<sup>13</sup> Diversion at the court level means that prior to the commencement of the trial proceedings, the court satisfies itself that alternative measures to formal judicial proceedings have been fully considered by the police and/or prosecutor’s office. If they fail to consider the use of diversion, the court either decides itself on applying diversion, which is called ‘diversion at the court level’, or refers the case back to the police or prosecutor’s office and requires the relevant authority to reconsider its original decision to take the case to trial, which may imply that ‘diversion at the police level’ or ‘diversion at the prosecution level’ will still be instigated.

<sup>14</sup> The term ‘diversion plan’ is considered most appropriate when it concerns diversion without a restorative juvenile justice approach and ‘diversion agreement’ is considered more appropriate if the conditions are agreed upon among the parties through a restorative juvenile justice process.

- ✓ Restrictive diversion conditions: These conditions limit the child's freedom to move around and/or meet with particular persons. Examples of restrictive conditions include a curfew that imposes a restriction on the child's liberty between specified hours (usually at night) for a specified period of time, not to associate with specified (delinquent) peers, not to contact the victim(s), not to visit specified places and not to visit a certain neighbourhood/area.
- ✓ Residential diversion conditions: Diversion with a residential component means that the child is placed for a short period of time in an open or semi-open residential institution for education, care, treatment and/or reintegration. As per international standards, residential forms of diversion should only be used as a measure of last resort and for the shortest appropriate period of time. Residential diversion conditions are not part of the continuum of alternative measures used as an analysis tool by UNICEF.
- ✓ Restorative diversion conditions: These conditions allow the child to restore the harms caused by his/her offence to the victim(s) as well as others such as the child's parents/guardians/family members and members of his/her social support system and/or community. Examples of restorative conditions are verbal or written apologies to the victim(s); verbal or written apologies to parents/guardians/family members and/or others affected by the offence; well-defined small jobs to be done for the victim(s); well-defined small jobs for parents/guardians/family members and/or others harmed by the offence; financial or symbolic compensation/restitution to the victim(s); paying back (financially or symbolically) parents/guardians/family members who have paid the financial compensation to the victim(s);<sup>15</sup> a specified number of community service hours that benefit the community; and participation in a victim empathy course.<sup>16</sup>

## Diversion measures in national law

Myanmar and Vanuatu are the only two countries that do not have any laws that incorporate provisions on diversion. However, as already mentioned, the draft Child Law of Myanmar introduces diversion without specifying at what stage of the proceedings it will be applied. The other 24 East Asian and Pacific countries have provisions that regulate or justify diversion either in their general laws (11 countries) or their child-specific laws (13 countries). Cambodia, Indonesia, Papua New Guinea, the Philippines and Thailand have child-specific juvenile justice laws regulate diversion at the three levels of the juvenile justice process, i.e., police, prosecution and court level. Lao PDR regulates diversion with a restorative justice approach at the police and prosecution level. Cook Islands, Fiji, Kiribati, Samoa, Solomon Islands, Marshall Islands and Micronesia have child-specific laws and only incorporate diversion at the court level. The general laws regulate diversion mainly at the court level (nine countries). In China, Malaysia, Timor-Leste and Viet Nam, diversion at the prosecution level is regulated by general laws and only in Viet Nam at the police level.

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<sup>15</sup> Compensation or restitution to the victim(s) implies that the child makes some payment or performs some service to make amends to the victim(s) and/or others affected by the offence, ideally including other option(s) for non-monetary forms of restoring the harms where the child/family cannot afford to pay [UNICEF Toolkit], e.g., a verbal or written apology, writing an essay to the victim(s) small job for the victim(s) family and agreement to participate in a victim empathy course/programme.

<sup>16</sup> Victim empathy courses/programmes are awareness and skills training classes to teach small groups of children in conflict with the law to consider the effects of their offences on their victim(s), their parents/guardians/family members, the community and themselves and to think about constructive alternatives for their offending behaviour.

**Table 16: Diversion in national law**

Region	Not in any law	General law			Child-specific law <sup>17</sup>		
		Police	Prosecution	Court	Police	Prosecution	Court
<b>12 East Asian countries</b>	1 Myanmar	1 Viet Nam	4 China, Malaysia, Timor-Leste, Viet Nam	3 China, Mongolia, Viet Nam	6 Cambodia, Indonesia, Lao PDR, Papua New Guinea, Philippines, Thailand	6 Cambodia, Indonesia, Lao PDR, Papua New Guinea, Philippines, Thailand	5 Cambodia, Indonesia, Papua New Guinea, Philippines, Thailand
<b>14 Pacific Island countries</b>	1 Vanuatu	0	0	6 Nauru, Niue, Palau, Tokelau, Tonga, Tuvalu	0	0	7 Cook Islands, Fiji, Kiribati, Samoa, Solomon Islands, Marshall Islands, Micronesia
<b>East Asian and Pacific region</b>	<b>2</b>	<b>1</b>	<b>4</b>	<b>9</b>	<b>6</b>	<b>6</b>	<b>12</b>
		<b>11</b>			<b>12</b>		

## Diversion measures in practice

The CRC promotes diversion of children in conflict with the law as much as possible, i.e., “whenever appropriate and desirable” (article 40(3)(b)). The CRC Committee states that diversion should be “a well-established practice that can and should be used in most cases” and “certainly not limited to children who commit minor offences, such as shoplifting or other property offences with limited damage, and first-time child offenders”. It is highlighted that in addition to avoiding stigmatization, diversionary measures “has good results for children and is in the interests of public safety, and has proven to be more cost-effective” (paragraphs 24 and 25 of CRC General Comment No.10). An assessment of the child should be promoted in order to identify the root causes and underlying family problems which need to be addressed through the child’s diversion plan/agreement in order to prevent re-offending. The diversion conditions should be proportionate to the offence and not be more severe or restrictive than the sanction the child would have received through formal judicial proceedings. [UNICEF Toolkit]

<sup>17</sup> East Asian and Pacific countries that have both child-specific and general legislation regulating diversion are included in the column ‘child-specific law’.

**“Social welfare officers have been trained to conduct a risk and needs assessment for children in conflict with the law, but no thorough evidence on the impact is available. In most cases the social welfare officers are not called upon”.**

UNICEF Timor-Leste

**“The evaluation of the pilot project with Juvenile Justice Committees (JJC) provides a solid evidence basis supporting the viability of diversion in Mongolia. Although the long-term impact will take years to be felt, the results to date are very promising in three locations where the JJC project is in operation. Examples of positive results include significantly less children being held in police custody, pre-trial detention of children has dropped, sentencing of children to prison has decreased, more children are protected during justice proceedings, overall decline in juvenile crimes, juvenile recidivism rates have plunged, recognition that detention does not reduce recidivism, higher rates of children in conflict with the law attending school, non-formal education (NFE) or vocational training and receiving support services”.**

UNICEF Mongolia

In practice, 25 East Asian and Pacific countries apply diversion, i.e., 11 East Asian countries and all 14 Pacific Island countries. In China, Lao PDR, Malaysia and Myanmar, children in conflict with the law are diverted, but the exact scale is unknown. In China, diversion measures are used nationwide, but there are different practices in different areas. In Lao PDR, diversion is used in the form of mediation, but it is not known to what extent. In Malaysia, the prosecutors are not actively encouraged to divert children through discontinuing the proceedings. In Cambodia, Mongolia, the Philippines and Viet Nam, diversion is used on a limited scale. In Indonesia, Papua New Guinea and Thailand, children are ‘rather often’ or ‘often’ diverted. Timor-Leste does not apply diversion at all. All 14 Pacific Island countries use diversion in practice and apply the measure ‘rather often’ (Cook Islands, Marshal Islands, Micronesia, Nauru, Niue, Palau, Tokelau, Tonga and Tuvalu) or ‘often’ (Fiji, Kiribati, Samoa, Solomon Islands and Vanuatu). Vanuatu implements diversion, although the laws do not incorporate provisions on diversion.

**“Police report diverting a great proportion of child related cases back to the community. Diversion itself is good and in line with good practices for justice for children, but children’s rights and protections need to be safeguarded and efforts to support the young offender and family must be made”.**

Child Protection Baseline – Fiji

**Table 17: Diversion in practice**

Region	Scale unknown	Hardly used	Rather often or often used
<b>12 East Asian countries</b>	4 China, Lao PDR, Malaysia, Myanmar	4 Cambodia, Mongolia, Philippines, Viet Nam	3 Indonesia, Papua New Guinea, Thailand
<b>14 Pacific Island countries</b>	0	0	14 Cook Islands, Fiji, Kiribati, Marshal Islands, Micronesia, Nauru, Niue, Palau, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu
<b>East Asian and Pacific region</b>	<b>4</b>	<b>4</b>	<b>17</b>

## Obligations for parents/guardians of children in conflict with the law

In the UNICEF questionnaire, it was asked whether it is possible that the diversion plan/agreement may contain conditions for the child's parents/guardians and/or family members. It was shown that it is rather common for the child's parents/guardians to comply with certain conditions if their child is diverted (21 countries). By far the most often agreed condition for parents/guardians is compensation of the victim(s) (six East Asian and 14 Pacific Island countries). Parental or family counselling is used in three East Asian and three Pacific Island countries, while parental skills programmes are only used in two countries. In Viet Nam, parents/guardians may be ordered to ensure that their child resides with them, to encourage the child to comply with his/her diversion plan, to supervise the child periodically and to report to the Chair of the People's Committee. The legal training for parents/guardians of children in conflict with the law is available in Viet Nam. In Kiribati, the parents/guardians of diverted children may be ordered to engage in religious activities. There is no information in this regard from Indonesia, Malaysia and the Philippines. In Lao PDR, those in positions of authority cannot order parents/guardians of diverted children to comply with certain conditions.

**Table 18: Diversion conditions for the child's parents/guardians**

Region	Parental skills programme	Parental or family counselling	Compensating the victim(s)	Other
<b>12 East Asian countries</b>	1 China	3 China, Papua New Guinea, Thailand	6 Cambodia, China, Mongolia, Papua New Guinea, Thailand, Timor-Leste	1 Viet Nam
<b>14 Pacific Island countries</b>	1 Kiribati	3 Fiji, Kiribati, Samoa	14 Cook Islands, Fiji, Kiribati, Marshal Islands, Micronesia, Nauru, Niue, Palau, Tokelau, Tonga, Tuvalu, Samoa, Solomon Islands, Vanuatu	1 Kiribati
<b>East Asian and Pacific region</b>	<b>2</b>	<b>6</b>	<b>20</b>	<b>2</b>

## Examples of promising/good practices of diversion from formal judicial proceedings

The 17 East Asian and Pacific countries that use diversion 'rather often' or 'often' have developed some promising/good practices. Three such practices from Cambodia, Thailand and Kiribati are discussed in this section, two case studies from Myanmar and Kiribati and two additional promising/good practices from Indonesia and the Philippines.

- ✓ **Diversion of children living on the streets in Cambodia:** The NGO 'Friends International' cooperates with police stations in Siem Reap province in the diversion of children living on the streets who commit petty offences. They have developed a mechanism where children are passed into the care of the NGO instead of being sent to prison. The children are placed in temporary housing, education programmes, vocational training centres or reintegrated into their families. In 2013, the police in Siem Reap diverted 76 children in this manner.
- ✓ **Tailored rehabilitation diversion plan in Thailand:** Diversion is implemented nationwide and most often at the court level, although not in all provinces to the same extent. Diversion is applied in petty offences and in cases of more severe offences. The director of the 'Juvenile Observation Centre' prepares a tailored rehabilitation plan that incorporates conditions on how the child may reform him/herself. Rehabilitation plans are developed through a restorative justice approach, i.e., family community group conferencing. Examples of conditions that may be incorporated in children's rehabilitation plans are religious activities, school attendance, community work hours and employment activities. It is also possible that the child's diversion plan incorporates rehabilitation through a short-term residential condition like placement in a shelter, participation in a 'Boot Camp Programme'. The child's compliance with the conditions are monitored by a probation officer and diversion measures are registered in administrative records.
- ✓ **Diversion with a restorative justice approach in Kiribati:** Courts in Kiribati divert children 'rather often'. Judges call the parties together and discuss how the conflict can be solved without proceeding to trial and they write up a diversion plan for the child. Police also divert cases of children in conflict with the law, but apparently this is without a legal basis. Police officers either mediate between the parties and facilitate the preparation of the child's diversion agreement or organize a community conference chaired by a respected community leader who identifies ways of reintegrating the child into his/her community and develops the child's diversion plan. Community leaders may also be responsible for monitoring children's diversion plans. UNICEF Kiribati has the impression that petty offences, including those committed by reoffenders, are diverted by police and the more serious offences are diverted by courts. They estimate that the proportion of cases diverted by police versus courts is 80 versus 20 per cent. The child's diversion plan incorporates conditions such as writing an apology letter to the victim(s), compensation, community service, counselling, curfew, and participation in a life skills programme. The only existing residential diversion option is participation in the Alcohol Awareness and Family Recovery Programme, which is a three-week training programme that aims for child rehabilitation and behaviour change. The child's parents/guardians may also have to comply with certain conditions, like paying a fine and participation in a parental skills training. Parental skills trainings are available both in the capital and on more remote islands. The decision on whether or not to divert a child and the diversion plan are based on a social inquiry report prepared by a youth officer, police officer or social welfare officer. Diversion measures are registered in administrative records.



## Two case studies on diversion from formal judicial proceedings

The following two case studies illustrate good practices of diversion from formal judicial proceedings. The case study from Myanmar shows that in the absence of formal diversion provisions police may occasionally divert children from criminal proceedings and use the informal justice system in order to tailor the child's diversion plan. The second case study explains a programme for parents/guardians of diverted and sentenced children in Kiribati.

### **Box 3: Case study on diversion by the police, relying on community justice mechanisms in Myanmar**

Maung Ni was apprehended outside Dragon Supermarket by one of the security guards for stealing packets of food. He was 14-years-old and no longer attending the school. The manager of the Supermarket was furious and brought him to the police. The manager said that this was the third time that Maung Ni had been caught taking things from his shop and wanted to know what the police would do to stop this. He said that he would demand the child be punished by taking him to the police station and locking him up.

Maung Ni told the police that his father was dead and he was living with his mother in a poor family. He did not want his mother to know what was happening. He pleaded with the police officer to punish him by hitting him or doing something to compensate his guilt. When the police officer visited Maung Ni's home together with the child, his mother was not at home. Neighbours said that she would be back home late. When the police officer managed to meet his mother, he found that Maung Ni had seven siblings. His mother earned very little money each month working as a cleaner, and she could not afford enough food for her family or send all of her children to school. Only two of the children were attending primary school.

She told the police officer that she found some extra food in the house (apparently referring to the food that Maung Ni stole and brought back home), but that she did not know where her son was getting it from. The police officer talked to the Village Administrator, community leaders and village elders to find a possible solution to the case without filing an official lawsuit against Maung Ni since he was a minor and the offence committed was not a serious crime.

One community leader, U Pho Phyu, came up with an alternative option rather than arresting him and sending him to the court for the offence he committed. He suggested Maung Ni be employed with an apprentice income in his motorbike workshop in the neighbourhood. He also asked for guarantees from everyone to take responsibility while he would supervise Maung Ni (under the formal consent of his mother) in improving his behaviour. The police told U Pho Phyu that they will issue Maung Ni a written warning with conditions and rules that he must comply with over two years. They guaranteed that he would be sent to court if he committed another offence. They also said that Maung Ni would need to report his situation each month to the police station. U Pho Phyu proposed compensation for the damages done by Maung Ni to the supermarket. The manager agreed to the reconciliation and would no longer press formal charges against Maung Ni as long as he did not reoffend.

UNICEF Myanmar

#### **Box 4: Case study on the Parental Skills Programme for parents/guardians of diverted and sentenced children in Kiribati**

Sam is a 16-year-old boy living with his mother, father and two sisters on the main land. He attended junior secondary school. His parents spend very little time with Sam and his two sisters: his father spends his time drinking alcohol while his mother plays bingo.

Sam started misbehaving and one day he was drunk and broke into a shop to steal goods worth about US\$50.00. The shop owner caught him in the act and immediately reported him to the police. Sam was in police custody for almost 24 hours before he was released to his parents. The police decided to divert the case, with the diversion meeting attended by a social welfare officer, teacher, community leader, Sam and his parents. The owner of the shop did not turn up.

The participants developed the diversion plan and agreed that Sam's parents had to compensate the amount of US\$50.00. Sam has to write a letter of apology to the owner of the shop. The teacher's job was to monitor Sam's attendance and performance in school and report weekly to social welfare and the police. The community leader ensured that Sam would not go out after 9PM. Sam has to report weekly to the police and social welfare. The duration of the diversion plan is two months. Compliance would result in dismissing the case with a clean record. Failure to do so will imply that Sam would end up in court.

In addition, Sam's parents were referred to the social welfare division for parental counselling for their alcohol and gambling problems. They also participated in training on positive parenting, together with other parents of diverted and sentenced children, and learned about safe and engaging environments, using non-violent discipline, and child and brain development. All parents were made aware of a parenthood programme at the antenatal clinic, which is a programme for fathers to accompany their pregnant wife during the medical check-up at the clinic and includes counselling.

UNICEF Kiribati

## **Alternatives to pre-trial detention in the region**

### **The concept of alternatives to pre-trial detention**

Alternatives to pre-trial/trial detention are alternative measures at the pre-charge, pre-trial and trial stages that are imposed on children who are being formally processed through the criminal (juvenile) justice system. They provide family- and community-based options for the supervision of children pending their trial, rather than detaining them in police cells, pre-trial detention centres or remand homes.

**“Concerns have been raised about the number of children on remand, often for minor offences such as theft, due to their inability to pay bail, lack of alternative programmes available for supervising children whose parents/guardian are unwilling to pay the bail amount and the absence of clear legislative restrictions on the use of remand, especially for minor crimes”.**

RWI – Malaysia

During the data collection process the concepts of alternatives to pre-trial detention and diversion were sometimes confused. While reading this section, it is important to keep in mind that diversion measures cannot be imposed, but require the informed consent of the child in conflict with the law and only apply to children who are not formally processed through the criminal (juvenile) justice system. Alternatives to pre-trial/trial detention, on the other hand, are ordered, do not require the child’s consent and apply to children who are formally processed through the criminal (juvenile) justice system.

**Figure 4: Differences between diversion and alternatives to pre-trial detention**

<b>Diversion:</b>	<b>Alternatives to pre-trial detention:</b>
<ul style="list-style-type: none"> <li>• Requires the written consent of the child and their parents/guardians</li> <li>• It usually does not result in a criminal record</li> <li>• There are no trial proceedings (if the child complies with the diversion conditions)</li> </ul>	<ul style="list-style-type: none"> <li>• It can be imposed by the police or prosecutor without the consent of the child and their parents/guardians</li> <li>• It may result in a criminal record</li> <li>• The child then awaits formal trial proceedings in the community</li> </ul>

According to the CRC, arrest and detention pending trial may be used “only as a measure of last resort and for the shortest possible period of time” (article 37(b)). The CRC Committee has emphasized ‘pre-trial detention’ in this regard. “...strictly limit the use of deprivation of liberty, and in particular pre-trial detention” (paragraph 28 of CRC General Comment No.10). Beijing Rule 13.2 states that “whenever possible, detention pending trial should be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home”. Alternatives to pre-trial detention may be unconditional as well as conditional. For example, children may be unconditionally released to the custody of their parents/guardian, a family member, community supervisor or a responsible, trustworthy adult. In some jurisdictions children may also be released to CSOs or NGOs that function as the ‘responsible/trustworthy adult’. Some examples of releasing children on certain conditions – also called ‘behavioural contract’ – are bail, supervision by probation officer, compliance with a curfew and need to report regularly to a police station, probation office or day reporting centre. Monetary bail, i.e., an amount of money that has to be paid as a condition for releasing the child pending his/her trial which is refunded only when the child returns to appear in court as ordered, is discouraged as a release condition because it discriminates against children from poor backgrounds, children living and working on the street and other children whose families are unable to pay money for bail. [UNICEF Toolkit] It is also possible that children are released to a foster family, small scale group home, open care institution or an observation/diagnostic centre,<sup>18</sup> instead of being placed in a closed pre-trial detention facility. These residential options may be appropriate in cases of children in conflict with the law without parental/family care, but are not included in the continuum of alternative measures used within the framework of this regional study.

<sup>18</sup> Article 12 ‘personality assessment’ of the Model Law on Juvenile Justice (2013) may be relevant in this regard. It states: (1) The children’s [juvenile] [youth] court shall have experts [insert appropriate welfare agency] assess the personal, familial, social and environmental conditions of the child in order to understand his or her personality and the extent of his or her criminal responsibility before passing any judgement on the child. (2) If the children’s [juvenile] [youth] court after concluding its personality assessment finds that a child is suffering from a mental illness preventing him or her from being criminally responsible, the child shall be discharged and, if necessary, transferred to a specialized institution under independent medical management.

## Alternatives to pre-trial detention in national law

All 26 East Asian and Pacific countries have incorporated provisions on alternatives to pre-trial detention in either their general laws (12 countries) or child-specific laws (14 countries).

**“According to the Juvenile Criminal Procedures Law (2014), the pre-sentencing release may be carried out based on the request of parents, guardian or close relatives, protector or by the duty of the head of the People’s Prosecutor, Child Court or Child Court Chamber. The pre-sentencing released child shall be monitored and educated by parents, guardian or close relatives, protector or concerned village administration authorities”.**

UNICEF Lao PDR

**Table 19: Pre-trial alternatives in national law**

Region	Not in any law	General law	Child-specific law <sup>19</sup>
<b>12 East Asian countries</b>	0	5 Cambodia, China, Mongolia, Timor-Leste, Viet Nam	8 Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Papua New Guinea, Philippines, Thailand,
<b>14 Pacific Island countries</b>	0	7 Nauru, Niue, Palau, Tokelau, Tonga, Tuvalu, Vanuatu	7 Cook Islands, Fiji, Kiribati, Marshal Islands, Micronesia, Samoa, Solomon Islands
<b>East Asian and Pacific region</b>	<b>0</b>	<b>12</b>	<b>15</b>

## Alternatives to pre-trial detention in practice

In all 25 East Asian and Pacific countries, children in conflict with the law may await their trial in the community. In Timor-Leste, pre-trial release is applied very rarely and only in the form of house arrest (which implies deprivation of liberty) and placement in an open residential facility (‘Forum de Comunicacoes Juventude’). The situation differs slightly between the East Asian and Pacific Island region. Six of the East Asian countries hardly use alternatives at the pre-trial stage. Only Malaysia and Thailand release children ‘rather often’ at the pre-trial stage. China, Indonesia and the Philippines do not know to what extent alternatives to pre-trial detention are used in their countries. On the other hand 12 Pacific Island countries allow the children to await their trial in their communities ‘rather often’ or ‘often’. Only Kiribati and Solomon Islands hardly apply the provisions on pre-trial release. In Vanuatu all children in conflict with the law are released at the pre-trial stage because there are no detention facilities. Financial bail as guarantee for pre-trial release is used in about one third of the East Asian and Pacific countries (Cambodia, China, Lao PDR, Malaysia, the Philippines, Thailand and Viet Nam, and probably in Papua New Guinea, Kiribati, Samoa and Solomon Islands).

<sup>19</sup> East Asian and Pacific countries that have both child-specific and general legislation regulating pre-trial detention, are included in the column ‘child-specific law’.

**“There are significant numbers of children that use drugs and steal from their parents, family and communities to be able to buy the drugs. If arrested, these children are deprived of their liberty in pre-trial detention facilities often for prolonged periods of time without being charged and without legal assistance. There are no community-based services for child drug users in the communities”.**

UNICEF Lao PDR

**“Children are not only released when they are charged with a petty offence and are first time offenders, but also in cases of misdemeanours as well as reoffenders. Usually, children are released to their parents/guardian, family members, another trustworthy adult or community leader. In some Pacific Island countries, e.g., Marshall Islands, children can also be released to NGOs/SCOs”.**

UNICEF Pacific

**Table 20: Pre-trial release in practice**

Region	Scale unknown	Hardly used	Rather often or often
<b>12 East Asian countries</b>	3 China, Indonesia, Philippines	6 Cambodia, Lao PDR, Mongolia, Myanmar, Papua New Guinea, Viet Nam	2 Malaysia, Thailand
<b>14 Pacific Island countries</b>		2 Kiribati, Solomon Islands	12 Cook Islands, Fiji, Marshal Islands, Micronesia, Nauru, Niue, Palau, Samoa, Tokelau, Tonga, Tuvalu, Vanuatu (100%)
<b>East Asian and Pacific region</b>	<b>3</b>	<b>8</b>	<b>14</b>

All East Asian and Pacific countries release children in conflict with the law to their parents/guardians at the pre-trial level. In the East Asian and Pacific region, children can be released to family members in Lao PDR, Malaysia, Mongolia, Myanmar, Papua New Guinea, Samoa, Solomon Islands, Vanuatu and other Pacific Island countries (17 countries). Releasing children to trustworthy or respected adults is not uncommon in the East Asian and Pacific countries. It happens in Lao PDR (village authorities), Viet Nam (respected person), Fiji (community leader), Kiribati (religious community member), Samoa (community leader), Solomon Islands (church members and community leaders), Vanuatu (community leaders) and other Pacific Island countries (community leaders). Some East Asian and Pacific countries release children into the supervision of CSOs or FBOs at the pre-trial stage (Fiji, Marshal Islands, Solomon Islands and Thailand).

**“Smaller Pacific Island States rely very much on family and the extended family to resolve issues of juvenile offending and solutions to keep the child/young person in productive positive outcomes, unlike the more developed legal systems in Fiji, Samoa, etc. that have specialized juvenile justice or youth courts, and alternatives to detention using restorative justice approaches”.**

UNICEF Pacific

## Examples of promising/good practices of pre-trial alternatives

The 14 East Asian and Pacific countries that use pre-trial alternatives ‘rather often’ or ‘often’ have developed some promising/good practices. Three such practices are discussed in this section from Malaysia, Fiji and Vanuatu, one case study from Fiji and two additional promising/good practices in Thailand and Samoa.

- ✓ **Release on bail in Malaysia:** There is a presumption under the Child Act in favour of immediate bail of children for all but the most serious crimes. As a general rule children should be released on their first appearance in court. To be released on bail, children require a parent/guardian or relative to sign a bond and deposit a cash amount with the court as security. The amount varies depending on the seriousness of the crime and the parents’/guardians’ ability to pay. Monitoring mechanisms for released children at the pre-trial stage do not exist.
- ✓ **Pre-trial release of reoffenders in Fiji:** The Juvenile Act provides the release of arrested children on bail. The police officer in charge of the police station shall release the child on recognizance, with or without sureties. Children charged with murder or other grave crimes cannot be released at the pre-trial level, if it is necessary in the interests of the child to remove him/her from association with any undesirable person or if the police officer has reason to believe that the child’s release will defeat the ends of justice. Also, reoffenders are released in actual practice. Children are not only released to their parents/guardian, but also to family members, community leaders, other trustworthy adults as well as to CSOs and NGOs. Release conditions that are imposed on children are, among others, living in a particular place, regularly reporting to a police station, compliance with a curfew and close supervision by a parent/guardian and extended family members.
- ✓ **Release of all children in Vanuatu:** Alternatives to pre-trial detention are applied in all cases of children in conflict with the law, because there are no pre-trial detention facilities in Vanuatu. It seems that the police decide whether or not the case should be handled by the chief, which implies diversion, or the court, which implies that the child is released and may await his/her trial in the community. The decision as to whether a case should be handled by the chief also depends on the complainant. Police have a ‘no drop policy’ and if a complainant insists that a case should be dealt through the formal law, the police will respect such a decision and act on such an instruction. During the pre-trial stage, the responsibility for the child lies with the parents/guardians and community leaders and they report to the police.



## A case study on pre-trial release

The following case study illustrates a good practice of pre-trial release and shows that in Fiji children without parental/family care can await their trial in the community if community leaders are willing to supervise the child.

### **Box 5: Case study on pre-trial release to a community leader in Fiji**

A 15-year-old boy trespassed onto Ministry of Agriculture property and released a million dollars of aqua culture fish being bred the ponds. He explained to the police officer in charge that said he felt sorry for the fish cooped up in the pond and thought they should be allowed to swim freely in the river and down to the sea. As there is a presumption for bail for all juveniles in conflict with the law in the Juvenile Act, the boy was allowed to await his trial in his community. He was released into the custody of his parents under supervision of the community leader who also taught at the Boys Home woodwork and metal work. The curfew imposed implied that the boy had to stay at home from 6PM to 7AM. Immediately after school he had to report to the community leader.

UNICEF Fiji

## Minimizing time spent in pre-trial detention in the region

### The concept of measures to minimize time in pre-trial detention

If detention at the pre-charge, pre-trial and trial stages is unavoidable, the time children spend in detention should be limited to the shortest appropriate period of time (article 37(b) of the CRC). “The law should clearly state the conditions that are required to determine whether to place or keep a child in pre-trial detention, in particular to ensure his/her appearance at the court proceedings, and whether he/she is an immediate danger to himself/herself or others. The duration of pre-trial detention should be limited by law and be subject to regular review” (paragraph 80 of CRC General Comment No.10). Children’s circumstances may change while in pre-trial detention and may enable their release or enable diversion. For example, the child’s identity may have been established, the child’s parents or family member(s) may have been located, or a responsible adult or CBO willing to assist may have been found. “The decision to initiate a formal criminal law procedure does not necessarily mean that this procedure must be completed with a formal court sentence for a child. ... The Committee wishes to emphasize that the competent authorities – in most States the office of the public prosecutor – should continuously explore the possibilities of alternatives to a court conviction. In other words, efforts to achieve an appropriate conclusion of the case by offering measures like the ones mentioned above in section B [‘interventions/diversion’] should continue. The nature and duration of these measures offered by the prosecution may be more demanding, and legal or other appropriate assistance for the child is then necessary. The performance of such a measure should be presented to the child as a way to suspend the formal criminal/juvenile law procedure, which will be terminated if the measure has been carried out in a satisfactory manner” (paragraph 68 of CRC General Comment No.10). Children may be released from pre-trial detention both with and without certain conditions.

## Measures to minimize time in pre-trial detention in national law

The vast majority of East Asian and Pacific countries incorporate provisions on release from pre-trial detention in their general laws (10 countries) and child-specific laws (10 countries). Cambodia, Malaysia, Myanmar, Kiribati, Samoa and Vanuatu are the only countries that do not have legally regulated release from pre-trial detention.

**“Children who are detained and pending trial may be released on bail or recognizance as provided for the Juvenile Justice and Welfare Act. In all other cases, and whenever possible, detention pending trial may be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home”.**

JJWC – the Philippines

**Table 21: Measures to minimize time in pre-trial detention in national law**

Region	Not in any law	General law	Child-specific law <sup>20</sup>
<b>12 East Asian countries</b>	3 Cambodia, Malaysia, Myanmar	4 China, Mongolia, Timor-Leste, Viet Nam	5 Indonesia, Lao PDR, Papua New Guinea, Philippines, Thailand
<b>14 Pacific Island countries</b>	3 Kiribati, Samoa, Vanuatu	6 Nauru, Niue, Palau, Tokelau, Tonga, Tuvalu	5 Cook Islands, Fiji, Marshal Islands, Micronesia, Solomon Islands
<b>East Asian and Pacific region</b>	<b>6</b>	<b>10</b>	<b>10</b>

## Regular review of children’s pre-trial detention in practice

The majority of East Asian and Pacific countries regularly reviews children’s pre-trial detention, i.e., five East Asian countries and 11 Pacific Island countries. In Cambodia, Malaysia, Mongolia, Myanmar, Timor-Leste, Viet Nam, Kiribati and Solomon Islands, children run the risk of remaining in pre-trial detention for long periods of time without review of their placement (this information is not available for the Philippines). Vanuatu has not been incorporated in the overview as there are no pre-trial detention facilities in the country. Only in Cambodia and Timor-Leste is release from pre-trial detention not applied in any of cases of children in conflict with the law.

<sup>20</sup> East Asian and Pacific countries that have both child-specific and general legislation regulating pre-trial detention are included in the column ‘child-specific law’.

**“Children’s pre-trial/trial detention is not regularly reviewed. Children remain for lengthy periods under police custody, i.e., either in police stations or at the police officer’s home in order to avoid the financial costs of transportation to temporary care stations”.**

UNICEF Myanmar

**Table 22: Instances of the regular review of children’s pre-trial detention**

Region	No regular review	Regular review
<b>12 East Asian countries</b>	6 Cambodia, Malaysia, Mongolia, Myanmar, Timor-Leste, Viet Nam	5 China (by the Procuratorate), Indonesia (by parole/correction officer), Lao PDR (by the prosecutor), Papua New Guinea (by juvenile justice officer or volunteers), Thailand (by Juvenile Observation and Protection Centre)
<b>14 Pacific Island countries</b>	2 Kiribati, Solomon Islands	11 Fiji (by the court), Samoa (by police and probation), Cook Islands, Marshal Islands, Micronesia, Nauru, Niue, Palau, Tokelau, Tonga, Tuvalu (all 9 Pacific Island countries by court)
<b>East Asian and Pacific region</b>	<b>8</b>	<b>16</b>

Twenty-two East Asian and Pacific countries still use opportunities to release children when they are deprived of their liberty at the pre-trial stage. The majority of countries ‘hardly’ release children from pre-trial detention (15 countries), while children in Indonesia, Lao PDR, Fiji and Kiribati are ‘rather often’ or ‘often’ released from pre-trial detention. The Philippines, Viet Nam and Samoa do not have sufficient information on minimizing the time children in conflict with the law spend in pre-trial detention. Cambodia, Myanmar and Timor-Leste do not release children in conflict with the law when they are in pre-trial detention and Vanuatu has no detention centres from where children can be released.

**Table 23: Release from pre-trial detention in practice**

Region	Scale unknown	Hardly used	Rather often or often
<b>12 East Asian countries</b>	3 China, Philippines, Viet Nam	4 Malaysia, Mongolia, Papua New Guinea, Thailand	2 Indonesia, Lao PDR
<b>14 Pacific Island countries</b>	1 Samoa	10 Cook Islands, Marshal Islands, Micronesia, Nauru, Niue, Palau, Tokelau, Tonga, Tuvalu, Solomon Islands	2 Fiji, Kiribati
<b>East Asian and Pacific region</b>	<b>3</b>	<b>15</b>	<b>4</b>

## A case study on minimizing time in pre-trial detention

The case study from Mongolia highlights a good practice of how to minimize the time children have to spend in pre-trial detention. The example demonstrates how the Mongolian police release children from pre-trial detention by diverting them away from judicial proceedings.

## Alternatives to post-trial detention in the region

### The concept of alternatives to post-trial detention

Alternatives to post-trial detention (also called 'non-custodial sentences' and 'alternative sentences') are alternatives at the post-trial stage (or 'disposition stage' and 'sentencing stage') that are imposed on children who are being formally processed through the criminal (juvenile) justice system. They 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.

#### **Box 6: Case study on the release of a reoffender from pre-trial detention in Mongolia**

Uuganaa, a 17-year-old boy, lives with his parents and two siblings in Bayangol district. He is a second year student majoring in drawing at Ulaanbaatar College. In 2008, he and his friends got into an argument with another group of boys. Uuganaa later encountered one of these boys and robbed him of his cell phone and cash. At first his future prospects appeared grim when police officers detained Uuganaa for two weeks in a detention centre before commencing a three-month long investigation.

Fortunately, a JJC coordinator intervened and helped reset the course of Uuganaa's life. At the time Uuganaa was angry, hot tempered, impudent and made poor choices with friends. He had no interest in studying and spent a lot of time after school drinking alcohol and hanging around with his friends. From the time he was 10 years old, his parents left him behind with two younger sisters and went to work. For nearly seven years they worked far away from home. After his grandfather passed away, Uuganaa assumed responsibility for his two younger siblings and the household. He felt tremendous pressure and felt very lost. Uuganaa gradually began to spend more time with friends, becoming more and more short-tempered, he often ignored the criticism and warnings of parents, friends and relatives. At 15 he dropped out of school. His arrest was the impetus for fostering closer relations with his parents and one childhood friend he has known since they were toddlers.

After discussions with the JJC coordinator and police inspector, Uuganaa's parents became more involved and attended parenting courses. Slowly, they recognized the impact of their hands-off parenting style and work schedule on their children's lives. Uuganaa's only friend has always tried to guide him from the beginning of his rebellious period. The friend regularly accompanies him to the JJC coordinator's office. His unequivocal support has been instrumental in motivating Uuganaa to stay on the right path.

Uuganaa learned boundaries, social norms and appropriate behaviour. With support from the JJC coordinator and JJC social worker, the police learned and enforced the rights of children in conflict with the law. The police recognized the unique role they could play as authority figures to steer Uuganaa in the right direction. At the outset, the JJC coordinator explained to Uuganaa that he had two options: (i) to continue schooling in order to become a successful businessman and renowned painter and set a good example for his siblings or (ii) to stay in the criminal sphere and eventually end up in prison. Uuganaa chose the first option.

The JJC coordinator and social worker offered significant support by drawing up an individualized case management plan including various trainings on life skills, legal knowledge building, team-building activities and sports. He met regularly with the JJC coordinator during support sessions. As the social worker helped him to better understand and negotiate his environment, he became more confident of his judgment and decisions. What he found particularly helpful and insightful was writing an essay about his life. The process of writing and rewriting essays after meeting with the JJC social worker encouraged Uuganaa to reflect on his actions. He became able to take a step outside of himself and more objectively analyse his behaviour. His self-awareness and empathy grew. Uuganaa started to recognize that his anger, impatience and lack of self-confidence made him more vulnerable to engaging in delinquent behaviour. With the support of JJC, he entered college and he now dreams of being an architect. He hopes to have a family with two children and aspires to be a good father.

UNICEF Mongolia



**Figure 5: The differences between diversion and alternatives to post-trial detention**

<p><b>Diversion:</b></p> <ul style="list-style-type: none"> <li>• Requires the written consent of the child and their parents/guardians</li> <li>• It usually does not result in a criminal record</li> <li>• There are no trial proceedings (if the child complies with the diversion conditions)</li> </ul>	<p><b>Alternatives to post-trial detention:</b></p> <ul style="list-style-type: none"> <li>• It can be imposed by the police or prosecutor without the consent of the child and their parents/guardians</li> <li>• It usually results in a criminal record</li> <li>• This is also called ‘alternative sentences’ and ‘non-custodial sentences’</li> </ul>
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The CRC Committee states that “in the disposition phase of the proceedings, deprivation of liberty must be used only as a measure of last resort and for the shortest appropriate period of time (article 37(b) of the CRC); this means that States parties should have in place a well-trained probation service to allow for the maximum and effective use of measures such as guidance and supervision orders, probation, community monitoring or day report centres, and the possibility of early release from detention” (paragraph 28 of CRC General Comment No.10). The laws must provide the court/judge, or other competent, independent and impartial authority or judicial body, with a “wide variety of possible alternatives to institutional care and deprivation of liberty” (paragraph 70 of CRC General Comment No.10) to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence. Annex 4 provides an example of a programme designed for children who come into conflict with the law through serious offences in New Zealand.

Concrete examples of alternatives to post-trial detention that are used in various countries worldwide are: conditional discharge without conviction, judicial reprimand, fine, probation order, attendance order, supervision or guidance order, day reporting centre, community service or work order, counselling or therapeutic treatment order, compensation or restitution order, curfew order, conditional suspended sentence, and electronic tagging. Fines used as an alternative to post-trial detention should not be encouraged as they discriminate against poor children, children without parental support and children living and working on the street. Moreover, fines are not considered to have rehabilitative value. If fines are used, the amount should take into account the child’s ability to pay, and the law should not allow the imprisonment of a child for the non-payment of a fine. [UNICEF Toolkit]

As mentioned before, the residential placement of children in conflict with the law in a group home or other open care, treatment or educational institution may be appropriate where the child’s living arrangements are thought to have contributed to his/her offending behaviour, such as children without parental/family care who are not part of the continuum of alternative measures used within this regional study. Measures amounting to forced labour, corporal punishment, inhuman and degrading treatment, as well as any other measures contrary to the CRC, should be explicitly prohibited.

**Alternatives to post trial detention in national law**

All 26 East Asian and Pacific countries have incorporated provisions on alternatives to post-trial detention in their general laws (12 countries) or child-specific laws (15 countries). The CRC Committee does not provide a concrete indication on what may be considered as possible alternatives to institutional care and deprivation of liberty regulated by their laws as promoted. However, 10 East Asian and Pacific countries seem to have a variety of alternatives to post-trial detention regulated by their laws, i.e., Papua New Guinea (seven measures), Viet Nam (three administrative measures and four criminal measures), Fiji (seven measures), Kiribati (seven measures), Samoa (seven measures), Solomon Islands (seven measures), Malaysia (six measures), Indonesia (five measures), Mongolia (four measures) and Myanmar (four measures). Cambodia’s new Juvenile Justice Law (2016) also incorporates some alternatives to post-trial detention.



**Table 24: Alternatives to post-trial detention in national law**

Region	Not in any law	General law	Child-specific law <sup>21</sup>
<b>12 East Asian countries</b>	0	5 Cambodia, China, Mongolia, Timor-Leste, Viet Nam	8 Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Papua New Guinea, Philippines, Thailand
<b>14 Pacific Island countries</b>	0	7 Nauru, Niue, Palau, Tokelau, Tonga, Tuvalu, Vanuatu	7 Cook Islands, Fiji, Kiribati, Marshal Islands, Micronesia, Samoa, Solomon Islands
<b>East Asian and Pacific region</b>	<b>0</b>	<b>12</b>	<b>15</b>

## Alternatives to post-trial detention in practice

Twenty East Asian and Pacific countries apply alternatives to post-trial detention for children in conflict with the law ‘rather often’ or ‘often’, i.e., seven East Asian and 13 Pacific Island countries. In Viet Nam, non-custodial sentences are often used in the administrative system, but not in the criminal system. Alternatives to post-trial detention are used in five East Asian and Pacific countries, but on a very modest scale, i.e., in four East Asian countries and one Pacific Island country. Indonesia and the Philippines do not know to what extent alternatives to post-trial detention are used in actual practice. Probation (19 countries), community service (14 countries) and participation in a specific programme (12 countries) are sentences that are often imposed on children in conflict with the law in actual practice in East Asian and Pacific countries.

**“Children in conflict with the law are rarely sentenced to non-custodial sentences. There are no formal programmes available to support or implement and monitor non-custodial sentences, and many justice officials as well as the public are sceptical about alternatives to post-trial detention”.**

UNICEF Cambodia

<sup>21</sup> East Asian and Pacific countries that have both child-specific and general legislation regulating post-trial detention are included in the column ‘child-specific law’.

**“There is no such thing in Thailand as a wraparound service for juveniles should they be released to their homes and communities. There are the probation services, but, at the present time, the Department of Probation, which is responsible for the probation work for both adults and children, is overworked and understaffed. Thus, the court tends to send the juveniles that only need child welfare to the Detention or Juvenile Training Center at a young age and for a long period of time”.**

RWI – Thailand

**Table 25: Alternatives to post-trial detention in practice**

Region	Scale unknown	Hardly used	Rather often or often
<b>12 East Asian countries</b>	2 Indonesia, Philippines	4 Cambodia, Lao PDR, Timor-Leste, Viet Nam (criminal system)	7 China, Malaysia, Mongolia, Myanmar, Papua New Guinea, Thailand, Viet Nam (administrative system)
<b>14 Pacific Island countries</b>	0	1 Solomon Islands	13 Cook Islands, Fiji, Kiribati, Marshal Islands, Micronesia, Nauru, Niue, Palau, Tokelau, Tonga, Tuvalu, Samoa, Vanuatu (100%)
<b>East Asian and Pacific region</b>	<b>2</b>	<b>5</b>	<b>20</b>

## Social inquiry report as basis for alternatives to post-trial detention in practice

Beijing Rule 17 deals with the ‘guiding principles in adjudication and disposition’ and states, among other things, that “the reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society” and “the well-being of the juvenile shall be the guiding factor in the consideration of her/his case” (Beijing Rule 17.1(a)(d)). In order to support a tailored approach to sentencing, the Beijing Rules require that the social inquiry reports are “prepared in all cases except those involving minor offences” (Beijing Rule 16.1). A social inquiry report is an assessment of the child’s current and past social circumstances relevant to understanding why he/she committed the offence(s) and his/her needs and motivation for reintegration, rehabilitation, restoration and other alternative measures. A social inquiry report, also called a ‘pre-sentencing report’ or ‘pre-disposition report’, is often a pre-requisite to enable judges to use their discretion in disposing of children’s cases in the most appropriate way. Some jurisdictions use special social services or personnel attached to the court or board. Other personnel, including probation officers, may serve the same function. Annex 3 provides additional information on social inquiry reports from countries outside the East Asian and Pacific region.

In eight countries, it was found that social inquiry reports are requested by the courts in order to decide on the most appropriate measure for children in conflict with the law. In Papua New Guinea, courts receive a checklist completed by the juvenile justice officer, as well as a presentencing report, instead of a social inquiry report. Information from Mongolia and Timor-Leste is not available. In the Pacific Island region, social inquiry reports are not requested systematically. In Fiji, Cook Islands, Marshal Islands, Micronesia, Nauru, Niue, Palau, Tokelau, Tonga, Tuvalu and Vanuatu it depends on the adjudicator whether a social inquiry report is requested from the Social Welfare Department. Only in Kiribati and Samoa do courts systematically request social inquiry reports (there was no information available for Samoa). The overview only shows whether or not a social inquiry report has been requested by the court, and it is assumed that the requested reports are used by the courts. There is no information about the quality of the reports and the training that social workers/probation officers have received in order to prepare quality reports.

**Table 26: Alternatives to post-trial detention based on social inquiry reports**

Region	No report requested	Report requested
<b>12 East Asian countries</b>	2 Lao PDR, Viet Nam	8 Cambodia (social worker), China (court/appointed social organization/professional), Indonesia (parole/correction officers), Malaysia (probation), Myanmar (probation officer), Papua New Guinea (juvenile justice officer), Philippines (social worker/multidisciplinary team), Thailand (Juvenile Observation and Protection Center)
<b>14 Pacific Island countries</b>	0	2 Kiribati (social welfare/police), Samoa (probation office)
<b>East Asian and Pacific region</b>	<b>2</b>	<b>10</b>

## Examples of promising/good practices of alternatives to post-trial detention

East Asian and Pacific countries have developed a number of promising/good practices of alternatives to post-trial detention for children in conflict with the law. Six such practices are discussed in this section from Malaysia, Viet Nam, Fiji, Kiribati, Vanuatu and other Pacific countries, one case study and good practice from Thailand and two additional promising/good practices from Papua New Guinea and Samoa.

- ✓ **Interactive workshop in Malaysia:** The Child Act incorporates a variety of alternatives to post-trial detention, i.e., admonish and discharge, good behaviour bond (discharge the child with a bond to be of good behaviour and to comply with conditions specified by the court), custody of fit person (the child is placed in the care of a relative or other fit and proper person for a specified period and with conditions specified by the court), fine (the court may order that the child's parents/guardians pay the fine, rather than the child personally), compensation of costs and probation (order the child to be placed under the supervision of a probation officer for a period of between 12 months and three years). In addition to these alternatives, the court may require the child's parents/guardian to execute a bond for the child's good behaviour with or without security. Overall the courts seem to favour non-custodial options, with 77 per cent of children being subject to alternatives such as admonishment, bond of good behaviour, care to a parent or fit person and fines. Probation is not used often and does not involve structured support. The only structured community-based rehabilitation programme available for children in conflict with the law is the 'interactive workshop', which involves individual and family counselling, parenting workshops and a family camp. The main objective of the programmes is to strengthen parenting skills and improve the parent-child relationship.

- ✓ **Community-based education in Viet Nam:** Under the administrative system, community-based education is the most often used alternative to post-trial detention. The child is placed under the supervision and education of the local communes, wards, district administration or social organizations, and they must fulfil obligations for study, labour and rehabilitation. This allows sentenced children to remain with their families. Because commune level education is a non-custodial measure, the president of a local People's Committee has the authority to decide whether or not a child must participate. Before deciding the matter, the law requires that he/she organize a meeting with the local police chiefs, legal representatives, representatives of local mass organizations and the families of those who may be required to participate in the education. Within days of this meeting, the president issues a decision. The agencies charged with carrying out the education meet with the child to organize and implement a plan of action within a set time limit. Once a month these organizations must report to the local People's Committee on the progress of the child. When the child has finished the duration of his/her sentence, the People's Committee president issues a certificate.
  
- ✓ **Community work in Fiji:** The Juvenile Act incorporates a variety of potential alternatives to post-trial detention, i.e., discharge, payment of a fine, compensation or costs, ordering the parent/guardian to pay a fine, compensation or costs, ordering the parent/guardian to give security for the good behaviour of the child, care order, probation order or any other lawful measure. The phrase 'any other lawful measure' allows the court to impose conditions that are productive for the child, family and community. In practice, probation orders and community service orders are the most often imposed options. The community work scheme gives children in conflict with the law who are unable to pay fines a chance to do community work as a non-custodial alternative to sentencing. This programme is led by the Ministry of Social Welfare in partnership with a range of organizations which provide placements for community works. A maximum of 24 hours of community work can be ordered and it should be carried out by the child after school hours. In rural areas, this alternative to post-trial detention is often applied because, among other reasons, community leaders are very cooperative and community work is relatively easy to manage and supervise. Fines are also ordered by the court, usually to be paid by the child's parents/guardian, but in combination with conditions for the child him/herself such as a curfew, probation, etc.
  
- ✓ **Variety of alternatives in Kiribati:** The Juvenile Justice Act incorporates a variety of alternatives to post-trial detention, i.e., discharging the child on the entering into a recognizance with or without sureties, committing the juvenile to the care of a relative or other fit person, ordering the child to pay a fine, damages or costs, ordering the parent/guardian to pay a fine, damages or costs, ordering the parent/guardian to give security for his good behaviour, directing that the child be released on entering into a bond to appear and receive their sentence when called upon and dealing with the case in any other manner. Community service, counselling, curfew, participation in a life skills programme and Alcohol Awareness and Family Recovery Programme (residential) are sentencing options that are used in actual practice.
  
- ✓ **Involvement of community leaders in probation in Vanuatu:** Alternatives to post-trial detention are applied in all cases of children in conflict with the law that reach the court stage, because there are no post-trial detention facilities in the country where children can be deprived of their liberty. Probation officers prepare a social inquiry report/pre-sentencing report for the court in order to decide on the most appropriate form of probation and which probation conditions the child has to comply with. The most common conditions set out by probation officers that children have to comply with involve community service hours and participation in a life skills programme such as cooking and sewing. Compensation of the victim(s) is in principle not one of the probation conditions, because the compensation is usually dealt with in the community, by community leaders, before the case goes to court. The probation officer monitors the child's compliance with the probation conditions and gets support from community leaders who are appointed as Community Justice Supervisors.

- ✓ **Conditional discharge in Cook Islands, Marshal Islands, Micronesia, Nauru, Niue, Palau, Tokelau, Tonga and Tuvalu:** There are many different alternatives to post-trial detention used in the Pacific Island countries. Probation is the most often imposed measure. In all nine Pacific Island countries, children are also conditionally discharged. They are not convicted and will not have a criminal record if they comply with certain conditions. In Cook Islands, for example, children are almost never sentenced to deprivation of liberty, but are instead send to a 'strict supervision programme'. The programme implies that the child is on curfew, has to attend school, is not allowed to associate with particular peers and is strictly supervised by respected elders in the community. Palau has a specific community-based programme where children participate in constructive activities, such as sports and other activities they are interested in. The High Courts try very hard to keep children out of prison and prefer supervision by a judicial focal person.

## A case study of alternatives to post-trial detention

One case study was collected that illustrates a good practice of an alternative measure at the post-trial stage, i.e., a short-term residential programme for children in the post-trial stage in Thailand.

### **Box 7: Case study on the short-term programme in a Buddhist temple as an alternative to post-trial detention in Thailand**

<b>Project:</b>	Juvenile Ordination Program.
<b>Rationale:</b>	To raise moral awareness, together with the provision of basic legal knowledge and vocational training.
<b>Expected result:</b>	Using religion as a means for children and juveniles to improve the development of their morals and consciousness. They will be provided with legal knowledge to prevent recidivism as well as vocational training for career development. The added value of the programme is to respect and honour His Majesty the King.
<b>Activities:</b>	<ol style="list-style-type: none"> <li>1. Ordination of children and juveniles at Yannawa Temple in Bangkok with a practical field activity.</li> <li>2. Coordination with Vocational Commission, Ministry of Education to offer five days of vocational training in the last days of ordination.</li> </ol>
<b>Target population:</b>	Children and juveniles who enter the justice system at the pre- and post- trial from the Central Juvenile and Family Court who are Buddhist and ready to participate in the programme.
<b>Timeframe:</b>	Twice a year at Yannawa Temple, for a 15-day ordination period.
<b>Evaluation:</b>	Individual evaluation by monk mentors, programme monitoring, evaluation and follow-up after ordination by the team of associate judges.
<b>Project Chief:</b>	Mr. Sutthiporn Mukchokwattana, Associate Judge of the Central Juvenile and Family Court
<b>Project manager:</b>	Deputy Chief of Associate Judges, Quality of Living Development Division

Central Juvenile and Family Court – Activities on prevention, correction, treatment and rehabilitation] Video of similar program activities conducted by the Juvenile and Family Court, Ratchaburi province: [www.youtube.com/watch?v=jOK1vcJJwEs](http://www.youtube.com/watch?v=jOK1vcJJwEs)

## Minimizing time spent in post-trial detention

### The concept of measures to minimize time in post-trial detention

The CRC Committee states that “States parties should have in place a well-trained probation service to allow for the maximum and effective use of measures such as ... and the possibility of early release from detention” (paragraph 28 of CRC General Comment No.10). If detention at the post-trial stage is unavoidable, the time children spend in detention should be limited to the shortest appropriate period of time (article 37(b) of the CRC), for example through giving credit to time spent in pre-trial/trial detention, combined detention sentence and probation, and early (conditional) release from post-trial detention. These measures are not full alternatives, because the child is deprived of his/her liberty for some time. Within the regional study, the measure ‘early (conditional) release from post-trial detention’ has been further explored.

### Early (conditional) release from post-trial detention in national law

Almost all East Asian and Pacific countries regulate the early (conditional) release of children from post-trial detention through their general laws (10 countries) and child-specific laws (14 countries). Only Samoa and Vanuatu do not have any legal provision on early (conditional) release.

**Table 27: Early (conditional) release from post-trial detention in national law**

Region	Not in any law	General law	Child-specific law
<b>12 East Asian countries</b>	0	4 China, Mongolia, Timor-Leste, Viet Nam	8 Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Papua New Guinea, Philippines, Thailand
<b>14 Pacific Island countries</b>	2 Samoa, Vanuatu	6 Nauru, Niue, Palau, Tokelau, Tonga, Tuvalu	6 Cook Islands, Fiji, Kiribati, Marshal Islands, Micronesia, Solomon Islands
<b>East Asian and Pacific region</b>	<b>2</b>	<b>10</b>	<b>14</b>

### Regular review of children’s post-trial detention in practice

In six East Asian and Pacific countries children may risk to stay in post-trial detention for the entire term of their detention sentence, because their detention is not regularly reviewed. This is the case in five East Asian countries and one Pacific Island country. In the other 18 East Asian and Pacific countries children’s detention sentence is regularly reviewed by a court or other authority. Myanmar is mentioned in both categories, because it depends on where the child is deprived of his/her liberty. There is no information on a regular review for the Philippines and Timor-Leste. For Vanuatu the measure is not applicable, because there are no post-trial detention facilities for children in conflict with the law.

<sup>22</sup> East Asian and Pacific countries that have both child-specific and general legislation regulating post-trial detention, are included in the column ‘child-specific law’.



**“If convicted children are deprived of their liberty in training schools for a minimum term of two years or till the child attains the age of 18 years as a maximum term (Child Law 1993, article 47(d)), their detention is reviewed after one year from sentencing by the Department of Social Welfare and Juvenile Court. When children are placed in prisons (for more serious offences, usually older children) the regular review mechanism does not apply”.**

UNICEF Myanmar

**Table 28: Instances of the regular review of children’s post-trial detention**

Region	No regular review	Regular review
<b>12 East Asian countries</b>	5 Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar	6 China (by justice bureaus), Mongolia, Myanmar, Papua New Guinea (by court), Thailand (by court), Viet Nam (by court)
<b>14 Pacific Island countries</b>	1 Kiribati	12 Cook Islands, Fiji (by court), Marshal Islands, Micronesia, Nauru, Niue, Palau, Tokelau, Tonga, Tuvalu (by court), Samoa (by probation officer), Solomon Islands (by prison authorities)
<b>East Asian and Pacific region</b>	<b>6</b>	<b>18</b>

## Early (conditional) release from post-trial detention in practice

In 16 East Asian and Pacific countries children are rather often or often early (conditionally) released from post-trial detention, i.e., in six East Asian and 10 Pacific Island countries. Indonesia, the Philippines and Kiribati do not know the scale of early (conditional) release in their respective countries. In Samoa this measure is not used and in Vanuatu there are no closed facilities from where children can be released. In China, early release from post-trial detention is used quite rarely, usually because children in conflict with the law have to be over 16 years old to enter the criminal justice system.

**Table 29: Early (conditional) release from post-trial detention in practice**

Region	Scale unknown	Hardly used	Rather often or often
<b>12 East Asian countries</b>	2 Indonesia, Philippines	4 Cambodia (very rarely), China, Malaysia, Timor-Leste (rarely)	6 Lao PDR, Mongolia, Myanmar, Papua New Guinea, Thailand, Viet Nam
<b>14 Pacific Island countries</b>	1 Kiribati	1 Solomon Islands	10 Cook Islands, Fiji, Marshal Islands, Micronesia, Nauru, Niue, Palau, Tokelau, Tonga, Tuvalu
<b>East Asian and Pacific region</b>	<b>3</b>	<b>5</b>	<b>16</b>

## Monitoring of children released from post-trial detention

The vast majority of the East Asian and Pacific countries monitor children who are (conditionally) released from post-trial detention facilities and other closed institutions. In total, seven East Asian countries and 12 Pacific Island countries provide some form of monitoring. In Cambodia and Lao PDR children released from post-trial facilities are not monitored or supported. There is no information on Mongolia, the Philippines and Timor-Leste in this regard. In Samoa, boys who are sentenced to imprisonment stay in the facility until the end of their six months to one year term, and are not (conditionally) released early. In Vanuatu there are no post-trial detention facilities from where children can be released.

**Table 30: Monitoring of children released from post-trial detention**

Region	No monitoring	Monitoring
<b>12 East Asian countries</b>	2 Cambodia, Lao PDR	7 China, Indonesia, Malaysia, Myanmar, Papua New Guinea, Thailand, Viet Nam
<b>14 Pacific Island countries</b>	0	12 Cook Islands, Fiji, Marshal Islands, Micronesia, Nauru, Niue, Palau, Tokelau, Tonga, Tuvalu, Kiribati, Solomon Islands
<b>East Asian and Pacific region</b>	<b>2</b>	<b>19</b>

## Practical examples of early (conditional) release from post-trial detention

Practical examples of promising/good practices or case studies that show an effective programme for the early (conditional) release of children from post-trial detention were not found.

# Restorative juvenile justice approaches

## The concept of restorative juvenile justice

A restorative justice approach refers to “any process in which the child in conflict with the law, his/her parents/guardians, victim(s) and, if appropriate, any other individuals or community members affected by the offence participate together actively in the resolution of matters arising from the offence, generally with the help of a facilitator”. In the East Asian and Pacific region, many terms are used to refer to restorative justice approaches, such as reconciliation, mediation, conferencing, family conferencing, community conferencing, compensation and settlement. The CRC Committee states that “protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders” (paragraph 10 of CRC General Comment No.10).

**Figure 6: Differences between diversion and restorative juvenile justice approaches**

<b>Diversion:</b>	<b>Restorative juvenile justice:</b>
<ul style="list-style-type: none"> <li>• Only applicable to children in conflict with the law</li> <li>• It can only be applied until the first trial hearing</li> <li>• Does not include elements of restorative juvenile justice</li> <li>• Does not necessarily involve the victim(s) and other persons who are affected by the offence</li> </ul>	<ul style="list-style-type: none"> <li>• Applicable to children in contact with the law</li> <li>• Can be applied at any stage of the juvenile justice process, including the post-sentencing stage and in community/village mechanisms</li> <li>• Holds the child responsible for the reparation of harm caused by the offence</li> <li>• It involves the child victim(s) in setting the conditions of the agreement</li> <li>• It involved the community in setting the conditions as well as in monitoring and supporting the child’s compliance with the agreement</li> </ul>

In contrast with diversion and alternatives to detention, restorative juvenile justice approaches may be applied at any stage of the justice process and may inspire decision making at the community, police, prosecution and court levels as well as inside juvenile detention facilities.

The ‘UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters’, which is a general (not a child-specific) international instrument, lists the procedural safeguards and principles that have to be respected when applying a restorative justice approach in (child) offenders cases (principles 12 to 17):

- ✓ The (child) offender and victim(s) have the right to consult with legal counsel concerning the restorative process.
- ✓ Child offenders have the right to the assistance of a parent or guardian.
- ✓ Before agreeing to participate in a restorative justice process, the parties should be fully informed of their rights, the nature of the process and the possible consequences of their decision.
- ✓ Neither the victim(s) nor the (child) offender should be coerced, or induced by unfair means, to participate in a restorative justice process or to accept restorative outcomes. Their informed consent is required. Child offenders may need special advice and assistance before being able to form a valid and informed consent.
- ✓ Participation of an (child) offender in a restorative justice process should not be used as evidence of admission of guilt in subsequent legal proceedings.
- ✓ Agreements between the parties should be arrived at voluntarily and should contain only reasonable and proportionate conditions.

- ✓ Discussions in restorative justice processes that are not conducted in public, like some non-formal restorative processes, should be confidential and should not be disclosed subsequently, except with the agreement of the parties or as required by national law. Children's privacy and the confidentiality of proceedings involving children should be protected.
- ✓ The agreement between the parties should, if it is not a diversion agreement, be judicially supervised or incorporated into judicial decisions or judgements. In most systems the outcome can be appealed by either the (child) offender or the prosecution.
- ✓ Failure to reach an agreement between the parties should not be used against the (child) offender in subsequent criminal (juvenile) justice proceedings.
- ✓ Failure to implement the agreement made in the course of a restorative justice process (other than a judicial decision or judgement) should not be used as justification for a more severe sentence in subsequent criminal (juvenile) justice proceedings.

The two main restorative juvenile justice approaches are mediation and conferencing:<sup>23</sup>

- ✓ Mediation, also called 'victim offender mediation' (VOM), is a process that brings the victim(s) of an offence together with the child offender for mediation, provided that the child offender has admitted guilt to the offence, without pressure, and that both parties agree to take part in the process. A trained mediator/facilitator assists the parties in resolving the conflict/consequences of the crime and to reach a solution acceptable to all. Mediation can be operated by both governmental agencies and NGOs. Mediation can be a diversionary measure, but also a pre-sentencing process leading to sentencing recommendations to the court. Usually, the mediator/facilitator meets with both parties in advance of a face-to-face meeting and can help them prepare for that occasion. This is done to ensure, among other things, that the victim(s) is not re-victimized by the encounter with the child offender and that the child offender acknowledges responsibility for the incident and is sincere in wanting to meet the victim(s). [UNICEF Toolkit]
- ✓ Conferencing has a somewhat broader focus than mediation. It involves bringing together the family and friends of both the victim(s) and the child offender, and sometimes other members of the community to participate in a process facilitated by a trained neutral facilitator/convenor. The purpose of the conference is to identify desirable outcomes for the parties, address the consequences of the offence and explore appropriate ways to prevent the offending behaviour from reoccurring. The mandate of conferencing is to confront the child offender with the consequences of the offence and to develop a restorative plan. Because conferencing involves a wider circle of concerned people, including individuals who may be in a position to work with and support the child offender, conferencing is particularly effective as a means of ensuring that the child offender follows through on agreed outcomes. In fact, other participants in the conferencing process frequently have a continuing role to play in monitoring the child offender's future behaviour and ensuring that he/she complies with the conditions they have agreed upon. Conferencing is mainly used as a diversionary measure and pre-sentencing process leading to sentencing recommendations, often managed by NGOs or CSOs with or without financial support from the government. The agency to which the child offender is referred, is also responsible for monitoring his/her compliance with the conditions of the agreement and may or may not function under the direct oversight of law enforcement or justice officials. [UNICEF Toolkit]

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<sup>23</sup> See: Chapter 2 'The Use of Restorative Approaches' (p.19-37) in: UNODC, Handbook on Restorative Justice Programmes, United Nations, New York 2006) for further details of mediation, conferencing and other restorative juvenile justice processes such as conflict resolution, circle sentencing, community justice committees/community restorative board, reparative probation, etc.

Besides these two restorative juvenile justice approaches, the conditions children in conflict with the law have to comply with as part of their diversion measure, pre-trial release, alternatives to post-trial detention and/or post trial-release can be of a restorative nature. Alternative measures may include restorative conditions, such as an apology to the victim(s), writing an apology letter, doing a small job for the victim(s), a certain number of community work hours, etc. Restorative conditions may be decided through a restorative juvenile justice process, such as mediation and conferencing, but also through one or more meetings between the juvenile justice professional(s) or social welfare staff and the child and his/her parents/guardians without the presence and involvement of the victim(s) and/or other parties.

Within the framework of this regional study, 'community service' is considered an indirect restorative justice approach. In some cases, the child in conflict with the law and/or his/her parents/guardians cannot directly restore the harms caused by the offence to the victim(s). For example, if there is no victim (victimless offences), the victim does not consent to a restorative justice process, the victim cannot be present during the restorative justice process (for example he/she is still in the hospital) or the victim does not want the child to directly restore the harms. In such cases, the child may be requested to perform community service hours as part of his/her diversion plan or as an alternative to post-trial detention. Community service requires the child to work a specified number of hours for free in some way that benefits the community and/or indirectly benefits the victim(s). The purpose is to give the child the opportunity to make amends for the offence by contributing something of value to either the victim(s) or the community in general. Unlike financial compensation, which is often paid by the child's parents/guardians, community service can be an effective way for children to be held personally accountable for their wrong doings. [UNICEF Toolkit]

## **Restorative juvenile justice in national law**

A significant number of East Asian and Pacific countries do not regulate restorative juvenile justice through their national laws, i.e., one East Asian country and nine Pacific Island countries. The other 16 East Asian and Pacific countries incorporate provisions on restorative juvenile justice in either their general laws (four East Asian countries and one Pacific Island country) or their child-specific laws (six East Asian and four Pacific Island countries) or in both child-specific and general laws (Cambodia). More than half of these countries have provisions on restorative juvenile justice with regard to both diversion and alternatives to post-trial detention (Cambodia, China, Indonesia, Mongolia, Lao PDR, Papua New Guinea, the Philippines, Thailand, Kiribati and Samoa).

**Table 31: Restorative juvenile justice in national law**

Region	Not in any law	General law	Child-specific law <sup>24</sup>
<b>12 East Asian countries</b>	1 Myanmar	5 Cambodia (alternatives to post-trial detention), China (diversion and alternatives to pre-trial and post-trial detention and early release from post-trial detention), Mongolia (diversion and alternatives to post-trial detention), Timor-Leste (alternatives to post-trial detention and early release from post-trial detention), Viet Nam (diversion)	7 Cambodia (diversion), Indonesia (diversion and alternatives to post-trial detention), Lao PDR (diversion and alternatives to post-trial detention), Malaysia (alternatives to post-trial detention), Papua New Guinea (diversion and alternatives to post-trial detention), Philippines (diversion and alternatives to post-trial detention), Thailand (diversion and alternatives to post-trial detention)
<b>14 Pacific Island countries</b>	9 Cook Islands, Marshall Islands, Micronesia, Nauru, Niue, Palau, Tokelau, Tonga, Tuvalu	1 Vanuatu (alternative to post-trial detention)	4 Fiji (alternatives to post-trial detention), Kiribati (diversion and alternatives to post-trial detention), Samoa (diversion and alternatives to post-trial detention), Solomon Islands (alternatives to post-trial detention)
<b>East Asian and Pacific region</b>	<b>10</b>	<b>6</b>	<b>11</b>

Only Viet Nam regulates diversion with a restorative justice approach, and Malaysia, Fiji and Solomon Islands' only alternatives to post-trial detention are with a restorative justice approach. China is the only country that has a restorative justice approach with regard to pre-trial measures in its law, and China and Timor-Leste are the only countries that have incorporated a restorative justice approach with regard to early release from post-trial detention in their national law. The overview also includes 'community service work' as an indirect form of restorative juvenile justice, i.e., both as diversion measure and alternative to post-trial detention. This is for example the case in Indonesia, Papua New Guinea, Thailand, Fiji, Kiribati, Samoa, Vanuatu and the nine other Pacific Island countries.

**“The provision ‘by dealing with the offender in any other lawful manner’ (Juvenile Act, Cap 56 s32(1)(h)) allows for restorative justice outcomes to be productive for the child, family and community. It also enables the offender to stay at school or work and put their time and effort into restoring their relationship with the victim if the achievable practical terms are agreed on for the offender”.**

UNICEF Fiji

<sup>24</sup> East Asian and Pacific countries that have both child-specific and general legislation regulating restorative juvenile justice are included in the column 'child-specific law'.

## Restorative juvenile justice in practice

In eight East Asian and 13 Pacific Island countries a restorative juvenile justice approach is most often used with regard to diversion. However, a restorative juvenile justice approach with regard to alternatives to post-trial detention is also rather common, this is the case in five East Asian countries and 13 Pacific Island countries. In China, a restorative juvenile justice approach is used with regard to pre-trial alternatives, and in China and Papua New Guinea a restorative juvenile justice approach is applied in early release from post-trial detention. This means that the children are released based on the outcome of a mediation/conferencing process. A restorative juvenile justice approach is not used in Malaysia, Myanmar, Timor-Leste, Viet Nam or Solomon Islands. Restorative juvenile justice approaches applied by community leaders and other informal justice providers at the community level are not included in the overview.

**“Section 87 of the JJ-Act provides the basis for early release. While the law does not directly refer to use of restorative justice approach in reviewing orders and deciding on conditions for early release, in practice mediation/conferencing is used in reviewing imprisonment orders for early release of juveniles”.**

UNICEF Papua New Guinea

**Table 32: Restorative juvenile justice in practice**

Region	Diversion	Alternatives to pre-trial detention	Alternatives to post-trial detention	Early release from post-trial detention
<b>12 East Asian countries</b>	8 Cambodia, China, Indonesia, Lao PDR, Mongolia, Philippines, Papua New Guinea, Thailand	1 China	5 China, Lao PDR, Mongolia, Papua New Guinea, Thailand	2 China, Papua New Guinea
<b>14 Pacific Island countries</b>	13 Cook Islands, Fiji, Kiribati, Marshal Islands, Micronesia, Nauru, Niue, Palau, Tokelau, Tonga, Tuvalu, Samoa, Vanuatu	0	13 Cook Islands, Fiji, Kiribati, Marshal Islands, Micronesia, Nauru, Niue, Palau, Tokelau, Tonga, Tuvalu, Samoa, Vanuatu	
<b>East Asian and Pacific region</b>	<b>21</b>	<b>1</b>	<b>18</b>	<b>2</b>



## Examples of promising/good practices of restorative juvenile justice

The 21 East Asian and Pacific countries that apply restorative juvenile justice approaches have developed some promising/good practices. Two such practices will be discussed in this section from Thailand and Kiribati, one case study from Papua New Guinea and four additional promising/good practices from Indonesia, Papua New Guinea, the Philippines and Samoa.

### ✓ **Family community group conferencing to develop the child's diversion plan in Thailand:**

Diversion at both the prosecution level and the court level implies that the director of Juvenile Observation Centre prepares a tailored rehabilitation plan that incorporates conditions how the child may reform him/herself. Rehabilitation plans are developed through a 'family community group conference'. In preparing a rehabilitation plan, the director invites the alleged child in conflict with the law and his/her parents/guardians, the victim(s) and his/her support persons and a psychiatrist or social worker to a conference. The court may also invite community representatives or agencies that have relevant duties or that have been affected by the offence, or a public prosecutor. If the judge agrees with the rehabilitation plan and considers it in the best interests of the child, he/she orders the implementation. The prosecutor has to report the implementation of the rehabilitation plan to the court. The rehabilitation plan may also include conditions for the child's parents/guardians, such as to mitigate damage caused or to remedy or compensate the victim(s). At the court level it is a requirement that the victim(s) may be remedied and receives reasonable compensation through the rehabilitation plan. If the child has fully complied with the conditions incorporated in his/her rehabilitation plan and it concerns diversion at the prosecution level, the prosecutor will issue a 'non-prosecution order'.

- ✓ **Mediation and community conferencing by police in Kiribati:** Police officers divert cases of children in conflict with the law in two ways. Police may organize formal warning meetings that are generally chaired by the investigating police officer and are often held in a police station. Most times, a smaller group of people attend a formal warning meeting, which is conducted in a style similar to mediation. Attendees include the child in conflict with the law, his/her parents/guardians, a social worker and any other person the police officer identifies as being able to assist the process. The police officer facilitates the actual preparation of the diversion plan. Police may also organize a community conference that is chaired by a respected community leader. A community conference is focused on more actively involving the community in the process. A larger group of community representatives can attend the community conference, which has a focus on repairing the harms caused to the victim(s) and the community. The chair of the community conference is responsible for developing the diversion plan. In this process, the community collaborates to resolve this issue and identifies ways of re-integrating the child back into the community. These two forms of diversion practiced by police are considered promising/good practices, but have not been translated into the new Juvenile Justice Act.

## One case study on restorative juvenile justice

One case study has been collected that illustrates a good practice of a restorative justice approach. The example shows how the sentencing decisions of judges in Papua New Guinea are guided and tailored by the outcome of a community-based conference among the parties.

### **Box 8: Case study on community-based conferencing at the court level to provide sentencing recommendations in Papua New Guinea**

Timothy, a 14-year-old teenager, was in a lock-up cell in the National Capital District (Port Moresby), when he met Mary during her routine visit to the police station. Mary is a Juvenile Justice Officer, under the Office of Juvenile Justice Services. One of Mary's tasks was to regularly visit and inspect police stations and institutions that hold juveniles, and to interview the juveniles to extend support, counselling and assistance.

Timothy's story is not unfamiliar to Mary, who assists many juveniles in the justice system. Timothy was an orphan, living with his two younger sisters and their grandmother. His parents died from HIV/AIDS. He stopped going to school when he was in Grade 5, leaving him with a lot of idle time. Timothy was reported to the police by his neighbour, Kansol, from whom he stole baby nappies and several *'billums'* (traditional bags). According to Timothy, he did not intend to steal the items, but the opportunity presented itself when he saw them in his neighbour's room and no one was around. Timothy thought he could sell the items for some money. Kansol found out about the missing items and brought Timothy to the police station where he admitted to the offense. The police officer on duty tried to mediate between the victim, Kansol, and Timothy to reach a settlement. Kansol refused, leading to Timothy's detention and the theft charge.

Upon Mary's advice, the police agreed to release Timothy to the custody of his grandmother, pending the resolution of his case. Mary met Timothy and his grandmother during the initial summary hearing of the case at the Juvenile Court. As a Juvenile Justice Officer, Mary supports juveniles during the court process. By that time, Mary had prepared a report of Timothy's case, family and social background, including a report on how he was treated from arrest up to the court hearing. The hearing was attended by the victim, Kansol and his wife, and by Timothy and his grandmother. Noting that Timothy admitted to the petty offense, was apologetic and that it was his first offense, the magistrate convinced the victims to agree to settle the case through a community conference.

The conference was conducted with Mary in the role of conference facilitator. Both the victim's and offender's family, including their extended relatives, came to attend the conference. The community leader and pastor, and other neighbours in the community were also present. The Child Protection Officer under the Office of Child and Family Services could not attend. At the conference, Mary explained the purpose of the conference, the background of the case and the relevant laws. The victims, Timothy and their respective families were provided ample opportunity to air their sides and to propose an agreement to settle the case. Timothy communicated his remorse for the act and apologized to the victims' family, as well as to his family. His uncles and aunts expressed their shame over the incident and offered to pay the victims 150 Kinas, which was more than the amount of the items stolen. The Pastor advised Timothy's family on how to better care for Timothy and his siblings. He also encouraged the parties to go to church. The community leader also gave his advice to Kansol, Timothy and their families. After everyone concerned has said their piece, Kansol and his family accepted Timothy's apology and agreed to drop the complaint.

As a sign of peace, Kansol's family, who were considered the host of the community conference, cooked a meal for everyone at the conference. Timothy's family provided the drinks. Mary drew up a conferencing report and plan, signed by the parties, which she submitted to the Juvenile Court. Based on the report, the Magistrate dismissed the court case. The plan included a clause for Timothy to return to school and be supervised by his family. Mary continued to visit Timothy and his family in their home to check on him, then after three follow-up visits, Mary closed the case, convinced that Timothy has learned his lesson and that his grandmother and extended family are looking after him.

UNICEF Papua New Guinea

## Continuum of six alternative measures in the region

It was explained earlier that ideally the continuum of six alternative measures for children in conflict with the law is both regulated by national (child-specific) legislation and implemented nationwide in actual practice, including with a restorative juvenile justice approach with regard to diversion and alternatives to post-trial detention. In the overview 'Continuum of Alternative Measures in National Legislation and Practice' the alternative measures that are regulated by law and implemented in actual practice have been included.

The overview does not reflect to what extent international standards on juvenile justice and/or restorative juvenile justice are respected in actual practice, only to what extent the alternative measures are used.

The overview paints a rather positive picture. Indonesia, Lao PDR, Papua New Guinea, Viet Nam and Solomon Islands have the continuum of six alternative measures both regulated by law and implemented in actual practice. Indonesia, Lao PDR, Papua New Guinea and Solomon Islands have incorporated the continuum in their child-specific legislation and Viet Nam has it incorporated it in its general legislation. Malaysia, Mongolia, Thailand, Cook Islands, Fiji, Marshal Islands, Micronesia, Nauru, Niue, Palau, Tokelau, Tonga and Tuvalu apply the continuum, but have not regulated the six alternative measures. Vanuatu does not apply the entire continuum in practice, as there are no detention facilities for children in conflict with the law and therefore, children cannot be released from pre-trial and post-trial detention facilities.

Cambodia, China, Myanmar, the Philippines, Timor-Leste, Kiribati and Samoa have the continuum of six alternative measures neither incorporated in their laws nor implemented in actual practice. This is mainly because the alternative measure 'unconditional diversion/police warning'. Not taking into account 'unconditional diversion/police warning', only Cambodia, Myanmar and Samoa do not have the continuum of five alternative measures in their laws and not in actual practice.

**“The only alternative measure for children in conflict law that China lacks, is ‘unconditional diversion/police warning’. The reason why this measure is not available in the criminal justice system is because of the high MACR. A similar measure to ‘police warning’ is often used for children below MACR (<16 – <14 years old)”.**

UNICEF China

The overview clearly shows that ‘unconditional with the diversion/police warning’ is the only alternative measure that is hardly regulated by national law (7 countries). The five other alternative measures are both regulated by law and implemented in actual practice in the vast majority of the East Asian and Pacific countries (from 20 to 26 countries). Alternatives to pre-trial detention and alternatives to post-trial detention are incorporated in the laws of all 26 East Asian and Pacific countries, as well as being practiced in those countries, except alternatives to pre-trial detention in Timor-Leste. All 12 East Asian countries apply early (conditional) release from post-trial detention. A restorative justice approach is ‘very often’ applied with regard to diversion (21 countries) and ‘rather often’ with regard to alternatives to post-trial detention (18 countries).

The Pacific Island countries apply all alternative measures, except measures to minimize time spent in pre-trial detention, as well as restorative justice approaches much more often than the East Asian countries.

**Figure 7: Key for Table 33**

<b>No:</b>	<b>Not</b> regulated by law <b>Not</b> implemented in actual practice	<b>Yes:</b>	Implemented in actual practice, <b>but ‘hardly used’</b>
<b>Yes:</b>	Regulated by law	<b>Yes:</b>	Regulated by law <b><u>with a restorative justice approach</u></b> Implemented in actual practice <b><u>with a restorative justice approach</u></b>
<b>Yes:</b>	Implemented in actual practice, but the scale is unknown	<b>n/a:</b>	Not applicable
<b>Yes:</b>	Implemented in actual practice and <b>used ‘rather often’ or ‘often’</b>	<b>?:</b>	No information received

**Table 33: Continuum of alternative measures in national legislation and practice**

Country	Unconditional diversion/ police warning		Diversion from formal judicial proceedings		Alternatives to pre-trial detention		Measures to minimize pre-trial detention		Alternatives to post-trial detention		Measures to minimize post-trial detention	
	Law	Practice	Law	Practice	Law	Practice	Law	Practice	Law	Practice	Law	Practice
Cambodia	Yes	Yes	Yes/Yes	Yes/Yes	Yes	Yes	Yes	No	Yes/Yes	Yes	Yes	Yes
China	No	No	Yes/Yes	Yes/Yes	Yes/Yes	Yes/Yes	Yes	Yes	Yes/Yes	Yes/Yes	Yes/Yes	Yes/Yes
Indonesia	Yes	Yes	Yes/Yes	Yes/Yes	Yes	Yes	Yes	Yes	Yes/Yes	Yes	Yes	Yes
Lao PDR	Yes	Yes	Yes/Yes	Yes/Yes	Yes	Yes	Yes	Yes	Yes/Yes	Yes/Yes	Yes	Yes
Malaysia	No	Yes	Yes/Yes	Yes	Yes	Yes	No	Yes	Yes/Yes	Yes	Yes	Yes
Mongolia	No	Yes	Yes/Yes	Yes/Yes	Yes	Yes	Yes	Yes	Yes/Yes	Yes/Yes	Yes	Yes
Myanmar	No	Yes	No	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes
Papua New Guinea	Yes	Yes	Yes/Yes	Yes/Yes	Yes	Yes	Yes	Yes	Yes/Yes	Yes/Yes	Yes	Yes/Yes
Philippines	No	No	Yes/Yes	Yes/Yes	Yes	Yes	Yes	Yes	Yes/Yes	Yes	Yes	Yes
Thailand	No	Yes	Yes/Yes	Yes/Yes	Yes	Yes	Yes	Yes	Yes/Yes	Yes/Yes	Yes	Yes
Timor-Leste	No	Yes	Yes	No	Yes	No	Yes	No	Yes/Yes	Yes	Yes/Yes	Yes
Viet Nam	Yes	Yes	Yes/Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Total East Asian countries</b>	<b>5</b>	<b>10</b>	<b>11/9</b>	<b>11/8</b>	<b>12/1</b>	<b>11/1</b>	<b>9</b>	<b>9</b>	<b>12/10</b>	<b>12/5</b>	<b>12/2</b>	<b>12/2</b>
Cook Islands	No	Yes	Yes	Yes/Yes	Yes	Yes	Yes	Yes	Yes	Yes/Yes	Yes	Yes
Fiji	No	Yes	Yes	Yes/Yes	Yes	Yes	Yes	Yes	Yes/Yes	Yes/Yes	Yes	Yes
Kiribati	No	No	Yes/Yes	Yes/Yes	Yes	Yes	No	Yes	Yes/Yes	Yes/Yes	Yes	Yes
Marshall Islands	No	Yes	Yes	Yes/Yes	Yes	Yes	Yes	Yes	Yes	Yes/Yes	Yes	Yes
Micronesia	No	Yes	Yes	Yes/Yes	Yes	Yes	Yes	Yes	Yes	Yes/Yes	Yes	Yes
Niue	No	Yes	Yes	Yes/Yes	Yes	Yes	Yes	Yes	Yes	Yes/Yes	Yes	Yes
Nauru	No	Yes	Yes	Yes/Yes	Yes	Yes	Yes	Yes	Yes	Yes/Yes	Yes	Yes
Palau	No	Yes	Yes	Yes/Yes	Yes	Yes	Yes	Yes	Yes	Yes/Yes	Yes	Yes
Samoa	Yes	Yes	Yes/Yes	Yes/Yes	Yes	Yes	No	Yes	Yes/Yes	Yes/Yes	No	No
Solomon Islands	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes/Yes	Yes	Yes	Yes
Tokelau	No	Yes	Yes	Yes/Yes	Yes	Yes	Yes	Yes	Yes	Yes/Yes	Yes	Yes
Tonga	No	Yes	Yes	Yes/Yes	Yes	Yes	Yes	Yes	Yes	Yes/Yes	Yes	Yes
Tuvalu	No	Yes	Yes	Yes/Yes	Yes	Yes	Yes	Yes	Yes	Yes/Yes	Yes	Yes
Vanuatu	No	Yes	No	Yes/Yes	Yes	Yes	No	[n/a]	Yes/Yes	Yes/Yes	No	[n/a]
<b>Total Pacific Island countries</b>	<b>2</b>	<b>13</b>	<b>13/2</b>	<b>14/13</b>	<b>14</b>	<b>14</b>	<b>11</b>	<b>13</b>	<b>14/5</b>	<b>14/13</b>	<b>12</b>	<b>12</b>
<b>East Asian and Pacific region [26 countries]</b>	<b>7</b>	<b>23</b>	<b>24/11</b>	<b>25/21</b>	<b>26/1</b>	<b>25/1</b>	<b>20</b>	<b>22</b>	<b>26/15</b>	<b>26/18</b>	<b>24/2</b>	<b>24/2</b>

## 2.4 Selected countries for the in-country visits

The four criteria that UNICEF used to select the five countries for an in-depth exploration of the promising/good practices of alternative measures for children in conflict with the law are:

- ✓ Child-specific legislation on alternative measures.
- ✓ Child-specific institutes and/or specialized professionals.
- ✓ At least two promising/good practice(s) of alternative measure(s) that are 'rather often' or 'often' applied.
- ✓ Collaboration between the juvenile justice sector and social welfare sector.

The final selection of five East Asian and Pacific countries should incorporate at least one (preferably two) promising/good practices of CJJ, diversion, alternatives to pre-trial detention, alternatives to post-trial detention and restorative juvenile justice. Also, at least one Pacific Island country should be part of the final selection.

**Table 34: Selection of countries for the in-country visits**

Country	Sampling Criteria			
	Child-specific legislation on alternative measures	Child-specific institutes and/or specialized professionals	At least two promising practices of alternative measures that are 'rather often' or 'often' applied	Collaboration juvenile justice sector and social welfare sector
<b>East Asian countries [12 countries]</b>				
<b>Cambodia</b>			Restorative juvenile justice	Yes
<b>China</b>		Yes	Restorative juvenile justice	Yes
<b>Indonesia</b>	Yes	Yes	Diversion, Restorative juvenile justice	Yes
<b>Lao PDR</b>	Yes	Yes	Community juvenile justice	Yes
<b>Malaysia</b>	Yes	Yes	Post-trial alternatives	Yes
<b>Mongolia</b>		Yes	Post-trial alternatives	Yes
<b>Myanmar</b>	Yes	Yes	Community juvenile justice	Yes
<b>Papua New Guinea</b>	Yes	Yes	Community juvenile justice, Unconditional diversion, Restorative juvenile justice	Yes
<b>Philippines</b>	Yes	Yes	Community juvenile justice	Yes
<b>Thailand</b>	Yes	Yes	Diversion, Pre-trial alternatives, Post-trial alternatives, Restorative juvenile justice	Yes
<b>Timor-Leste</b>		Yes	Community juvenile justice	Yes
<b>Viet Nam</b>		Yes		Yes

Country	Sampling Criteria			
	Child-specific legislation on alternative measures	Child-specific institutes and/or specialized professionals	At least two promising practices of alternative measures that are 'rather often' or 'often' applied	Collaboration juvenile justice sector and social welfare sector
<b>Pacific Island countries [14 countries]</b>				
<b>Cook Islands</b>	Yes	Yes	Community juvenile justice, Pre-trial alternatives, Restorative juvenile justice	
<b>Fiji</b>	Yes	Yes	Diversion, Pre-trial alternatives, Post-trial alternatives, Restorative juvenile justice	Yes
<b>Kiribati</b>	Yes		Diversion, Pre-trial alternatives, Post-trial alternatives, Restorative juvenile justice	Yes
<b>Marshall Islands</b>	Yes		Community juvenile justice, Pre-trial alternatives, Restorative juvenile justice	
<b>Micronesia</b>	Yes		Community juvenile justice, Pre-trial alternatives, Restorative juvenile justice	
<b>Niue</b>			Community juvenile justice, Pre-trial alternatives, Restorative juvenile justice	
<b>Nauru</b>			Community juvenile justice, Pre-trial alternatives, Restorative juvenile justice	
<b>Palau</b>			Community juvenile justice, Pre-trial alternatives, Restorative juvenile justice	
<b>Samoa</b>	Yes	Yes	Community juvenile justice, Diversion, Pre-trial alternatives, Post-trial alternatives, Restorative juvenile justice	
<b>Solomon Islands</b>	Yes	Yes	Community juvenile justice, Pre-trial alternatives	
<b>Tokelau</b>			Community juvenile justice, Pre-trial alternatives, Restorative juvenile justice	
<b>Tonga</b>			Community juvenile justice, Pre-trial alternatives, Restorative juvenile justice	
<b>Tuvalu</b>			Community juvenile justice, Pre-trial alternatives, Restorative juvenile justice	
<b>Vanuatu</b>			Community juvenile justice, Pre-trial alternatives, Post-trial alternatives	



A photograph of the Nauru Secondary School building. The building is a single-story structure with a gabled roof. The upper portion of the wall is white, and the lower portion is light blue corrugated metal. A large sign in blue letters reads "NAURU SECONDARY SCHOOL". There is a small white vent on the white wall above the sign. A large tree with green leaves is in the foreground, partially obscuring the top of the building. The ground in front is gravel.

NAURU SECONDARY SCHOOL

Four countries meet all four sampling criteria, i.e., Indonesia, Papua New Guinea, Thailand and Fiji. None of the UNICEF COs in these countries advised against in-country visits.<sup>25</sup> However, UNICEF Indonesia mentioned “the new Juvenile Justice Law only entered into force 1.5 years ago (August 2014), which means that we do not have a clear picture yet of whether and how the law and alternative measures for children in conflict with the law are implemented”. UNICEF Papua New Guinea has formulated a similar contra-indication, namely that “the Juvenile Justice Act was only recently enforced and various current practices are still based on the previous law, as well as not being fully in line with international standards on juvenile justice and restorative juvenile justice”. UNICEF Thailand only mentioned arguments in favour of an in-country visit. UNICEF Fiji was somewhat reserved and mentioned that “an in-country visit may require planning in advance through the on-going partnership with the Fiji Police via the Multi Year Workplan signed with police. Despite challenges from the unstable political situation in Fiji and the fact that the Juvenile Act does not regulate diversion of children in conflict with the law as per international standards”.

Other potential Pacific Island countries that could have replaced Fiji are Cook Islands, Kiribati, Samoa and Solomon Islands. These countries meet three of the four sampling criteria. The initial selection of four countries covers CJJ once (Papua New Guinea), diversion four times (Indonesia, Papua New Guinea, Thailand, Fiji), pre-trial alternatives twice (Thailand, Fiji), post-trial alternatives twice (Thailand, Fiji) and restorative juvenile justice four times (Indonesia, Papua New Guinea, Thailand, Fiji).

The fifth country that was selected should at least include CJJ, so that there are two countries in total that cover that alternative measure. Lao PDR, Myanmar, the Philippines and Samoa equally qualified as the fifth country. After consulting with UNICEF Myanmar it was concluded that a visit would currently not be of much relevance, because “the new Child Law is not yet approved, diversion and restorative justice approaches are not implemented and the other formal alternative measures for children in conflict with the law are only practiced on a very small scale and not yet harmonized with international standards on juvenile justice. And the collaboration between the juvenile justice sector and social welfare sector is in its infancy”. UNICEF concluded that although a visit may be relevant for various reasons, but “the mediation practices are not yet brought in line with international standards and alternatives to post-trial detention are hardly implemented”.

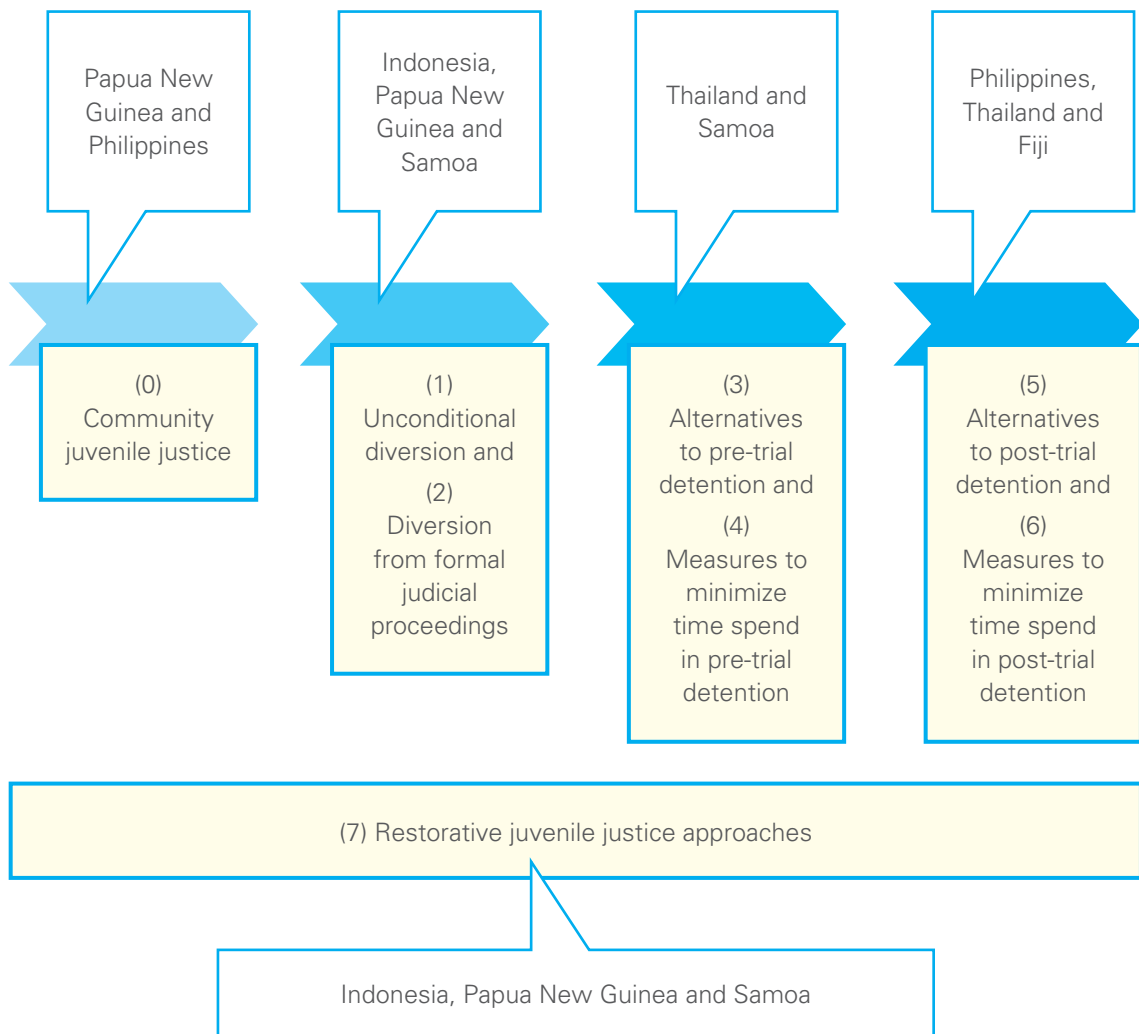
UNICEF did not discuss a potential in-country visit with UNICEF Philippines, but based on the discussions with JJWC Philippines it was concluded that the Philippines “seem to over rely on a ‘welfare response’ to children in conflict with the law, i.e., through care and rehabilitation in closed residential facilities without a fixed term of the placement of children in the post-trial stage; even diversion seems to be of a residential nature”. UNICEF Samoa had no objection to an in-country visit. Taking all arguments for and against into consideration, the Philippines seemed the best choice for the fifth country as besides CJJ, the country has implemented diversion through mediation to a certain extent and has established multi/inter-disciplinary teams in Rehabilitation Centres that prepare social inquiry reports/social case files in cases of children in conflict with the law. After consulting UNICEF Pacific, it was decided that a three day in-country visit to Samoa and a one day side visit to Fiji should be organized.

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<sup>25</sup> Each country-level summary includes a paragraph on ‘relevance of an in-country visit’ (see the sub-section ‘Conclusion on Alternative Measures’).



**Figure 8: Continuum of alternative measures and alternative measures for selected countries**



Based on the above arguments, UNICEF and the involved UNICEF COs agreed on visiting Indonesia, Papua New Guinea, Thailand, the Philippines and Samoa/Fiji as part of the study on diversion and other alternative measures for children in conflict with the law. The diagram (*see Figure 8*) shows the most appropriate combination of alternative measures for children in conflict with the law to explored in detail during the country visits. UNICEF endeavoured document CJJ twice (Papua New Guinea and the Philippines), diversion three times (Indonesia, Papua New Guinea and Samoa), alternatives to pre-trial detention twice (Thailand and Samoa), alternatives to post-trial detention three times (the Philippines, Thailand and Fiji) and restorative juvenile justice approaches three times (Indonesia, Papua New Guinea and Samoa). Meaning that UNICEF documented 13 alternative measures for children in conflict with the law in total. In Part III the findings of the in-country visits and alternative measures will be presented.

# PART III: COUNTRY VISITS

## 3.1 Promising/good practices documented in the five selected countries

As explained before, UNICEF has selected Indonesia, Papua New Guinea, Thailand, the Philippines and Samoa/Fiji as the countries to visit in order to document promising/good practices of all measures included in the continuum of alternative measures for children in conflict with the law. In total, 13 alternative measures were selected.

Twelve promising/good practices will be described in detail. Three initially selected alternative measures could not be researched adequately during the visits, i.e., measure 6 ‘early release from post-trial detention’ (multidisciplinary team/the Philippines), measures 5 and 6 ‘alternatives to post-trial detention’ (probation and early release from post-trial detention (Fiji), and measure 1 ‘unconditional diversion/police warning’ (Samoa). However, two additional promising/good practices were documented that UNICEF was not aware of prior to the in-country visits (measure 7 ‘restorative juvenile justice approaches related to diversion’ (measure 2) in the Philippines) and measure 7 ‘restorative juvenile justice approaches related to alternatives to post-trial detention’ (measure 5) in Indonesia).



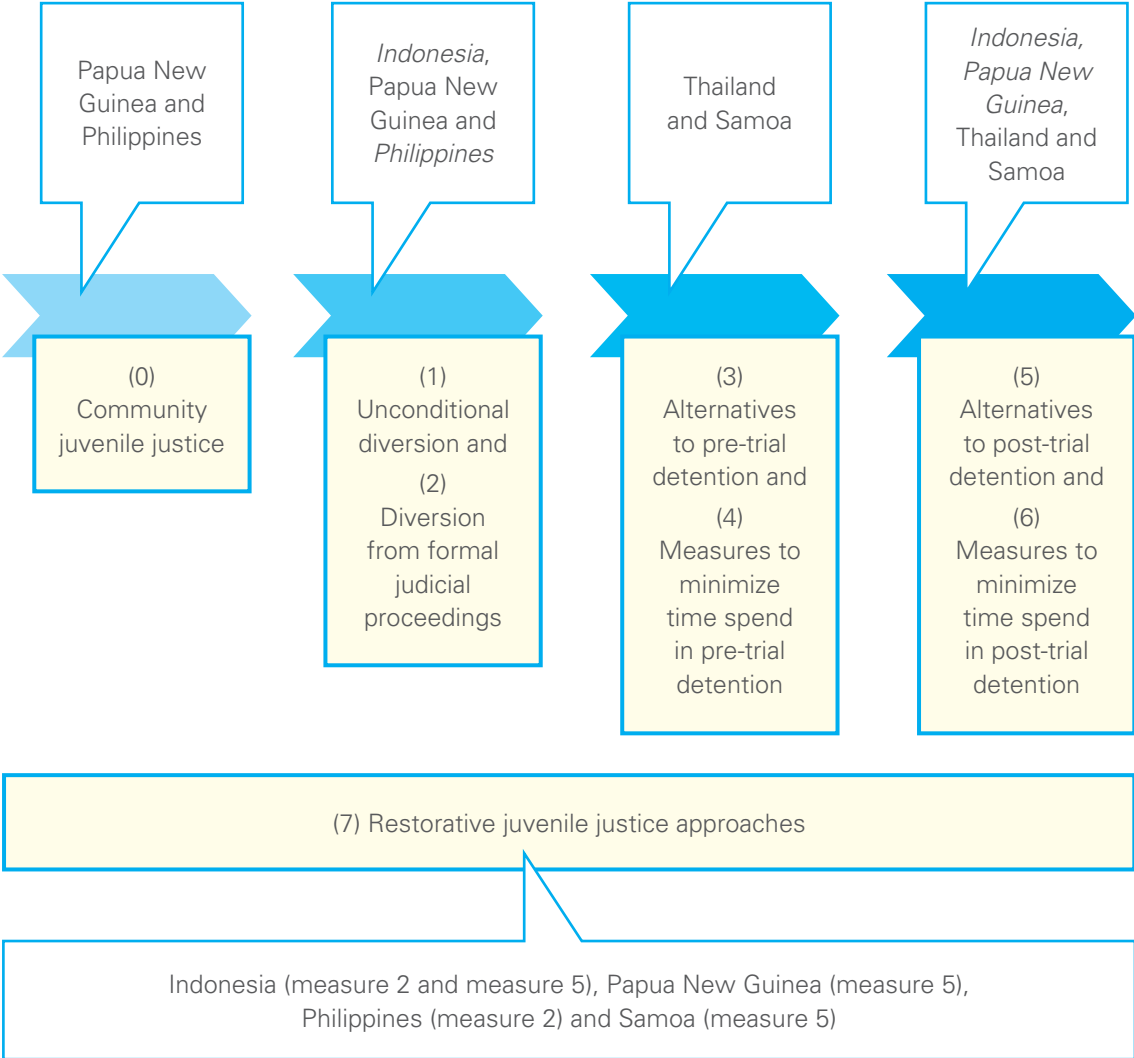
**Table 35: Selected and documented promising/good practices**

Country	Selected alternative measures	Documented alternative measures
<b>East Asian countries [12 countries]</b>		
<b>Indonesia</b>	<ul style="list-style-type: none"> <li>✓ Measure 2: Diversion from formal judicial proceedings</li> <li>✓ Measure 7: Restorative juvenile justice approaches</li> </ul>	<ul style="list-style-type: none"> <li>✓ Measure 2: Diversion from formal judicial proceedings</li> <li>✓ Measure 7: Restorative juvenile justice approaches (= Measure 2)</li> <li>✓ Measure 7: Restorative juvenile justice approaches (= Measure 5)<sup>26</sup></li> </ul>
<b>Papua New Guinea</b>	<ul style="list-style-type: none"> <li>✓ Measure 0: Community juvenile justice</li> <li>✓ Measure 1: Unconditional diversion/ Police warning</li> <li>✓ Measure 7: Restorative juvenile justice approaches</li> </ul>	<ul style="list-style-type: none"> <li>✓ Measure 0: Community juvenile justice</li> <li>✓ Measure 1: Unconditional diversion/ Police warning</li> <li>✓ Measure 7: Restorative juvenile justice approaches (= Measure 5)</li> </ul>
<b>Philippines</b>	<ul style="list-style-type: none"> <li>✓ Measure 0: Community juvenile justice</li> <li>✓ Measure 6: Early (conditional) release from post-trial detention (multidisciplinary team)</li> </ul>	<ul style="list-style-type: none"> <li>✓ Measure 0: Community juvenile justice</li> <li>✓ Measure 7: Restorative juvenile justice approaches (= Measure 2)</li> </ul>
<b>Thailand</b>	<ul style="list-style-type: none"> <li>✓ Measures 3 and 4: Alternatives to pre-trial detention</li> <li>✓ Measure 5: Alternatives to post-trial detention</li> </ul>	<ul style="list-style-type: none"> <li>✓ Measures 3 and 4: Alternatives to pre-trial detention</li> <li>✓ Measure 5: Alternatives to post-trial detention</li> </ul>
<b>Pacific Island countries [14 countries]</b>		
<b>Fiji</b>	<ul style="list-style-type: none"> <li>✓ Measures 5 and 6: Alternatives to post-trial detention</li> </ul>	--
<b>Samoa</b>	<ul style="list-style-type: none"> <li>✓ Measure 1: Unconditional diversion/ Police warning</li> <li>✓ Measures 3 and 4: Alternatives to pre-trial detention</li> <li>✓ Measure 7: Restorative juvenile justice approaches</li> </ul>	<ul style="list-style-type: none"> <li>✓ Measure 3: Alternatives to pre-trial detention</li> <li>✓ Measure 7: Restorative juvenile justice approaches (= Measure 5)</li> </ul>
<b>Total</b>	<b>13 promising/good practices</b>	<b>12 promising/good practices</b>

<sup>26</sup> Only a few days prior to the UNICEF Regional Workshop in August 2016, it became clear that community service as an alternative to post-trial detention (primary penal sanction) is not used in actual practice.

Figure 9 shows the 12 promising/good practices that UNICEF documented. The diagram also includes the two additional promising/good practice (*italics*), as well as the five alternative measures to which the restorative juvenile justice approaches are applied (underlined).<sup>27</sup>

**Figure 9: Continuum of alternative measures and documented alternative measures**



<sup>27</sup> The 12 alternative measures have been documented in more detail in the five mission reports. The detailed information can be requested from the respected UNICEF COs.

## 3.2 Community juvenile justice in Papua New Guinea and the Philippines

The alternative measure 'community juvenile justice' has been explored in Papua New Guinea and the Philippines.

### Community juvenile justice through village courts in Papua New Guinea

In Papua New Guinea, the measure 'community juvenile justice through village courts' (measure 0) was documented.

#### ✓ Description of the measure according to national law:

The Village Court system is governed by the Village Courts Act (1989) and the Village Courts Amendment Act (2013). The main aims of the amended Village Courts Act (2013) are:

- Encouraging the use of mediation in settling disputes before doing a full court hearing;
- Making sure peace and harmony are reached by ensuring fairness during Village Courts sittings;
- Ensuring women have equal access to Village Courts and that women are not discriminated against;
- Making sure everyone has a right to justice no matter where they live in Papua New Guinea;
- Making sure the Village Courts promote the basic rights outlined in the Constitution; and
- Village courts can hear disputes and offenses as prescribed in the Village Courts Regulations 1974. This includes theft under Kina 100, assault, insulting words, threatening behavior and making false statements. The village courts cannot handle offenses such as rape, murder, drug use, arson and gambling. The penalties and orders that may be imposed by the villages court are fines up to 200 Kina (in child cases), compensation in cash or goods, and community work. Fines can be paid with money, goods, food, or other things of value.

A defendant can appeal a Village Court decision under certain circumstances (sections 85 to 95). The Juvenile Justice Act (2014) states that "if a village court or village court official exercises jurisdiction under the Village Courts Act 1989 with respect to a juvenile, the Court or the official shall, as far as is practicable, apply the principles of this Act under sections 6 and 76" (article 21(1)). Sections 6 lists the general principles and section 76 deals with the purpose and principles of sentencing. The Village Courts Amendment Act (2013) includes a section on 'Village Courts and Children' (section 40A). It states, among other things, that "the primary consideration of a Village Court is what is in the best interest of the child" and that Village Courts may refer a dispute or matter that involves an alleged child offender to a Children's Court if the Village Court is satisfied that "the dispute or matter is particularly complex or serious or it is in the best interests of the child to refer the dispute or matter". The amended Act also includes provisions concerning 'the opportunity to be heard', 'assistance by a parent, guardian, relative or adult friend', 'imposing a penalty or fine on a member of a child's family' and 'restriction of publication of proceedings' in child cases. Section 44(2) deals with 'order to perform work' for the benefit of an injured or aggrieved party and emphasizes that "in ordering a child to perform work, a Village Court must give appropriate consideration to the child's age, ability and circumstances, including the requirement to attend school". The amended Village Courts Act and the Training Manual for Village Courts Officials encourages mediation in settling disputes before organizing 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" (section 53(3)). Mediation is means "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".



✓ **Description of the measure in actual practice:**

The Village Court system is supported by national, provincial and local level governments. The Village Courts and Land Mediation Secretariat (at the Department of Justice and Attorney General) form the centralized policy making body that supports and guides the operation of the Village Courts. There are about 1,646 Village Courts and 17,000 Village Court officials in over 1,600 different locations in Papua New Guinea. There are no Village Courts in Port Moresby. In the capital, all cases of children in conflict with the law are dealt with through formal juvenile justice mechanisms. The Village Court officials are court magistrates, clerks and peace officers. The Village Court magistrates are lay-magistrates (community leaders/village elders) and most of them are 70 to 80 years old. In this regard the young beneficiaries of the Village Courts have shared the following: "If we can change anything relating to the Village Courts, we want younger magistrates. The old magistrates do not listen to us and do not understand us. Old magistrates sometimes twist our words and they do not speak our language (pigin)". The officials receive a monthly allowance rather than a salary. Only a few Village Court officials have been trained in juvenile justice/justice for children and restorative justice approaches/mediation in child cases.

The young beneficiaries of Village Courts explained that they prefer that their cases are dealt with by the Village Court and not by police: "Police officers beat us up. Village Courts magistrates are polite, they ask us what we have done and then we can explain what happened. Also, at Village Courts sessions our parents are always present, while that is not always the case at the police station". Village Courts hold mediation and full court sessions on a particular weekday in the main village/district capital. Full court sessions are held for more serious child cases, such as theft over 1,000 Kina and sexual harassment. Children are predominantly referred to Village Courts for stealing and fighting. Village Courts deal with cases of children in conflict with the law from age 7 to 18 years old. Girls and boys in conflict with the law are treated equally and with the same proceedings. Mediation in cases of children in conflict with the law often take place indoors to ensure more privacy.

The mediator's role is to help the parties reach an agreement. If no agreement can be reached, the case is referred to the full court. One or more Village Court magistrates conduct the mediation session, with other respected village elders sometimes being involved. The participants in a mediation session are the child in conflict with the law, his/her parents/guardians and extended family members and the victim(s) and his/her extended family and community members. The magistrate(s) facilitate the discussions between the parties and do not take decisions on behalf of the child and/or the parties. The outcome of a session is almost always that the child in conflict with the law has to apologize and the parents/guardians have to pay compensation to the victim(s). It rarely happens that the child has to perform work for the victim(s) or the community. The timeframe for paying the compensation is agreed upon by the parties. When the compensation is paid, the parties come together to cook, have a meal and shake hands (implying that the victim(s) forgives the child). According to the Village Court officials "the main purpose of mediation is bringing peace to the community again". The mediation order in cases of children in conflict with the law (as well as in adult cases) is a legal document. "If the parents do not pay the compensation agreed upon, they commit an offence". It was emphasized that children hardly ever reoffend after they have gone through a mediation session.



✓ **Enablers and success factors:**

- Village Courts are established nationwide and are accessible to villagers, including children.
- Village Court proceedings can be considered semi-formal or non-formal. Village Courts are regulated by national laws (Juvenile Justice Act (2014), the Village Court Act (1986) and the Village Courts Amendment Act (2013). Village Court staff (magistrates, clerks and peace officers) receive their allowance from the Government.
- The Village Court proceedings are described in the Village Courts Amendment Act (2013). The Training Manual for Village Court Officials that was developed by the Department of Justice and Attorney General incorporates guidelines, practices, cases, exercises, mock trials, etc., including in cases of children in conflict with the law.
- Papua New Guinea's Melanesian tradition recognizes community-based mediation and conferencing as positive ways of settling disputes. Criminal justice actors are generally accepting of, or open to, restorative justice approaches and diverting children away from the formal justice system towards community-based alternatives.

✓ **Barriers and challenges:**

- The Juvenile Justice Act (2014) recognizes the jurisdiction of Village Courts in cases of children in conflict with the law, but does not incorporate how Village Courts may/have to deal with children and their parents/guardians/family.
- The changes in legislations may not reach the people in remote places. Some village courts are located in very remote areas and are hard to reach. Thus, for example, some village courts still hear cases of juveniles who are 7 years old, which is below the new age of criminal responsibility (10 years).
- The current Village Courts proceedings need to be improved in terms of child and gender sensitivity.

- The outcomes of Village Courts proceedings are focussed on the financial compensation of the victim(s) or family of the victim(s). Rehabilitation and/or reintegration of children in conflict with the law is not often considered by Village Court magistrates, although in some cases counselling or community service is part of the agreement between parties. Support for the parents/guardians/family of children in conflict with the law is hardly ever incorporated in the agreement.
- Village Courts do not allow lawyers to be present during the proceedings in cases of children in conflict with the law (as well as adult cases), i.e., neither for the child in conflict with the law and his/her parents/guardians/family nor for the victim(s).
- Some of the older Village Court magistrates have a low literacy level.
- Customs and practices vary from province to province.

#### ✓ **Running costs:**

UNICEF Papua New Guinea has provided the following overview of day-to-day costs to maintain 'community juvenile justice through village courts' (measure 0):

- The costs associated with running a village court include the allowances for Village Court officials, that are provided by the Government.
- The total fees of Village Court officials per court are approximately PGK2,000 (US\$655) per month (including the allowance for the chairman, deputy chairman, magistrate, court clerk and peace officer).
- In a full court sitting with 11 magistrates, an additional PGK3,000 (US\$980) would be incurred.
- For the other operational costs of a Village Court in a rural setting it would be PGK100 (US\$32) and PGK200 (US\$65) in urban setting.

## Community juvenile justice at the *barangay* level in the Philippines

In the Philippines 'community juvenile justice at the *barangay* level' (measure 0) measure has been documented.

#### ✓ **Description of the measure according to national law:**

The Revised *Katarungang Pambarangay* Law under R.A. 7160, also known as the Local Government Code (1991), introduced substantial changes to the authority granted to the *Lupon Tagapamayapa* as well as in the procedures to be observed in the settlement of disputes within the authority of the Lupon. Republic Act 9344, as amended by Republic Act 10630, regulates diversion at the *barangay* (the smallest political unit) level ('community/village juvenile justice'). "Children in conflict with the law shall undergo diversion programmes without undergoing court proceedings subject to the conditions herein provided: (a) Where the imposable penalty for the crime committed is not more than six (6) years imprisonment, the law enforcement officer or *Punong Barangay* with the assistance of the local social welfare and development officer or other members of the LCPC shall conduct mediation, family conferencing and conciliation and, where appropriate, adopt indigenous modes of conflict resolution in accordance with the best interest of the child with a view to accomplishing the objectives of restorative justice and the formulation of a diversion program. The child and his/her family shall be present in these activities" (section 23).

In case there is no victim involved in the offence and the imposable penalty is not more than six years imprisonment, "the local social welfare and development officer shall meet with the child and his/her parents or guardians for the development of the appropriate diversion and rehabilitation programme, in coordination with the BCPC" (*Barangay Council for the Protection of Children*) (section 23(b)). The same Act states that only the following children in conflict with the law are eligible for diversion at the *barangay* level: "He or she: (1) is above 15 but below 18 years of age; (2) acted with discernment; and (3) allegedly committed an offense with an imposable penalty of not more than six (6) years of imprisonment" (sections 22 and 23). The National JJWC,

in close collaboration with their local partners, has developed the '*Barangay Protocol*' (final draft) that describes in detail the procedures to be followed by the *punong barangay*, all elected *barangay* officials, *barangay tanod* and the members of the BCPC in handling cases of children in conflict with the law and in facilitating diversion proceedings.

According to the *Barangay Protocol*, the *barangay* is responsible for taking custody of children in conflict with the law who are eligible for diversion at the *barangay* level and conducting diversion proceedings and assisting in implementing the diversion programme for children in conflict with the law who have acted with discernment. The diversion proceedings must be completed within 45 days. If the parties reach an agreement, the child's diversion contract must include an individualized diversion programme consisting of adequate socio-cultural and psychological interventions and services, as well as the following components:

- Rights, responsibilities or accountabilities of the child, his/her parents/guardians and the victim(s) (when applicable)
- Voluntary admission of the child
- Reporting obligations of the child and his/her parents/guardians
- Monitoring and/or supervision obligations of others (for example, the principal of the child's school will monitor and report on the child's school attendance)
- Method of monitoring
- Duration of the diversion programme

✓ **Description of the measure in actual practice:**

The country is subdivided into 18 regions, the regions into provinces, and the provinces into cities and municipalities. The cities and municipalities are further subdivided into *barangays*. *Barangays* (community/village) leaders establish communication and coordination with the following local organizations – both government and non-government – and actors in order to facilitate the handling of children in conflict with the law (as well as children at risk):

- Local social welfare and development officers (LSWDO) lodged in the local government units and other officials of the Department of Social Welfare and Development (DSWD) in the region
- Public Attorney's Office
- Local health officers
- Women and Children's Protection Desk (WCPD) of the Philippine National Police
- Regional Juvenile Justice and Welfare Council (RJJWC)
- School officials within the *barangay*
- NGOs assisting children
- FBOs

Data concerning children in conflict with the law show that slight physical injuries, malicious mischief and theft are often handled by *barangays* without the involvement of the police. More serious cases are immediately referred to the WCPD. A child is considered a child in conflict with the law from the moment he/she is taken into custody by the *barangay*. The *barangay* official involved identifies him/herself to the child and explains to the child the reason for taking him/her into custody, the offense allegedly committed and his/her constitutional rights. Then he/she registers the child in the logbook and, within eight hours, informs the child's parents/guardians, social worker, child's counsel or lawyer of the Public Attorney's Office and local health officer. The *barangay* official will then bring the child to the *barangay* station for the initial investigation. This includes confirming the supposedly committed offense and determining the age of the child. If the child is above 15 years old but below 18 years old, he/she has to be turned over ('give physical custody') to the LSWDO to assess whether the child has acted with discernment at the time of the offense. Ideally, the LSWDO has seven working days to complete the assessment on the child's discernment and submit the report to the law enforcement officer.





✓ **Enablers and success factors:**

- Capacity building of all professionals and volunteers involved in community/village juvenile justice.
- Available community-based programmes/services for children in conflict with the law, as well as programmes developed and organized by NGOs/CSOs and BCPCs for their parents/guardians/families.
- The community demonstrates a lot of potential level for diversion. Because everyone has to live together they want peace in their community and are therefore willing to solve disputes.
- BCPCs are interdisciplinary entities and address all child protection issues. BCPCs have an impressive referral network consisting of legal assistance, health services, social support services, one-stop-shop in hospital, etc. BCPCs are on duty 24 hours a day, seven days a week, including holidays. BCPCs prioritize children in conflict with the law. BCPCs are acknowledged and supported by juvenile justice professionals. For example, judges provide training and awareness to BCPCs.
- Many frontline members are religious, which supports the inclusion of children in conflict with the law.
- Children who have successfully complied with a diversion programme do not have a criminal record and are able to find government jobs.
- “Through a network of Government agencies and stakeholders, the *barangay* is able to handle diversion cases in a cost efficient manner. Thus, the municipality and/or city are not overwhelmed with cases, as they are adequately handled at the *barangay* level”.  
[Universalia Report]

### ✓ **Barriers and challenges:**

- While restorative justice is aligned to indigenous practice and is now getting wider application as a legal framework in the Juvenile Justice and Welfare Act (JJWA), the Philippines still has a retributive legal system which influences behaviour and perception. Since the time of its promulgation, the JJWA has always been vulnerable to legislative efforts towards amendment, particularly calling for the lowering of the MACR. Public support to retain MACR at 15 years has been found to be split.
- The turnover of members of the *Barangay* Council for the Protection of Children (BCPC) affects the sustainability of community-based diversion programmes as well as the sustainability of capacity building initiatives.
- Not all *barangays* have a social worker(s). The caseload of local social workers is very high. They deal with cases of all children, not just those in conflict with the law.
- Almost all stakeholders have argued that most parents/guardians of children in conflict with the law are not ready or capable of taking care of their children due to poverty, lack of work, no enabling family environment, etc. Children in conflict with the law are 'hard to sell', the social norm and general mind-set lean towards residential care and the deprivation of liberty. There aren't enough NGOs/CSOs to provide parental skills programmes, parental counselling, livelihood programmes, financial support, etc. The view of the juvenile justice professionals is that the NGOs/CSOs have to work with the parents/guardians/families of children in conflict with the law, while the children themselves are in a residential (closed) institution. The role of the NGOs/CSOs is "to make the parents/guardians/families ready for the reintegration of their child after release from the residential (closed) facility". It seems that 'parental/family support while the child is at home' is not a concept that the juvenile justice professionals consider as feasible and/or effective. Most diverted children in conflict with the law are first placed in a residential (closed) facility and from there they are diverted. UNICEF Philippines has concluded that "the notion appears to be that it is because in these closed facilities, the children will have access to programmes that are beneficial to them, including access to education and restorative/rehabilitative modules that will transform them to better individuals".
- There is no culture of evaluating programmes for children in conflict with the law linked to programme design and budget allocation.
- It takes a lot of time to document and see the results. There is a need to clearly document the results to prove that the measure is effective.
- Community leaders are elected every three years, which implies that expertise disappears.

### ✓ **Running costs:<sup>28</sup>**

UNICEF Philippines has provided the following overview of day-to-day costs to maintain the measure 'community juvenile justice at the *Barangay* level' (measure 0).

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<sup>28</sup> While community-based services for children, such as sports festivals, information dissemination campaign/sessions, parent effectiveness seminars, family development sessions, alternative learning sessions, etc., are provided at the *barangay* level, the budget for these are included in the City Social Welfare or other agency budgets. For instance, the payment for teachers or facilitators for the alternative learning sessions as well as the learning materials/books are paid by the Department of Education. These are no longer included in the budget of the BCPC.

**Table 36: Day-to-day costs of maintaining community juvenile justice at the *barangay* level**

Items	Particulars
Human resources: – Social workers  – Social welfare aides – BCPC volunteers	PHP750/US\$15.95 per day [social workers are estimated to provide assistance to the village juvenile justice officers at least 3 days a week]  PHP555/US\$11.81 per day [not paid by the community/ <i>barangay</i> ]
Food/meals during diversion proceedings, meetings and case conferences	PHP100 US\$3.19 per activity/day
Travelling for monitoring/coordination with other stakeholders	PHP60 US\$1.28 per day
Electricity/water	PHP153.38 US\$3.26 per day
Communication/mobile expenses for coordination	PHP100 US\$3.19 per day
Common office supplies (folders, bond paper, writing materials, etc.)	PHP227 US\$4.83 per day
<b>Average day-to-day costs</b>	<b>PHP1,945.38/US\$41.38 per day</b>

### 3.3 Diversion from formal judicial proceedings in Papua New Guinea, Indonesia and the Philippines

The alternative measure of ‘unconditional diversion’ has been explored in Papua New Guinea and the alternative measure for ‘diversion from formal judicial proceedings’ in Indonesia and the Philippines.

#### Unconditional diversion/police warning in Papua New Guinea

In Papua New Guinea, UNICEF has documented the measure ‘unconditional diversion/police warning’ (measure 1).

✓ **Description of the measure according to national law:**

The ‘Police Juvenile Justice Policy and Protocols’ (2006) describe two forms of unconditional diversion at the police level:


- Warning, with the child’s name not being recorded.
- Warning, with the child’s name being recorded (*see Figure 10*).

The police officer may issue a warning if the child is alleged to have committed a trivial or minor offence, i.e., where no violence was involved, both in cases in which there is no ‘obvious’ victim (name not recorded) and cases in which there is a victim (name recorded). The warning is given on the spot and the child is not taken to the police station. The police officer advises the child to change his/her behaviour. It states: “young people do not respond positively to threats and intimidation by Police. Let the young person know that you are giving them a second chance. Use the opportunity to try and build a more positive relationship with young person” and that “a warning will not be issued as a means of resolving anti-social behaviour or other behaviour that may be ‘irritating’ rather than criminal”.



**Figure 10: Police warning in Papua New Guinea**

**Option 2: Warning Name recorded in Police Notebook**



**Purpose**

- This type of warning is issued for trivial and minor offences, where there is a victim.

**Procedures**

- The warning is given on the spot.
- If appropriate, ask the young person to apologize to the victim(s) for his/her behaviour.
- The young person is not brought to the police station.
- The young person is advised/counselled to change his/her behaviour.
- The young person is warned that if he/she persists in breaking the law, he/she may be charged next time.

**Records**

- The name of the young person and his or her address is recorded in the Police Officer's Notebook.
- The issuing of the warning is recorded in the Occurrence Book.
- In the Occurrence Book, the date, the time the warning was issued, the reason why the warning was issued and the young person's name and address is written down.

**Practice Tip 2**

In Melanesian culture, the purpose of an apology is to allow for forgiveness and reconciliation. An apology will have no meaning if it is forced and given under threat or intimidation. For an apology to have meaning for the young person and the victim(s), the young person must acknowledge that his or her behaviour was wrong.

**Guideline 2**

The shift OIC will ensure that all warnings are recorded in the Juvenile Occurrence Book.

**Guideline 3**

Warnings will be issued for trivial and minor offences, where violence is not involved.

*Police Juvenile Justice Policy and Protocols (2006) – UNICEF-Papua New Guinea*

The Juvenile Justice Act (2014) provides a very similar explanation of a 'police warning' (article 41). "(1) A member of the Police Force may give a warning to a juvenile at any place, including a place where the juvenile is found, and shall (a) explain to the juvenile that his or her behaviour is unacceptable and the possible consequences of the offending behaviour; and (b) warn the juvenile that if he or she persists in such behaviour, he or she may be charged the next time. (2) The juvenile must not be taken into police custody and the warning must not involve threats or intimidation. (3) The juvenile may be required to apologize to the victim(s) if (a) the member of the Police Force considers that it is appropriate in the circumstances; and (b) the victim(s) consents to participate in the proceedings. (4) The member of the Police Force may make a record of the warning".

✓ **Description of the measure in actual practice:**

Police warnings are applied nationwide. In actual practice, 'police warnings' are used in a somewhat different manner than described in the 'Police Juvenile Justice Policy and Protocols'. It is the police officer in charge of the local police station who decides whether or not a warning is issued to a child who is apprehended for a minor offence, such as stealing biscuits, etc. The police officer then warns the child: "What you have done ('offence') is wrong according to our law. If you ever do it again, you will get locked up". The child's parents/guardians and/or extended family members may be present. The victim(s) is not present during the police warning. The vast majority of minor offences committed by children between 10 and 18 years are solved with 'police warnings' or 'mediations at the police level'.

Cases of children in conflict with the law that are solved through 'police warning' are not registered. The police officers of Boroko Police Station (National Capital District) have explained that they consider 'mediation at the police level' a form of police warning.<sup>29</sup> Mediation at the police level is applied nationwide. It implies that the police officer in charge invites the parties, i.e., the child in conflict with the law, his/her parents/guardians and members of their extended family and community, the victim(s) and members of his/her/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. The outcome of the police mediation is almost always that the child in conflict with the law apologizes to the victim(s), the child's parents/guardians compensate the victim(s) and give something additional to the victim(s), which is almost always food. At the end of the mediation session the parties agree when and where they will have a joint meal, meaning that both parties bring food to cook and eat together. Sharing food on top of the financial compensation shows that the family/community of the child in conflict with the law is apologetic about what happened.

Cases of children in conflict with the law that are solved through 'mediation at the police level' are not registered, except for the note that 'action has been taken' in the Juvenile Occurrence Book. The vast majority of children in conflict with the law who are diverted at the police level through mediation do not reoffend: "Children who are part of a community do not reoffend. Parents/guardians and elders look after the children when they have been diverted back to their community. Community members know each other and know what happens in their community, so the children cannot and do not reoffend".

✓ **Enablers and success factors:**

- The Juvenile Justice Act (2014) provides the legal basis for police warning (unconditional diversion).
- The Police Juvenile Justice Policy and Protocols provides concrete guidelines and tips to police officers dealing with cases of children in conflict with the law, including how to issue a warning.
- Police trainings on juvenile justice, including in-service training at the Police Training Institute (Bomana), have been conducted and continue to be sustained by the Royal Papua New Guinea Constabulary, through its Community Police branch.
- Police warnings are also used in cases of children living/working on the streets in urban settings (but these children usually reoffend/come into contact with the police again).
- Police warnings are considered in-line with Beijing Rule 11. The Commentary explains that: "In many cases, non-intervention would be the best response. Thus, diversion at the outset and without referral to alternative (social) services may be the optimal response. This is especially the case where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner".

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<sup>29</sup> Because 'mediation at the police level' is conditional and implies that the child in conflict with the law has to meet with the victim(s) and has to apologize to the victim(s), UNICEF considers this response as 'diversion with a restorative justice approach' and not 'police warning'.

- Due to Papua New Guinea’s Melanesian tradition, which recognizes community-based mediation and conferencing as positive ways of settling disputes, criminal justice actors are generally accepting of, or open to, diverting children away from the formal justice system to community-based alternatives.

✓ **Barriers and challenges:**

- The police department has not yet established child/juvenile police sections/units. “As long as the child/juvenile police section is not yet gazetted, police officers cannot be promoted”.
- The police department does not collect detailed data relating to children in conflict with the law and ‘police warnings’ are not registered. This implies that police do not know whether a child is a reoffender or first-time offender when he/she comes in conflict with the police.
- Police warnings are limited to trivial and minor offences committed by children ≥MACR (and <MACR).
- It is often very difficult to find the parents/guardians of children in conflict with the law, especially if the children do not provide their correct names and do not have a fixed address (are living on the streets).
- It happens that the victim(s) reports the case, but then does not show up for the police mediation (which is not considered a ‘police warning’ within the UNICEF framework).
- Re-offending is common among juveniles in urban areas who live or work on the streets, because the juveniles have no parents/guardians to look after them or are neglected by their families.
- Data on juvenile justice indicators is not systematically collected at the police level and information sharing across law and justice line agencies is lacking. A Juvenile Occurrence Book is currently being developed.

✓ **Running costs:**

UNICEF Papua New Guinea has explained that there are no specific day-to-day costs to maintain the measure ‘unconditional diversion/police warning’ (measure 1).

## **Diversion from formal judicial proceedings without and with a restorative juvenile justice approach in Indonesia**

In Indonesia, the measure ‘diversion from formal judicial proceedings without and with a restorative justice approach’ (measure 2 and measure 7) was documented.

✓ **Description of the measure according to national law:**

Chapter II ‘Diversion’ of Law No.11 (2011), also called ‘Law on Juvenile Justice System’, deals with all aspects of the diversion process (articles 6 to 15) and states that diversion has to be initiated first at the police level (article 29(4)), secondly at the prosecution level (article 42(4)) and thirdly at the court level (article 52(2)). Diversion has to be initiated when the offence carries a prison term of less than seven years and the offence is not repeated (article 7(1)). In addition, police, prosecutors and judges have to take into account the following:

- Category of the offense;
- Age of the child;
- Findings of the social enquiry report prepared by the parole board; and
- Support from the child’s family and environment.

With regard to consent to diversion, the law states: “agreement on the diversion decision must be approved by the victim(s) and/or the family of victim(s) and the willingness of the child and his/her family” (article 9(2)). Their consent is not required in the following cases (article 9(2)):

- Breach offence;
- Minor offence (one that carries a sentence of less than three months imprisonment);
- Offence committed by children with no victim; and
- The loss born by the victim(s) is no more than provincial minimum wage.

Article 10(1) elaborates on so-called ‘victimless cases’ and states that in such cases the diversion agreement will be “between the investigator, perpetrator, and/or the family, parole officer, and possible involvement of a community figure”. Conditions that can be incorporated in children’s diversion-plan/agreement are (articles 10(2) and 11):

- Compensation in case victim(s) exist;
- Medical and psychosocial rehabilitation (only in victimless cases);
- Return of the child to the parents/guardian;
- Participation in an education or training course provided by an educational institute, social welfare centre or social welfare institution for approximately 3 months; and
- Community service (for approximately three months in victimless cases).

The probation officer is required to provide assistance, guidance and supervision “from the commencement until the end of the diversion process” (article 14(2)). Law No.11 explicitly promotes diversion with a restorative justice approach. In the Commentary it is stated that “the most fundamental thing in this Act is a very firm provision of restorative justice and diversion for the purpose of avoiding children in contact with the law to undergo a judicial process so as to prevent them from being stigmatized; it is expected that children reintegrate into their social environment in a proper manner. Therefore, participation of all those who can provide assistance will be essential. Ultimately, this process must be aimed at ensuring restorative justice both for the child and the victim”. Article 68(2) underlines the need for coordination between social (welfare) workers and parole officers.

✓ **Description of the measure in actual practice:**

Diversion is implemented nationwide. There are currently no available statistics on diversion, however, local data of the Correction/Probation Office (in Solo) shows that in 2014 diversion was used in more than a quarter of the cases of children in conflict with the law (28 per cent) and almost half of the diversion-processes at the police level resulted in a diversion-plan/agreement (45 per cent). ‘Informal police diversion’ is also used (15 per cent), which means that the police officer reports the case and then refers the case to a local leader in order to solve the dispute through ‘local wisdom’ (customary law). Children in conflict with the law who are eligible for diversion are provided with legal assistance. The probation officer prepares the social inquiry report. The recommendation that is formulated most often by probation officers in the social inquiry reports is that the child will return to his/her parents/guardian and will continue his/her education (if the child already goes to school) (80 per cent).

In the other cases (20 per cent), especially if the child’s parents/guardians are ignorant or cannot help their child, the recommendation is that the child will be placed in a social welfare institution where he/she will participate in education/training, which implies a residential diversion condition. In addition, the child has to apologize to the victim(s) and the child’s parents/guardians have to compensate the victim(s) for the costs relating to the offence. Cases in which the victim(s) does not consent to diversion, or the parties cannot reach an agreement, are sent to the court for continuation of the formal juvenile justice process. In victimless cases, the child’s diversion plan may include community service hours, which means in the majority of cases the child has to clean the mosque in his/her own community or the community of the victim(s). The probation officer supervises the child during the implementation of his/her diversion plan/agreement. They can be assisted by social workers (Ministry of Social Affairs (MoSA)) and/or community leaders and community members (for example a teacher). Children who comply with their diversion plan/agreement do not have a criminal record.

✓ **Enablers and success factors:**

- Child-specific legislation, i.e., the Law No.11 (2011), incorporates and promotes diversion, alternatives to detention and restorative justice approaches.
- By law, both victimless cases and cases with victim(s) can be diverted without the consent of victim(s).
- Capacity building of professionals involved in the implementation of diversion and other alternative measures for children in conflict with the law.
- Support from UNICEF Indonesia to the juvenile justice programme and diversion programmes.
- Probation officers are involved in cases of children in conflict with the law during the entire juvenile justice process, i.e., from the beginning of the investigation by police, until the end of the measure/sentence imposed by the court. There are 'correction offices' in each province as well as remote correctional offices at the district level (in order to ensure that the probation officer can be in the police station within 24 hours) (Ministry of Law and Human Rights).
- Comprehensive data on diversion and other alternative measures for children in conflict with the law are available.

✓ **Barriers and challenges:**

- The provisions on diversion, alternatives to detention and restorative justice in Law No.11 are not fully clear to the juvenile justice professionals involved. The regulations and directives that have been issued on diversion and other alternative measures are neither fully clear nor practical, while the regulation on diversion has not been fully disseminated.
- In November 2015, the Director General of Corrections issued a directive that instructs probation officers not to recommend diversion of children in conflict with the law in their social inquiry reports.
- In 10 per cent of the cases the children are still sent to closed institutions as part of their diversion plan (which is not considered 'diversion' within the UNICEF framework).
- Not all juvenile justice stakeholders are aware of the international standards on diversion, alternatives to detention and restorative juvenile justice. Many police officers are not aware of the regulation on diversion.
- Capacity building initiatives focus on child rights and juvenile justice in general, and do not include specific skills relevant to diversion and other alternative measures. Training for police does not include skills relating to diversion and mediation. Training for probation officers is not specialized and concerns both adults and children in conflict with the law. Training for social workers is focused on residential care of children in social welfare institutions and not on community-based responses to children in conflict with the law.
- Police do not have a template/standard form for diversion plans/agreements. Prosecutors use the Supreme Court's template.
- The mechanism for monitoring and evaluating diversion are not yet in place and there is no financial support for juvenile justice professionals who monitor diversion.

✓ **Running costs:**

UNICEF Indonesia has provided the following overview of day-to-day costs to maintain the measure of 'diversion from formal judicial proceedings without and with a restorative justice approach' (measure 2):

[Note: US\$1 = IDR13,000]

- Services by Social Welfare Institution/LPKS:  
In-institution (residential diversion option):
  - All MoSA-owned LPKS apply Ministry of Finance approved *Standar Biaya Khusus* or Specialized Standard Cost. The 2016 standard is IDR17 million (US\$1,307) per child per year. Previously around IDR13 million (US\$1,000).

- Pro-rated. Based on how long the child stays in the institution (i.e., three months, six months) and what they need. The fund is managed by the institution. For food and snacks, for example, PSMP Antasena organized bids for caterings.
- Around 200 children live in the LPKS per year.

The IDR17 million is allocated for:

- Food and snacks. Budgeted for IDR23,000 per child per day.
- Uniforms (sports, shoes, caps, sandals, religious outfit, underwear).
- Personal toiletries and hygiene kits.
- Contribution for general sanitation and hygiene facilities.
- Fee/trainer's salaries and materials for vocational training.
- Salaries of staff and maintenance/operation of office are on different budget allocation.

Outside of institutions:

- In 2016, around IDR670 million was allocated for 120 children. Salaries and regular administration costs excluded.
- The fund can be used for:
  - Training/orientation of local social workers (food, resource persons, transportation, stationaries).
  - Gathering/orientation for parents/guardians of children in conflict with the law (food, resource persons, transportation, stationaries).
  - Outreach programmes (field visits and financial support for the children).
- About four to five visits are needed for outreach, these usually involved at least one social worker from Antasena and one local social worker. Verification visit, assessment, accompaniments.
- The cost component of the outreach are:
  - Transportation for social worker(s) from Antasena/Magelang and local social workers. Real cost, depending on the distance, to be used for bus/train and local transports. (Note that PSMP Antasena, which is located in Magelang District/Central Java Province, covers Central Java, East Java and Kalimantan).
  - Accommodation, if needed. Real cost.
  - Daily allowance (for food and miscellaneous). In Central Java = IDR375,000 (US\$29) per day; in East Java = IDR400,000 (US\$31) per day.
  - Direct support for the child amounting IDR1,300,000 per child (US\$100) given to the child/family, but the use is limited for funding for work/small business, house restoration, support to return to schools. The fund aims to support reintegration and ensure that the child is not resorting to crime.
- Probation services:
  - Funding is allocated for outreach (visits), including for accompanying the child during the pre-trial and trial process.
  - Depending on the caseload, around three to five visits are needed for diversion (at police level). Those include social inquiry visits and attending diversion meetings.
  - Around three to four visits are needed in at least three months for follow-up after the diversion plan is agreed.
  - Unit cost is about IDR110,000 (US\$8.5) per day in town. If it is outside of the town, IDR140,000 (US\$11) per day. Note that one Correction Office can handle seven or more districts.
  - Salaries and general operation are from a separated budget.



## Diversion from formal judicial proceedings with a restorative justice approach in the Philippines

In the Philippines, the measure 'diversion from formal judicial proceedings with a restorative justice approach', i.e., the component 'compensation of the victim(s) by the child in conflict with the law' (measure 2 and measure 7) was documented. In many East Asian and Pacific countries, compensation of the victim(s) is incorporated in the diversion agreement, but almost always the child's parents/guardians have to pay the victim(s) and not the child in conflict with the law. In the Philippines, UNICEF has explored the promising/good practice of children in conflict with the law who are compensating the victim(s).

### ✓ **Description of the measure according to national law:**

The Revised Rules and Regulations Implementing Republic Act No. 9344 as amended by R.A. 10630 states that the parents/guardians of children in conflict with the law are "jointly liable for the civil liability of the child" (Rule 34). "The parents shall be liable for damages unless they prove, to the satisfaction of the Court, that they were exercising reasonable supervision over the child at the time the child committed the offense, and exerted reasonable efforts and utmost diligence to prevent or discourage the child from committing an offense". Republic Act No. 9344 as amended by R.A. 10630 deals with the civil liability of the child with regard to diversion proceedings. "The Committee shall design a diversion programme taking into consideration the individual characteristics and peculiar circumstances of the child in conflict with the law. The program shall be for a specific and definite period and may include any or a combination of the following: ... The Committee shall also include in the program a plan that will secure satisfaction of the civil liability of the child in accordance with section 2180 of the Civil Code. Inability to satisfy the civil liability shall not by itself be a ground to discontinue the diversion program of a child. On the other hand, consent to diversion by the child or payment of civil indemnity shall not in any way be construed as admission of guilt and used as evidence against the child in the event that the case is later on returned to the court for arraignment and conduct of formal proceedings (section 34)".

### ✓ **Description of the measure in actual practice:**

In actual practice, parents/guardians are held responsible for compensating the victim(s) of their child's offence. Because many parents/guardians in the Philippines are unemployed and cannot pay the compensation to the victim(s), it is often agreed that the financial compensation may be paid in instalments. Sometimes the victim(s) absolves the parents/guardians from paying the remaining compensation after they have paid a certain number of instalments. Symbolic compensation is also applied. There was a case in which the mother agreed to work for the victim(s), i.e., washing the clothes of the victim(s) for a certain number of days. It also happens that the diversion facilitator makes the child responsible for financially and/or symbolically compensating the victim(s). The Juvenile Justice and Welfare Council and other discussion partners have provided the following examples of this potentially good practice:

- A 15-year-old boy came into conflict with the law after stealing copper wires from a hardware shop. During the case conference/diversion meeting, the victim expressed his wish that the child paid the compensation himself instead of his parents. Because the boy was still going to school and had no money, the parties agreed that the child would work in the victim's hardware shop on Saturdays till he had fully paid the compensation.
- A 16-year-old boy came into conflict with the law by committing robbery. As an abandoned child, he could not pay the compensation of PHP50,000. The judge placed the child in a Rehabilitation Centre where the boy participated in a vocational training (welding). After his release, he found a job as a welder and started paying the compensation to the victim in instalments of PHP5,000 per month. After one year the victim congratulated the boy and absolved him of the remaining amount.

- A 16-year-old boy came in conflict with the law after stealing a necklace worth PHP30,000. During the diversion proceedings, the boy committed to pay the victim the whole sum in increments of PHP5,000 per month. It was also agreed that the boy pay the complainant by going to their house. During the first month of payment, the victim received the money outside the gate. In the succeeding payments, he was allowed to enter the house and was even given snacks by the victim. The last payment was returned to the boy by the victim as a Christmas gift.
- In Training Schools (closed institutions for convicted children in conflict with the law) some children may perform paid work within the facility, particularly children whose parents are not able to compensate the victim. The Training School deposits the child's salary in his/her bank account so that the child will be able to (partly) pay the compensation to the victim while in the institution.

These and other similar practices in which the child in conflict with the law takes responsibility for the consequences of his/her offending behaviour are implemented nationwide, but not yet on a wide scale.

✓ **Enablers and success factors:**

- Willingness of juvenile justice professionals to look for tailored alternative measures for children in conflict with the law.
- The community is a very potential level for alternative measures, because the people have to live together and want peace in their community and are therefore willing to solve disputes.

✓ **Barriers and challenges:**

- The dominant way of dealing with children in conflict with the law is still placement in residential institutions with a closed regime.

✓ **Running costs:**

UNICEF Philippines has provided the following overview of day-to-day costs to maintain the measure of 'diversion from formal judicial proceedings with a restorative justice approach', i.e., the component 'compensation of the victim(s) by the child in conflict with the law' (measure 2 and measure 7).

**Table 37: Day-to-day costs of maintaining diversion from formal judicial proceedings with a restorative justice approach**

Items	Particulars	Amount
Human resources:		
– Social worker	PHP93.75/US\$1.99 per hour x 3 hrs/week x 4 weeks x 7.7 months	PHP8,662.50 US\$184.19
– Social welfare aides	PHP69.37/US\$1.48 per hour x 2 hrs/week x 4 weeks x 7.7 months	PHP4,273.19 US\$90.86
Travelling for monitoring	PHP60/US\$1.28 per day x once a week x 4 weeks x 7.7 months	PHP1,848 US\$39.29
Electricity/water	PHP153.38/US\$3.26 per day x 2 days/month x 7.7 months	PHP2,361.98 US\$50.22
<b>Total estimated expenses</b>		<b>PHP17,145.67</b> <b>US\$364.57 [whole duration of case]</b> <b>PHP73.58</b> <b>US\$1.57 [per day]</b>

## 3.4 Alternatives to pre-trial detention in Thailand and Samoa

The alternative measure 'alternatives to pre-trial detention' was explored in Thailand and Samoa.

### Conditional pre-trial release to parents/guardians or family members in Thailand

In Thailand, the documented measure was the 'conditional pre-trial release to parents/guardians or family members' (measure 3 and measure 4).

#### ✓ Description of the measure according to national law:

According to the Act on Juvenile and Family Court and Procedure (2010) children in conflict with the law between 10 and 18 years of age can be released at the pre-trial stage (articles 72 and 73). Article 72(2) states that "If the alleged child or juvenile has parents, guardians, any persons or representatives of an institution with whom he or she is residing and these persons or institutions have demonstrated that they are capable of being the custodians for such child or juvenile, then the inquiry official shall send the child or juvenile to these persons for custody and require that they accompany the child or juvenile to the court within 24 hours from the time the child or juvenile has arrived at the office of the inquiry official after his or her arrest. In such case, if there are circumstances under which it is convincing to believe that the child or juvenile may not turn up at the court, the inquiry official, to a reasonable extent, may require these persons to pay bail money". Article 73(1) continues that "... in addition, for the purpose of protecting the rights of the child or juvenile, the court may order that the child or juvenile be sent to his or her parents, guardians, any persons or representatives of an institution with whom he or she is residing or to any person or institution that the court considers appropriate to be granted custody of the child or juvenile during trial".

#### ✓ Description of the measure in actual practice:

The vast majority of children in conflict with the law between 10 and 18 years old are released at the pre-trial stage and may await their trial in their community. The estimation of the percentage of released children varies from 66 per cent (Supreme Court Judge) to 70-80 per cent (Office of the Attorney General) to 80 per cent (Central Juvenile and Family Court). Almost all children are released to their parents/guardians, but it also happens that children are released to an (extended) family member. The legal possibility to release children to "persons or institutions that the court considers appropriate to be granted custody of the child or juvenile during trials" is hardly used in actual practice. Only a few NGOs/CSOs that run shelters take care of children in conflict with the law on a case-by-case basis. Release at the pre-trial stage is always conditional (100 per cent of the cases). The following conditions are applied in actual practice:

- The child's parents/guardians have to guarantee/promise that they will take care of their child and bring him/her to the court if ordered to do so.
- Financial bail, usually not more than THB8,000 in child cases, is often applied (articles 106-119.B of the Criminal Procedure Code and article 6 of the Juvenile Procedure Act).
- Weekly report to the probation officer of the Juvenile Observation and Protection Center and/or to meet with a counsellor.
- The child has to undergo a treatment, seek consultation or participate in a therapeutic activity (article 73(4)), for example a rehabilitation programme for drug addicted children, family or individual counselling, disciplinary programme, and religious programme.



Children who are referred to one of the 33 Remand Homes in Thailand are those who pose a serious threat to other persons, recidivists, children without parental/family care and children whose parents/guardians request to detain them because they have no control over their children. Children who lived in an institution before they came into conflict with the law are usually not released to the institution where they used to live, but are detained in a Remand Home. The Juvenile Observation and Protection Centre (JOPC) is the governmental agency (Ministry of Justice) that is responsible for preparing the social inquiry report of children who are released and awaiting their trial in the community, as well as children deprived of their liberty in a Remand Home. In cases of children who are alleged to have committed an offence that is punishable by a maximum of five years imprisonment (plus a few other formal criteria), the director of the JOPC may suggest diversion at the prosecution level instead of taking the case to court (article 86). The director of the JOPC prepares the child's rehabilitation plan and submits it to the public prosecutor for consideration. In all other cases, the director of the JOPC prepares the pre-sentencing report on the child's family background, education, behaviour, causes of the offence, etc. submits it to the court in order to take it into consideration for trial and adjudication. The court will deduct the number of days that the child has been deprived of his/her liberty in the JOPC during the inquiry and trial from the child's final measure or sentence (articles 83 and 85(1)).

✓ **Enablers and success factors:**

- Child-specific legislation, i.e., the Act on Juvenile and Family Court and Procedure (2010), incorporates alternatives to pre-trial and other alternative measures.
- Capacity building for professional and volunteer juvenile justice actors (and management and other stakeholders) on relevant national legislation, child rights and juvenile justice/justice for children principles.
- Multidisciplinary teams of the Juvenile Observation and Protection Centres and the Counselling Centres of the Juvenile and Family Courts are specialized in working with children in conflict with the law and their parents/guardians/families as well as applying diversion and alternatives to pre-trial and post-trial detention.

- It is crucial for the implementation of diversion and other alternative measures that the management of juvenile justice entities/organizations understands the concepts as well as why such measures should be considered as a measure of first/second resort and deprivation of liberty as a measure of last resort. Moreover, management should motivate, encourage and structurally support their staff to apply alternative measures in as many cases as possible.
- The preparation and use of quality psychosocial assessments, needs and risk assessments, social inquiry reports and pre-sentencing reports (different terms are used by different juvenile justice professionals and at different stages of the juvenile justice process) contributes to the use of diversion, alternatives to detention and restorative justice approaches.
- Interdisciplinary meetings and events encourage juvenile justice professionals (and volunteers) to strengthen coordination, collaboration, networking, partnership and development of a (more) comprehensive approach to juvenile justice.
- Various pilots on alternative measures for children in conflict with the law have been carried out, monitored and evaluated. Based on the lessons learned, other pilots have been designed and/or promising/good practices have been replicated and scaled up in Thailand.
- Legal assistance for children in conflict with the law and their parents/guardians throughout the juvenile justice process may increase the use of diversion and alternatives to pre- and post-trial detention.

#### ✓ **Barriers and challenges:**

- There is discussion among juvenile justice professionals, both within their own profession and among different professions, how the legal provisions on alternative measures need to be interpreted. Relevant instructions, guidelines and standard operating procedures have been developed, but are not used by all juvenile justice professionals.
- Not all juvenile justice professionals (and volunteers) have sufficient knowledge of relevant national legislation, child rights and juvenile justice/justice for children principles and sufficient skills to work with children in conflict with the law and their parents/guardians/families or in a multidisciplinary juvenile justice team.
- The high turnover of juvenile justice professionals, especially judges and management of juvenile justice entities, causes various challenges for the immediate work with children in conflict with the law and their parents/guardians/families, including loss of institutional memory.
- Some staff perceive the application of diversion and alternatives to pre-trial and post-trial detention as 'additional work'.
- There are no accountability mechanisms when detention/deprivation of liberty is not used as a measure of last resort and/or not for the shortest appropriate period of time or when alternative measures are not applied as soon as possible (diversion is a measure of first resort and alternatives to post-trial detention are a measure of second resort).
- Working in the juvenile justice sector and dealing with children in conflict with the law is not always/often not a professional choice and considered as a step forward in one's professional carrier.
- Inter-sectoral collaboration between juvenile justice professionals (and volunteers) and social welfare/child protection professionals (and volunteers) hardly exists. The main explanation is that the mandate of the Ministry of Social Development (MoSDHS) is defined by the Child Protection Law and the responsibilities of social workers of MoSDHS are basically focused on children at risk and child victim(s)/witnesses of crime.
- Currently capacity building initiatives are mainly donor-driven. Inclusion of juvenile justice/justice for children topics in the pre-service and in-service curricula of juvenile justice professionals contributes to the sustainability of the capacity building initiatives.
- There is no nationwide and no coherent implementation of programmes.
- There is a need to develop a database and record keeping.
- Insufficient financial resources.



### ✓ **Running costs:**

UNICEF Thailand has provided the following overview of day-to-day costs to maintain measure 'conditional pre-trial release to parents/guardians or family members' (measures 3 and 4):

- A one-day family relationship programme is roughly THB800 (US\$22) per person per day.
- A five-day rehabilitation program is roughly THB600 (US\$16) per person per day.
- Other programmes' costs may vary.
- According to the Ministry of Justice Regulation (2012) in term of expenditures concerning allowance, transportation and other expenses on participation of rehabilitation plan for children or youth describes that the participants of meetings will receive THB300 as subsistence daily allowance and THB200 (total of THB500).

## **Pre-trial release to parents/guardians, family and community leaders/elders in Samoa**

In Samoa, the measure 'pre-trial release to parents/guardians, family and community leaders/elders' (measure 3) was documented.

### ✓ **Description of the measure according to national law:**

The Young Offender Act (2007) incorporates alternatives to pre-trial detention and allows children in conflict with the law to await their trial in their community. Section 22(1)(4) 'Bail and custody' states that a 'young person' may be remanded on bail on one or more of the following conditions:

- Living with specified persons or class of persons;
- Not associating with specified persons or class of persons;
- Abiding by a curfew;
- Attending school or any other specified place;
- Not be present at a specified location or be within defined areas of such location;
- Reporting to the probation service;
- Surrendering all travel documents; and
- Not taking alcohol, drugs or driving a motor vehicle.

### ✓ **Description of the measure in actual practice:**

Children in conflict with the law are almost never deprived of their liberty during the juvenile justice process, except during the early arrest stage. The pre-trial period is usually one month long, then the youth court starts the trial proceedings and the child is released if he/she was placed in pre-trial detention. Most children who are released during the arrest, pre-trial and trial stages stay with their parents/guardians in their own community, especially if the child is accused of having committed a minor offence. The probation officers and judges have provided the following estimation about children in conflict with the law at the arrest, pre-trial and trial stage:

- ±80 per cent are released to their own community/village. Usually 'no contact with the victim' is one of the release conditions in these cases.
- ±10 per cent are released to a (close) relative in another community/village than his/her own/family's community/village. This usually happens in serious and sexual offences in which both the child in conflict with the law and the victim(s) live in the same community. Placement of the child with a relative is meant to prevent him/her from revenge by the victim's family. This also happens when the child's parents are divorced.
- ±10 per cent are deprived of their liberty/placed in custody/remand home. This usually happens during the early arrest stage while the child's parents/guardians/family/community are doing the traditional apology and reconciliation.



“When the child and his/her parents/guardians appear before the youth court, the judge verifies whether the child still lives with his/her parents/guardians and can continue living in his/her own village/community or is already living/has to live with a (close) relative and temporary be removed to another village/community”. If the child has to live temporarily in another village/community, he/she is supervised by a community justice supervisor and monitored by a probation officer. Children in conflict with the law are never released on financial bail. Common pre-trial release conditions, supervised by a community justice supervisor, are:

- Reporting regularly to the community justice supervisor/probation officer.
- Going to school/continuing education.
- Participating in youth club activities.
- Participating in church activities.

✓ **Enablers and success factors:**

- Strong cultural values and Christianity.
- Involvement of local community justice supervisors (CJS) in supervision of children in conflict with the law.
- The parents/guardians of the children in conflict with the law have to be present during court hearings. If they do not want to come, they are summoned to come.
- All children in conflict with the law have legal assistance during the trial stage and sentencing stage from a lawyer of the National Prosecution Office.
- Human resource and funding support.
- Evaluation reports of what works and lessons learnt to inform improving good practice.
- One of UNICEF Pacific’s strategies is to establish a professional Child Protection Office to strengthen the juvenile justice workforce, social and community service response, etc. This initiative is to fund particular governmental staff working with children in conflict/contact with the law for a certain period of time (12 months). This strategy has been successful in some Pacific countries (Fiji, Samoa and Vanuatu). Some Governments have managed to integrate the funded juvenile justice positions in their government structures.

✓ **Barriers and challenges:**

- It is a challenge to engage with police to training and strengthen capacity to better implement alternatives to pre-trial detention.
- Awareness raising initiatives on diversion, alternatives to pre- and post-trial detention and restorative justice approaches are needed. The general public, juvenile justice professionals and volunteers do not really understand these juvenile justice concepts and the benefits of these alternative measures for children in conflict with the law, their parents/guardians/families and communities.
- There is a tendency that juvenile justice professionals/volunteers who have participated in capacity building initiatives on child rights, juvenile justice and other child-centred topics do not stay long(er) in their job and move on.
- Political instability.
- Lack of data collection.
- Lack of evaluation and analysis of promising/good practices to evidence what works well and challenges to resolve.

✓ **Running costs:**

UNICEF Samoa has not yet provided the day-to-day costs to maintain the measure ‘alternatives to pre-trial detention (release to parents/guardians, family and community leaders/elders)’ (measure 3).

## 3.5 Alternatives to post-trial detention in Thailand, Papua New Guinea, Samoa and Indonesia

The alternative measure 'alternatives to post-trial detention' has been explored in Thailand, Papua New Guinea, Samoa and Indonesia.

### (Temporary) Disposal of the case by the court in Thailand

In Thailand, the '(temporary) disposal of the case by the court' (measure 5) was documented.

#### ✓ Description of the measure according to national law:

Article 90 of the Act on Juvenile and Family Court and Procedure (2010) concerns children who are alleged to have committed an offence that is punishable by a maximum of 20 years of imprisonment and states that the court may order that the director of the JOPC prepares "a rehabilitation plan that contains conditions with which the child or juvenile including his or her parents, guardians, any persons or representatives of an institution with whom a child or juvenile is residing shall comply". Except the seriousness of the offence, the court also has to consider whether:

- The child has shown repentance for his/her act;
- The child may reform him/herself;
- The prosecutor does not have any objection;
- The circumstances of the case do not inflict unreasonable harm to the society;
- The victim(s) does not have any objection; and
- The victim(s) may be remedied and receive reasonable compensation through the rehabilitation plan.

The rehabilitation plan has to be submitted to the court for consideration within 30 days from the date on which the court has issued the order. If the court agrees with the rehabilitation plan, the judge orders the implementation and issues an order of 'temporary disposal of the case'. In case the court disagrees with the proposed rehabilitation plan, the judicial proceedings will continue. Article 91(2) states that "criteria, methods and conditions for the preparation of the rehabilitation plan pursuant to section 90 shall be as prescribed under the regulations imposed by the President of the Supreme Court". These Regulations have already been drafted.

#### ✓ Description of the measure in actual practice:

The measure of temporarily disposing of the case by the court is applied nationwide. The multidisciplinary team of the Juvenile and Family Court prepares the social inquiry report for the child and develops the rehabilitation plan. The rehabilitation plan may be prepared through a restorative justice process, called 'conference'. A lay judge is the facilitator of the conference. During the conference, the child, his/her parents/guardians, the victim(s) (and his/her parents/guardians), teacher, community leader and sometimes also the prosecutor and others, such as a social worker and/or psychologist, are present. The rehabilitation plan is developed by means of a standard form, including conditions, duration and monitors. Examples of conditions that are incorporated in children's rehabilitation plans are 'finalizing education', 'compensating the victim', 'completing ordination' and 'disciplinary camp'. The rehabilitation plan may also incorporate conditions for the child's parents/guardians and others, such as 'father has to participate in an alcohol addiction treatment', 'mother has to go for counselling', 'the parents/guardians have to participate in a parental skills programme', 'the school has to enrol the child'.

The lay judge, together with the psychologist of the multidisciplinary team, monitors the child's compliance with the conditions through house visits and sessions in the court compound. The monitors report regularly to the court on the progress and compliance of the child.

The rehabilitation plan usually lasts between six months to two years. If the child complies with the conditions incorporated in his/her rehabilitation plan, the report is sent to the court in order to 'strike the case off the case list' (articles 90-92 and 133). If the child does not fully comply with his/her rehabilitation plan, the director of JOPC notifies the non-compliance to the court and the court will issue an order as it considers appropriate or will resume the proceedings. Parents/guardians or others who do not comply with the obligations may get a fine.

✓ **Enablers and success factors:**

- Child-specific legislation, i.e., the Act on Juvenile and Family Court and Procedure (2010), incorporates diversion and other alternative measures.
- Capacity building for professional and volunteer juvenile justice actors (including management and other stakeholders) on relevant national legislation, child rights and juvenile justice/justice for children principles.
- Multidisciplinary teams of the JOPC and the Counselling Centres of the Juvenile and Family Courts are specialized in working with children in conflict with the law and their parents/guardians/families as well as applying diversion and other alternative measures.
- It is crucial for the implementation of diversion and other alternative measures that the management of juvenile justice entities/organizations understands the concepts as well as why alternative measures should be considered as measures of first/second resort and deprivation of liberty as a measure of last resort. Moreover, the management should motivate, encourage and structurally support their staff to apply diversion and other alternative measures as much cases as possible.
- The preparation and use of quality psychosocial assessments, needs and risk assessments, social inquiry reports and pre-sentencing reports (different terms are used by different juvenile justice professionals and at different stages of the juvenile justice process) contributes to the use of alternative measures.
- Interdisciplinary meetings and events encourage juvenile justice professionals (and volunteers) to strengthen coordination, collaboration, networking, partnership and development of a (more) comprehensive approach to juvenile justice.
- Various pilots on alternative measures have been carried out, monitored and evaluated. Based on the lessons learned, other pilots have been designed and/or promising/good practices have been replicated and scaled up in Thailand.
- Legal assistance for children in conflict with the law and their parents/guardians throughout the juvenile justice process may increase the use of alternative measures.

✓ **Barriers and challenges:**

- There is discussion among juvenile justice professionals, both within the profession and among different professions, on how the legal provisions on alternative measures need to be interpreted. Relevant instructions, guidelines and standard operating procedures have been developed, but are not used by all juvenile justice professionals.
- Not all juvenile justice professionals (and volunteers) have sufficient knowledge of relevant national legislation, child rights and juvenile justice/justice for children principles and sufficient skills to work with children in conflict with the law and their parents/guardians/family or in a multidisciplinary juvenile justice team.
- The high turnover of juvenile justice professionals, especially judges and management of juvenile justice entities, causes various challenges for the immediate work with children in conflict with the law and their parents/guardians/families including loss of institutional memory.
- Some staff perceive the application of diversion and alternatives to pre- and post-trial detention as 'additional work'.
- Working in the juvenile justice sector and dealing with children in conflict with the law is not always/often not a professional choice, and considered a step forward in one's professional carrier.

- The lack of community-based services and programmes for children in conflict with the law. Most existing CBOs are not capable and/or willing to deal with children in conflict with the law and/or to involve those children in the activities and programmes that are designed for children at risk and/or victim(s)/witnesses of crime.
- Sectoral collaboration among juvenile justice professionals (and volunteers) is not optimal and sometimes does not exist. Partly overlap of responsibilities and/or work implies loss of resources and from the perspective of children in conflict with the law and their parents/guardians/family it might imply the unnecessary delay of their case, decrease of trust, etc.
- Inter-sectoral collaboration between juvenile justice professionals (and volunteers) and social welfare/child protection professionals (and volunteers) hardly exists. The main explanation is that the mandate of the MoSDHS is defined by the Child Protection Law and the responsibilities of social workers of MoSDHS are basically focused on children at risk and child victim(s)/witnesses of crime.
- Currently capacity building initiatives are mainly donor driven. Inclusion of juvenile justice/justice for children topics in the pre-service and in-service curricula of juvenile justice professionals contributes to the sustainability of the capacity building initiatives.

#### ✓ **Running costs:**

UNICEF Thailand has provided the following overview of day-to-day costs to maintain measure 'temporary) disposal of the case by the court':

- A one-day family relationship programme is roughly THB800 (US\$22) per person per day.
- A five-day rehabilitation programme is roughly THB600 (US\$16) per person per day.
- The Ministry of Justice Regulation (2012) describes that the participants of meetings relating to the rehabilitation plans for children and youth will receive THB300 as subsistence daily allowance and THB200 (for a total of THB500) for transportation and other expenses.

## Community-based conferencing as a court measure in Papua New Guinea

In Papua New Guinea, the measure 'community-based conferencing as court measure' (measure 5 and measure 7) was documented.

#### ✓ **Description of the measure according to national law:**

The Juvenile Justice Act (2014) incorporates the option for juvenile courts to refer cases of children in conflict with the law to a 'community-based conference' in order to receive recommendations on possible sentences. It is stated that: "If (a) a Court is satisfied that an offence has been proven; or (b) the juvenile admits the facts constituting the offence, the Court may, before imposing sentence, refer the juvenile to an authorized facilitator to convene and facilitate a community-based conference for the purpose of making recommendations to the Court on an appropriate sentence" (article 78(1)). Article 78 continues as follows: "(3) At the community-based conference (a) the juvenile has the right to participate personally in the discussion and in any decision made; and (b) the victim(s) has the right to participate personally in the discussion and in any decision made, unless he or she elects not to participate. (4) Upon receipt of the recommendations from a community-based conference, the Court may (a) confirm the recommendations by making them an order of the Court; or (b) substitute or amend the recommendations and make an appropriate order". Article 37 of the Juvenile Justice Act (2014) deals with 'authorized facilitators' of conferences and states: "(1) the director may in writing authorize persons to facilitate community-based conferences". The authorized facilitator must convene and facilitate the community-based conference in accordance with Part III.B (article 78(2)).

✓ **Description of the measure in actual practice:**

Juvenile Courts refer children in conflict with the law to the Office of Juvenile Justice Services (Department of Justice and Attorney General) or to juvenile justice officers or juvenile justice volunteers, including volunteers of the Salvation Army, in order to conduct 'community-based conferences'. 'Community-based conferencing' is used in more serious cases of children in conflict with the law, like drug use, drug selling and fighting with weapons (knives/fire arms), and exceptionally in serious cases such as rape and murder. Recidivists are referred to community-based conferencing. The juvenile justice officer/volunteer prepares and conducts the conference as follows:

- After receiving the file of the child in conflict with the law and the request from the Juvenile Court to organize a community-based conference, the juvenile justice officer/volunteer conducts a house visit to the child in conflict with the law and his/her parents/guardians and a house visit to the victim(s). During the house visits he/she explains what a conference means, what the parties may expect and obtains the consent of the parties. If one or both parties do not give consent to conferencing, the juvenile justice officer/volunteer refers the case back to the Juvenile Court. "It happens often that the victim does not give his/her consent at the beginning of the house visit, but after our explanation that the proceedings are in the best interests of the child in conflict with the law and that adult and juvenile justice proceedings are different, all victims agree". If the child and his/her parents/guardians have another opinion about whether or not to participate in the conferencing process, the juvenile justice officer/volunteer guides the discussion till they reach an agreement.
- Within two weeks, the juvenile justice officer/volunteer submits the report concerning the house visits and the consent of the parties to the Juvenile Court. If the parties have given their consent to community-based conferencing, the juvenile court magistrate orders the organization of the conference meeting.
- Community-based conferences take place in the community hall, church or other community setting. The parties decide on the date and time of the conference. In almost all cases, only one conference meeting is held. The participants in the conferencing meeting are the child in conflict with the law and his/her parents/guardians and community or extended family, the victim(s) and his/her community or extended family, peace officer, Village Court magistrate(s)/community leader(s) and pastor(s)/religious leader(s). If the child in conflict with the law is a student, his/her teacher (or principal) is also invited.
- The conference facilitator, i.e., juvenile justice officer/juvenile justice volunteer, conducts the actual conferencing meeting as follows:
  - He/she invites the participants to introduce themselves.
  - He/she explains the purpose of the conference, rules during the conference, etc.
  - He/she invites the parties to share their stories about what has happened, i.e., first the child, then his/her parents/guardians, then the victim(s) and finally the extended family members or community members.
  - He/she summarizes what has been said by the participants about the incident.
  - He/she invites the child, his/her parents/guardians and the victim(s) to discuss "how things can be made right again". This part of the discussion starts with the suggestions of the victim(s) and then the child and his/her parents/guardians respond. The conferencing facilitator facilitates the discussion between the parties, but does not interfere or suggests solutions him/herself. The extended family members or community members are not supposed to be involved in the discussion about how the dispute may be solved.
- When the parties have come to an agreement, the child stands up and apologizes to the victim(s) and his/her parents/guardians/family/community. Then the victim(s) stands up and forgives the child and his/her parents/guardians/family. "The agreement focuses on the relationship between the parties and harmony in the community. The child, his/her parents/guardians and the victim(s) are usually members of the same community who have to live together in peace again". Almost all agreements reached through community-based conferencing include similar obligations, i.e., the child in conflict with the law has to say 'sorry',

the victim(s) has to forgive the child, the parents/guardians of the child in conflict with the law have to compensate the victim(s) through transferring the money to the victim's bank account (not exceeding 200 Kina according to the previous law and 5,000 Kina) of the current Juvenile Justice Act) and a joint meal two weeks or one month after the conference. Exceptionally, conferencing agreements include other obligations, such as counselling by the church/religious leader. The agreement is signed by both parties and the conference facilitator.

- The conference facilitator sends the agreement to the Juvenile Court for approval within two weeks. In actual practice, the juvenile court magistrate always approves the conferencing agreement (as per article 78(4)(a) or articles 35(5) and 62(3)(a) of the Juvenile Justice Act (2011)). It has not become clear whether a child in conflict with the law who has been part of a successful community-based conferencing process will have a criminal record.

#### ✓ **Enablers and success factors:**

- The Juvenile Justice Act (2014) incorporates 'community-based conferencing' at the court level in order to recommend sentencing options, such as diversion measure and court measure.
- Conferencing is already practiced (based on the previous Juvenile Courts Act (1991)) and accepted and valued by juvenile justice professionals/volunteers and the general public.

#### ✓ **Barriers and challenges:**

- There is no budget allocated to implement the Juvenile Justice Act (2014).
- There are insufficient social workers or authorized juvenile justice officers/volunteers to assist in cases of children in conflict with the law who are diverted or subject to other alternative measures.
- Conferencing (and mediation) as practiced at the various levels of the juvenile justice process is partly in line with international standards, especially holding the child responsible and developing tailored/child-centred agreements may require additional attention.

#### ✓ **Running costs:**

UNICEF Papua New Guinea has provided the following overview of day-to-day costs to maintain the measure 'community-based conferencing as court measure' (measure 5 and measure 7).

- The conferencing venue is usually whatever facility there is near the home of the parties and it can also be outdoors (outside the house of one of the parties). The recurrent costs would be the travel costs for the facilitator (usually the juvenile justice officer) to go to the venue for the conferencing, and travel costs of juvenile justice officer/volunteers to follow-up on the juvenile's performance.
- There are no structured training/rehabilitation programmes for children in conflict with the law yet, other than the counselling that some churches or FBOs could provide.

## **Pre-sentencing meeting at the trial stage (with a restorative justice approach) in Samoa**

In Samoa, the measure 'pre-sentencing meeting at the trial stage (with a restorative justice approach) (measure 5 and measure 7) was documented.

#### ✓ **Description of the measure according to national law:**

Part IV as well as other provisions of the Young Offender Act (2007) deal with pre-sentencing meetings. Section 6(4) deals with the court proceedings relating to pre-sentencing meeting and states that: "Where a Young Person admits any charge, the Court must direct the Probation Service to arrange a pre-sentence meeting in accordance with Part IV of this Act, unless the Court is advised that prior to a charge being laid, there has already been a meeting at which a fa'aleleiga has occurred which, in the Court's opinion is reasonable and just or where the Court considers such a course is not appropriate in the circumstances and in such cases the Court may proceed to sentence the Young Person in accordance with section 15". Section 10 lists the responsibilities



of the Probation Service with regard to pre-sentencing meetings. Section 11 describes the main characteristics of pre-sentencing meetings and proceedings. Section 12 elaborates on the purposes of pre-sentencing meeting and states that "(1) Any pre-sentence meeting must: (a) discuss the circumstances of the offending; and (b) seek the views of those in attendance; and (c) consider whether a reconciliation or other outcome may be arrived at by the parties affected. (2) In this section, an outcome may include payment to any victims for reparation, property loss, medical expenses incurred or any other reasonable loss suffered by the victim(s) as a result of the young person's actions". Section 13 explains the principles of pre-sentencing meeting. These are: "Any outcome determined at a pre-sentence meeting shall have regard to the following principles: (a) the accountability by the young person for the wrong that has been done; (b) the rehabilitation of the young person including an assessment of the suitability of his or her current living arrangements; and (c) the involvement of the young person's family, church, chief, and village; and (d) the protection of the community; (e) an acknowledgement of the views of the victim(s) and to restoring the position of the victim(s) in accordance with Samoan custom and tradition; and (f) the putting in place of a plan for rehabilitation of the young person that fosters responsibility by the young person and which promotes the young person's self-esteem, cultural awareness and understanding".

Section 14 further clarifies the recording of pre-sentencing meeting, that is "(1) At every pre-sentence meeting, the Probation Service will ensure that a probation officer is present at all times to record in writing the outcome of the meeting. (2) Any record of a pre-sentence meeting under subsection (1) must be provided to the Youth Court immediately prior to the next sitting of the Youth Court concerning the young person to which the written record applies. (3) Any course of action or punishment recommended at a pre-sentence meeting as to how a young person might best be treated must be able to be completed within 6 months of the young person being sentenced by the Court". Section 15 deals with the sentencing options of the Youth Court. These are "(1) Subject to subsection (2) and subsection (3), where the Court finds a charge to be proved against a young person it may where appropriate, without entering a conviction, order the young person within 6 months to: (a) carry out his or her obligations under any agreement reached at a pre-sentence meeting; or (b) undertake a term of community work of not more than 100 hours, to be completed within 6 months; or (c) undertake a needs assessment and/or rehabilitative programme of not more than 6 months duration".

#### ✓ **Description of the measure in actual practice:**

The practice of pre-sentencing meetings in cases of children in conflict with the law seems to be in line with how it is prescribed by the Young Offender Act (2007). Pre-sentencing meetings are practiced nationwide. The Probation Service is the key organization.<sup>30</sup> The Youth Court requests the Probation Service to convene a pre-sentencing meeting in all cases of children in conflict with the law from 10 years up to 17/18 years,<sup>31</sup> including recidivists, except in cases of rape and murder, which are the jurisdiction of the Supreme Court, and cases in which the child denies having committed an offence. The child has to admit the offence or the Youth Court has to prove that an offence has been committed by the child before a pre-sentencing meeting can be ordered and the victim(s) can be contacted. The judge can only give a ruling based on a pre-sentencing meeting report prepared by the probation officer.

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<sup>30</sup> The Probation Service considers pre-sentencing meeting as diversion for children in conflict with the law. Within the framework of the EAPRO study, diversion can be instigated at the police level, including before arrest, at the prosecution level and at the court level before the first trial hearing. Pre-sentencing meetings are ordered by the court during the first trial hearing, after the child in conflict with the law has pled guilty, which implies that it is an alternative measure at the court level/trial stage. Technically it seems to be a 'suspended sentence', because if the child complies with the conditions agreed upon by the parties and approved by the Youth Court within the agreed timeframe, he/she will not have a criminal record. In case of non-compliance, the child is sentenced by the Youth Court and will have a criminal record.

<sup>31</sup> The Young Offender Act (2007) only covers children in conflict with the law up till the age of 17 years. Section 2 defines 'young person' as "any person of or over the age of 10 years and under the age of 17 years" and 'adult' as "a person of or over the age of 17 years". The judges have confirmed that the Youth Court also requests a pre-sentencing meeting in cases of children of 17 years old in conflict with the law.

In victimless cases, the Youth Court requests the probation officer to prepare a pre-sentencing report which includes the child's family background, financial situation of the family, education and other personal information plus recommendations on the kind of sentence. If one or both parties do not consent to a pre-sentencing meeting, the probation officer prepares a pre-sentencing report for the Youth Court instead of convening a pre-sentencing meeting. If a pre-sentencing meeting is organized, the probation officer decides who will participate. Usually this includes the child in conflict with the law, his/her parents/guardians, the victim(s), his/her family members (or parents/guardians if the victim(s) is a child), community leaders/elders (concretely the village mayor, church minister and/or women representative) and other community members (if both parties agree) are invited. The child and the victim(s) have to be present. The victim(s) is often reluctant to participate in a pre-sentencing meeting. However, when the probation officer explains the purpose, process and that a pre-sentencing meeting is the only way forward most victims agree to participate.

The parties are never forced to participate in a pre-sentencing meeting. "The key is to motivate the parties and make them understand that the pre-sentencing meeting is an opportunity and a way forward. What happened, happened already, we cannot change that, but through a pre-sentencing meeting we can do something for the child offender and give him/her a second chance and rehabilitate him/her. The victim(s) can have a say in the outcome and the measure of the court and the parties can prevent reoffending". The probation officer is the facilitator of the pre-sentencing meeting. Neutrality is ensured; for example, the probation officer cannot be a relative/community member of one of the parties. During pre-sentencing meetings, Samoan cultural values and Christianity are always applied. The parties are often very emotional, for example with mothers who cry and ask for forgiveness, especially in sexual offence cases.

In most cases, a traditional apology (*ifoga*)<sup>32</sup> and reconciliation (*fa'aleleiga*) take place at the community level before the pre-sentencing meeting, especially when the child and the victim(s) are from the same community.<sup>33</sup> It means that the parents/guardians/family of the child and/or their community leader/elder (village mayor, church minister or women representative) sit in the open air, cover their head with a carpet and ask for forgiveness. They remain there till the victim(s)/victim's family calls them inside. This can be after one day, sooner or later. The child does not take part. That will be too risky as long as the victim(s) has not forgiven the child's and the child's family. Traditional apology is a very powerful means, especially if the community elder of the child's community is involved, because "it actually implies that the entire community takes part in the process". A traditional apology is always accepted by the victim(s)/victim's family. Children do not reoffend when their parents/guardians, family and entire community have asked for forgiveness to the victim(s) through this act. It is considered a severe punishment for the child's parents/guardians/family, because it is a very costly process. They have to offer food to all members of their community after the village has been shamed by the offence/conflict. "The traditional local village response to offending behaviour of children is harsher than the formal judicial response, because the entire village/community is 'punished' for the child's offending behaviour. The community shares the burden. Community members are proud of their village and if an offence happens, their village is stigmatized. Others will say 'you are from that village where this-and-that happened'. For that reason some children in conflict with the law would rather prefer to be referred to the formal justice system. Even if children live and go to school in Apia, their original village will be ashamed if the child comes into conflict with the law in Apia".

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<sup>32</sup> Section 2 of the Young Offender Act (2007) defines '*fa'aleleiga*' as "any customary reconciliation process whereby the parties to a dispute have come to a successful resolution of the matter in dispute".

<sup>33</sup> Communities organize a traditional apology/reconciliation if a child is alleged to have committed an offence, which implies that it has not yet been proved whether he/she is guilty or not.

If a traditional apology has taken place, the probation officer acknowledges the reconciliation between the parties during the pre-sentencing meeting and includes it in the pre-sentencing meeting report for the Youth Court. The pre-sentencing meeting is convened in the office of the probation officer. The probation officer does not give suggestions on what may/has to be incorporated in the agreement between the parties and the child's rehabilitation plan. He/she only facilitates the discussions between the parties. Usually, a combination of the following conditions for the child are included (in addition to the acknowledgement of the traditional apology and reconciliation):

- Attending school or participation in vocational training;
- Attending church and/or participating in church events;
- Participating in a youth group;
- Curfews, for example, 'being at home between certain hours in the evening and weekends' or 'not contacting the victim';
- Sometimes community work is incorporated in the child's rehabilitation plan (most often in victimless cases);
- The child's parents/guardians have to pay for the damages, if any, and the expenses of the victim(s) that resulted from their child's offence; and
- Sometimes the parties agree that the child in conflict with the law has to live outside his/her community with a relative for the duration of his/her rehabilitation plan (usually three or six months).

The pre-sentencing meeting report includes the decision of the parties, plus the personal information on the child such as the child's family background, financial situation of the family, education, etc. (like in other pre-sentencing reports). Personal information is collected before or afterwards, not during the pre-sentencing meeting. The pre-sentencing meeting report is signed by the child in conflict with the law and the probation officer, not by the child's parents/guardians or other participants in the pre-sentencing meeting. "The child has to take responsibility for what happened. Signing the contract and complying with the conditions encourage their responsibility". The Youth Court always approves what the parties have agreed upon and is in the report.

After the court's approval, the legal enforcement of the agreement between the parties and the child's rehabilitation plan starts. A community justice supervisor monitors the child's compliance with his/her rehabilitation plan. Sometimes the community justice supervisor takes the child into his/her own house if no relative is available/willing to temporarily take care of the child. The main reason that children in conflict with the law have to live in another community is to prevent the child being the victim of revenge by his/her community and to give the community time to prepare to take in the child again. The child has to comply with his/her rehabilitation plan in the community where he/she has to live during the time agreed upon. As much as possible, the child will continue his/her education in the same school/location (if the parties agree on this arrangement).

Problems only occur in cases in which both the offender and the victim(s) are children and from the same community and 'no contact with the victim' is part of the child's rehabilitation plan. If the children go to the same school, the probation officer has to find another school for the child in conflict with the law for the duration of the rehabilitation plan. Each village has CJSs, i.e., the church minister, village mayor and women representative(s), who supervise children in conflict with the law who are subject to diversion and other alternative measures. The CJSs are local government staff (paid in allowances), working on a voluntary basis with children in conflict with the law. The Probation Service monitors the CJSs through bi-weekly meetings and bi-yearly 'come-back' days. After half of the agreed timeframe, i.e., one and a half or three months, the probation officer prepares the progress report based on the information received from the CJS and submits the report to the Youth Court. At the end of the agreed timeframe, the probation officer prepares the final report. In cases where the child in conflict with the law does not comply

with the conditions agreed upon, the usual response of the Youth Court is to extend the child's rehabilitation plan by another three or six months (same period as the original period). However, in actual practice, the focus is on the child's education. If the child continues to go to school, but has breached another condition(s), the Youth Court usually does not extend the child's rehabilitation plan. If the child continues to breach his/her conditions, the Youth Court will impose a sentence, i.e., either a non-custodial or custodial sentence.

✓ **Enablers and success factors:**

- Samoa is a small country 'where everybody knows everybody'. In this context restorative justice in the form of pre-sentencing meeting or other approaches is very effective compared to restorative justice in big cities and urbanized countries where people are strangers to each other.
- Reconciliation is part of the Samoan culture and restorative justice approaches are well accepted.
- Samoa has only one culture/tribe.
- Samoa has strong cultural values and is a Christian country.
- The Probation Service is the key organization with regard to pre-sentencing meeting. It is a national service with an office in Apia and Savaii.
- The local CJS is involved in and has to take up its responsibility to supervise children in conflict with the law who are diverted or subject to other alternative measures. According to one of the judges "CJSs can be considered the most unique component of juvenile justice system in Samoa; CJs are our Samoan version of electronic supervision".

✓ **Barriers and challenges:**

- There are no comprehensive statistics available with regard to pre-sentencing meetings that are detailed enough as basis for improvements, harmonizing practices with international standards, etc.
- In the Pacific countries, most cases of children in conflict with the law are dealt with through customary and traditional law mechanisms (informal juvenile justice) and only the minority of children come into conflict with the formal (juvenile) justice system. Concrete data on customary and traditional law mechanisms are not available, and UNICEF has not yet developed a comprehensive view on how to collaborate with customary and traditional representatives and/or to build bridges between formal and informal justice.
- Awareness raising initiatives on alternative measures are needed. The general public as well as juvenile justice professionals and volunteers do not understand juvenile justice concepts and the benefits of alternative measures for children in conflict with the law, their parents/guardians/families and communities.
- There is a tendency that juvenile justice professionals/volunteers who have participated in capacity building initiatives on child rights, juvenile justice and other child-centred topics do not stay long(er) in their job and move on. "We lose our educated juvenile justice staff".

✓ **Running costs:**

UNICEF Samoa has provided the following overview of day-to-day costs to maintain the 'pre-sentencing meeting at the trial stage (with a restorative justice approach)' (measure 5 and measure 7).

- There are no costs, except the 'cost of labour', for the majority of cases in Apia as the cost of transportation is shouldered by the families of the victims and offenders.
- The costs of cases from Savaii are:
  - Transportation costs for the probation officer to facilitate a pre-sentencing meeting held on another island is about WST240 (inclusive of overnight accommodation and meal).<sup>34</sup>

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<sup>34</sup> The pre-sentencing meeting is held either at Mulinu'u or Tuasivi Office, depending on where the victim(s) resides.

- Cost of labour depends on the hourly rate of the Probation Officer responsible; to carry out the whole process of a pre-sentencing meeting takes about five hours (depending on their ranking).
- Transportation costs for witnesses/return boat fare is WST24.00 (travel costs for the participants are at their expense; bus costs depend on the distance and can be provided, if needed).
- Accommodation is WST100-150.00 (inclusive of dinner WST25.00) plus lunch WST10.00.
- Stationery (toners, paper, pens) is WST30.00.
- Utilities costs of phone bills WST50.00 and electricity WST10.00.
- Other miscellaneous costs are water and tissues.
- Petrol is WST50.00.

## Community service as primary penal sanction in Indonesia

In Indonesia, the measure 'community service as primary penal sanction imposed by the court' (measure 5) was documented.

### ✓ Description of the measure according to national law:

Law No.11, also called 'Law on Juvenile Justice System', defines restorative justice as "a resolution of criminal cases that involves the perpetrator, victim, families of victims/perpetrator and other parties affected by a crime, where all involved jointly strive to respond to the crime and its consequences based on restoring loss rather than retribution" (article 1(6)). The Commentary on the law further explains that "restorative justice is a process of diversion whereby all sides affected by a crime work together to find a satisfactory solution, as part of which the child and community jointly seek a solution that can bring about reconciliation and harmony to the exclusion of revenge". Article 5(1) states that "the juvenile justice system shall be required to prioritize the restorative justice approach". The law does not link restorative justice with community service, only with diversion (articles 8(1) and 93(d)).

The Commentary on Law No.11 (2011) provides the following definition of community service: "community service is an activity carried out to assist works at the government institution or social welfare institution" and further explains that "community service may take the forms of helping the elderly, people with disabilities, or orphans at the foster home and helping to carry out simple administration tasks at the office of the village administrator". The law clearly distinguishes between 'community service hours as diversion condition' (articles 10(1)(2) and 11) and 'community service as a primary penal sanction' (articles 71(1)(b)(2) and 76(1)(2)(3)). Article 76 explains what is meant by 'community service' in the Indonesian context. "Community service is a penal sanction, which aims to educate the child by increasing his/her awareness on positive community activities. A community service shall be imposed for a minimum of seven hours and a maximum of 120 hours". The Commentary on Law No.11 further explains that "community service is an activity carried out to assist works at the government institution or social welfare institution and may take the forms of helping the elderly, people with disabilities, or orphans at the foster home and helping to carry out simple administration tasks at the office of village administrator". In cases where the child does not perform the community work as agreed upon, "the supervising judge may to order the child to repeat wholly or partly the community service subjected as his/her punishment" (article 76(2)).

### ✓ Description of the measure in actual practice:

Only a few days prior to the EAPRO Regional Workshop in August 2016, it became clear that community service as an alternative to post-trial detention (primary penal sanction) is not used in actual practice.

### ✓ **Enablers and success factors:**

- Child-specific law explicitly incorporates and promotes a restorative justice approach to cases of children in conflict with the law, although not explicitly in relation to alternatives to post-trial detention in general or community service in particular. The Government has drafted the regulation on alternatives to post-trial detention, but it is yet to be approved.
- Capacity building for juvenile justice professionals on the implementation of alternative measures for children in conflict with the law.
- Probation officers are involved in cases of children in conflict with the law during the entire juvenile justice process, i.e., from the beginning of the investigation by police until the end of the measure/sentence imposed by the court. There are 'correction offices' (Ministry of Law and Human Rights) in each province as well as some remote correctional offices at district level (in order to ensure that the probation officer can be in the police station within 24 hours).
- The DG Correction (Minister of Law and Human Rights) promotes "prisonless provinces", which is a new development. In the past, the aim was to establish new juvenile prisons (in each province), based on the requirement in Law 11/2012 (article 105(1e)).

### ✓ **Barriers and challenges:**

- Probation officers never recommend community service as a sentence in the pre-sentencing reports for the court, because:
  - There are no mechanisms to implement community service and to monitor the child's compliance with the community service.
  - There are no lists of available local CBOs where community service can be performed.
  - There are no lists with examples which kinds of community service and how many hours of community service children can perform.
  - Probation officers are of the opinion that releasing the child to his/her parents/guardians and continuing education without additional conditions is sufficient and appropriate in most cases.
  - Some potential community service options mentioned in Law No.11 require particular skills that most children in conflict with the law do not have, for example 'helping people with disabilities', 'helping orphans at foster homes' and 'carrying out simple administration tasks'.
  - Many community leaders and members have a punitive attitude and often object to releasing children in conflict with the law to their parents/guardians and the community. They often insist that the children are deprived of their liberty in a juvenile detention facility or placed in a social welfare institution.
  - Awareness-raising among the general public and community leaders on alternatives to post-trial detention and other alternative measures is crucial.
  - The regulation on community service issued by the Government is not fully clear to prosecutors and judges.
  - There is no financial support for juvenile justice professionals who monitor alternatives to post-trial detention.
  - In November 2015, the Director General of Corrections issued a directive that instructs probation officers not to recommend alternative measures for children in conflict with the law in their social inquiry reports.
- Capacity building initiatives focus on child rights and juvenile justice in general, and do not include specific skills relevant to diversion and other alternative measures. Training for probation officers concerns both adults and children in conflict with the law and is not specialized. Training for social workers is focused on the residential care of children in social welfare institutions and not on community-based responses to children in conflict with the law.
- The stakeholders are of the opinion that alternatives to post-trial detention can only be applied in urban areas, because of the availability of community-based services.



- Not all stakeholders have the same understanding and perception of diversion and other alternative measures. The most often applied sentence for children in conflict with the law is a combination of imprisonment and subsequent vocational training, for example three years imprisonment plus six months vocational training. “Prisons are run by the Ministry of Law and Human Rights, so the tendency for probation officers who work for the same ministry is to recommend imprisonment”. Pure alternatives to post-trial detention, i.e., for those who have never been imprisoned, are hardly ever imposed.

✓ **Running costs:**

As community service is not used in actual practice, there are no day-to-day costs to maintain the measure ‘community service as primary penal sanction imposed by the court’ (measure 5).

### 3.6 Restorative juvenile justice approaches in Indonesia, Papua New Guinea, the Philippines and Samoa

Restorative juvenile justice approaches have been explored in four East Asian and Pacific countries. In Indonesia and the Philippines, the restorative justice approach is used at the pre-trial stage and in Papua New Guinea, Samoa and Indonesia at the trial and post-trial stages.



# PART IV: REGIONAL FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

## 4.1 Regional topics discussed during the regional workshop

This section lists the topics relating to diversion, alternatives to pre- and post-trial detention and restorative justice approaches in cases of children in conflict with the law that were raised during the data collection process and may be relevant to all or the vast majority of countries in the region. The topics were discussed with the UNICEF COs and their local counterparts during the regional workshop in August 2016.

### Small group discussions:

- ✓ Professional/volunteer staff dealing with cases of children in conflict with the law.  
Recommendations formulated by the small group (Thailand, Timor-Leste and Viet Nam):
  - Conducting more training and capacity building for volunteers.
  - Developing laws and guidelines that explain the responsibilities of volunteers.
  - Providing incentives to continue working as a volunteer and considering previous experiences.
  - Raising public awareness on the benefits of working as a volunteer.
  - Better screening of the volunteers, having staff for monitoring the volunteers and receiving feedback from children about volunteers.
  - Establishing a code of conduct for volunteers.
  - Guaranteeing work for volunteers during a particular period of time.
  
- ✓ Approaches for specific groups of children in conflict with the law.  
Recommendations formulated by the small group (Malaysia, Mongolia and Thailand):  
Three groups of children are considered more vulnerable when they come in contact with the law:
  - Children with disabilities.
  - Children in rural/remote areas.
  - Children without parental/family care or caregivers.To ensure diversion and other alternative measures are available for these groups of vulnerable children:
  - Collaborating among justice, law enforcement and social services (social welfare, health, education personnel including civil societies) in order to achieve a just outcome for all children and particularly vulnerable children.
  - Implementing all laws, regulations and policies on diversion or alternative measures for all children equally, whilst also looking at the specific situations to address the needs of vulnerable children.
  - Adopting measures to ensure that the delivery of child services reaches all localities.
  - Strengthen the functions of parties involved in dealing with children. For example, sending personnel dealing with children to trainings to address the needs of children.
  
- ✓ Approaches for children involved in specific offences.  
Recommendations formulated by the small group (China, Malaysia, the Philippines, Timor-Leste and Viet Nam):
  - Developing a more individual approach, tailored to the nature of the offence.
  - Investing in more tailored programmes and providing the necessary training to the stakeholders.

- Addressing the broad challenge of the best interest of the child versus safety concerns of the public.
  - Rationalizing the provision of financial allocation and human capital.
  - Mobilizing efforts to identify the causes of children’s offending for a more comprehensive solution to the problem and a more targeted approach.
  - Considering making diversion available to all offences, including serious crimes.
- ✓ Methods for raising awareness.  
Recommendations formulated by the small group (Malaysia, Papua New Guinea and Viet Nam):
- Developing policy/protocols/strategy:
    - Training professionals to better understand diversion/restorative justice and reminding them of the need to apply and methods of applying diversion and restorative justice. This should be accompanied by SOPs, protocols, and manuals with questions and answers on when and how to apply diversion. Trainings could be accomplished through study visits and the learning experiences of other countries.
    - Raising awareness for the public on CJJ, diversion, alternative measures, restorative justice, etc.
  - Utilizing media campaigns (all forms including social media) on diversion, restorative justice, and its benefits.
  - Including the following in awareness messages:
    - Explaining the benefits of diversion not only to the child but also to the victim(s) and the community.
    - Clarifying that diversion holds the child accountable while focusing on rehabilitation and reintegration of the child.
    - Emphasizing the effectiveness of diversion (success stories of reformed children, statistics on juvenile crime reduction, etc.).
    - Describing children’s psychology/development (including brain development).
    - Linking diversion and restorative justice with local customs and traditions.
    - Stressing diversion as building on the strengths of the family and community to resolve juvenile offences.
    - For professionals, emphasizing the obligation to follow national laws and international conventions.
  - Showing how effective diversion is (initiate case studies, strengthen data collection system, etc.).
  - Developing policies to set a common direction forward on diversion/restorative justice so that the same messages, approaches, and strategies are being communicated.
- ✓ Right to participation and accountability of children in conflict with the law.  
Recommendations formulated by the small group (Cambodia, Indonesia and Papua New Guinea):
- Conducting a study on the participation of children in juvenile justice system, including what it means, how meaningful it is for children and what may be appropriate methods.
  - Building the capacity of officials:
    - Awareness about juvenile justice laws in general and on the rights of the child to participate in all stages of the juvenile justice system.
    - Treatment of the child with dignity and facilitate meaningful participation.
    - Basic skills in participation.
  - Adopting guidelines on the implementation of the laws, including on facilitating participation.
- ✓ Approaches for special protective measures for children below MACR and their families.  
Recommendations formulated by the small group (Cambodia, China and Lao PDR):
- Having stricter media guidelines for the Government to produce positive programming for children.

- Having legislation for the Government punishing criminal syndicates for using children under the MACR.
  - Expanding parenting programmes.
  - Creating/enhancing community-based mechanisms for advocacy, identifying children at risk, and planning/undertaking interventions (this mechanism will also support parenting programmes).
  - Raising public awareness and advocating not to lower the MACR.
- ✓ Building bridges between informal/customary juvenile justice and formal juvenile justice. Recommendations formulated by the small group (Myanmar, Papua New Guinea and the Philippines):
- Seeking informal resolutions first before formal proceedings, possibly through legislation.
  - Documenting promising/good practices used by the informal justice mechanisms and sharing these to inform awareness-raising strategies.
  - Raising awareness on informal systems, promising/good practices, etc. to formal and informal systems, to be provided to agencies/sectors/practitioners/etc.
  - Setting standards based on the CRC within informal systems to ensure that the best interests of the child are respected.
  - Providing resources to support the informal systems (human and financial resources).
  - Ensuring recognition of the informal system by the formal system.
- ✓ Community-based services for children in conflict with the law and support for family members. Recommendations formulated by the small group (Cambodia, Lao PDR, Myanmar and Timor-Leste):
- Ensuring Government allocation of resources (human and finance) to protect the children in contact with the law for the best interest of the child.
  - Strengthening collaboration/coordination among Government, civil society and development partners.
  - Establishing/strengthening the child protection system/framework to protect children in contact with the law.
  - Advocating/lobbying the policymaker/parliamentarian to adopt legislation to protect children in contact with the law and also ensuring enforcement.
  - Raising awareness comprehensively to the community/duty bearer in order to change the attitude and behaviour of the law enforcers, stakeholders, communities and children.
  - Building the capacity of local community leaders/service providers/family members at the community level.
  - Supporting family members of children in conflict with the law through cash transfers, vocational training, parenting education, counselling, or income generation.
  - Increasing and building the specialization of relevance stakeholders (social workers, probation officers, judges, police justices, prosecutors, lawyers, etc.) in order to support the process of diversion and build child-friendly justice systems.

### **Plenary subjects of discussions:**

- ✓ Models of alternative measures for children in conflict with the law in other regions, especially the Middle East and North Africa (MENA) and Europe.
- ✓ Community-based responses to violent and sexual offences.
- ✓ Alternatives to specific forms of deprivation of liberty, like immigration detention, administrative detention and protective detention (to prevent the child from revenge/threats of the victim(s)/victim's family).
- ✓ Specialization of juvenile justice professionals (and volunteers) and organizing effective and sustainable capacity building initiatives.

- ✓ Overreliance on institutionalization/residential treatment of children in conflict with the law and not as a measure of last resort and the shortest appropriate period of time.
- ✓ Possible approaches and roles of schools in cases of school offences. [not discussed]
- ✓ Need for detailed and segregated data with regard to cases of children in conflict with the law (and other children in contact with the law) in the various stages of the juvenile justice process, including CJJ.
- ✓ Responses to victimless cases, like drug/alcohol use, graffiti, watching pornography, etc., and possible restorative juvenile justice approaches in such cases, like community service hours, victim empathy programme, etc. Cases in which the victim(s) do not give their consent to a restorative justice process might be included in this discussion.
- ✓ Relationship between social inquiry report/pre-sentencing report and pre-sentencing meeting of the parties involved in the offence requested by the court in order to receive sentencing recommendations. [not discussed]
- ✓ Involvement of the community of care/social support system of children in conflict with the law (and their parents/guardians) in the discussions on alternative measures, the conditions to be incorporated in the child's diversion/reintegration plan/agreement and monitoring children's compliance with their diversion/reintegration plan/agreement. This may also include the discussion about conditions for the child's parents/guardians/family as part of the diversion/reintegration plan/agreement.
- ✓ Desirability and possibilities of symbolic compensation of the victim(s) and/or the community by children in conflict with the law, like through a small job for the victim(s), assisting parents/guardians with household chores, community service hours, participation in constructive leisure time, participation in cultural/religious activities, etc.
- ✓ Making international standards on diversion, alternatives to pre- and post-trial detention and/or restorative justice approaches more concrete, and tailoring the international standards to customs and values of the countries in the region, like legal assistance, informed consent, responsibility of children in conflict with the law, participation in decision making, child-centred diversion/reintegration plans/agreements, monitoring diversion/reintegration plans/agreements, trained facilitators of restorative justice processes, etc. [not discussed]
- ✓ The requirement of remorse by the child in conflict with the law and forgiveness by the victim(s) as precondition of a restorative juvenile justice process or during the proceedings. [not discussed]
- ✓ Participation of children in conflict with the law (with or without their informed consent) in treatment or other reintegration activities during the pre-trial stage may be considered as a violation of the presumption of innocence.
- ✓ Coordination mechanisms and (multidisciplinary) collaboration between agencies and professionals/volunteers of the juvenile justice sector and social welfare/child protection sector, including police, prosecutors, judges, probation officers, social workers and CBO staff, in cases of children in conflict with the law, including for the purposes of advocacy, documenting practices, developing institutional memory, etc.
- ✓ The relationship between the MACR and alternative measures. It has been argued that a high MACR may decrease the use of diversion and other alternative measures, because the age range is limited and older children in conflict with the law may commit more serious crimes that are often not eligible for diversion and other alternative measures. On the other hand, a low MACR implies that a wider variety of alternative measures has to be developed in order to serve the broader age range of children in conflict with the law. [not discussed]

## 4.2 Regional enablers and barriers for using diversion and other alternative measures

### Regional enablers and factors for success

During the data collection process, i.e., the questionnaires, interviews and in-country visits, special attention has been paid to enablers for using diversion, alternatives to pre- and post-trial detention and restorative justice approaches in cases of children in conflict with the law. The main enablers and factors for success are:

#### **Most frequently mentioned enablers:** (by five or more countries)

- ✓ Child-specific legislation on diversion, alternatives to pre- and post-trial detention and restorative justice approaches.
- ✓ Awareness, understanding and commitment of juvenile justice professionals and stakeholders involved in diversion and other alternative measures.
- ✓ Capacity building of juvenile justice professionals (and other stakeholders) on diversion and other alternative measures.
- ✓ Existing traditions, customs and practices that support diversion and other alternative measures.
- ✓ Acceptance of diversion and other alternative measures by the general public, parents/guardians and communities,
- ✓ Coordinating mechanisms, implementing mechanisms and monitoring mechanisms for diversion and other alternative measures.
- ✓ Support and commitment of national and local governments to diversion and other alternative measures.
- ✓ Sufficient human resources, especially social workers/probation officers, and specialized juvenile justice professionals and/or volunteers.
- ✓ Guidelines, SOPs, rules and/or policies on how to implement diversion and other alternative measures.
- ✓ Specific community-based services and programmes for children in conflict with the law.
- ✓ Pilots and practices of diversion and other alternative measures that prove the effectiveness and provide lessons learned for rolling out and scaling up alternative measures.

#### **Other enablers mentioned:** (by less than five countries)

- ✓ MoUs/protocols and interagency and inter-sectoral cooperation with regard to diversion and other alternative measures and children in conflict with the law.
- ✓ Support of CSOs to implement diversion and other alternative measures.
- ✓ Donor support to diversion and other alternative measures.
- ✓ Technical support from UNICEF to understand and/or implement diversion and other alternative measures.
- ✓ Comprehensive data on diversion and other alternative measures.
- ✓ Quality social inquiry reports/pre-sentencing reports that include well-argued recommendations.
- ✓ Specialized child-institutes.

#### **Potential enablers not mentioned by stakeholders:** (deduced from in-country visits and literature)

- ✓ Continuum of alternative measures incorporated in national law and applied in actual practice, so that the alternatives can be tailored to the needs and circumstances of children in conflict with the law.
- ✓ A variety of alternatives to post-trial detention in national law and applied in actual practice, so that the alternatives can be tailored to the needs and circumstances of children in conflict with the law.



- ✓ The root causes of the child's offending behaviour addressed through the child's diversion/reintegration plan/agreement.
- ✓ Use of quality social inquiry report as basis for decision making on alternative measures.
- ✓ Status offences are not considered and not dealt with as offences.
- ✓ No emphasis on pure financial options, such as monetary bail, fine and financial compensation.
- ✓ Regular review of pre- and post-trial detention in order to minimize the time children are deprived of their liberty.
- ✓ Insight in informal juvenile justice/CJJ practices and the relation between such practices and formal juvenile justice.

## Regional barriers and challenges

During the data collection process, the barriers for using diversion, alternatives to pre-trial and post-trial detention and restorative justice approaches in cases of children in conflict with the law were listed. The main barriers and challenges mentioned by the stakeholders are the opposite of the main enablers.

### **Most frequently mentioned barriers:** (by five or more countries)

- ✓ Lack of awareness, understanding and commitment of local government and/or juvenile justice professionals involved in diversion and other alternative measures.
- ✓ Lack of (child specific) legal framework on diversion and other alternative measures.
- ✓ Lack of guidelines, SOPs, protocols or procedures on how to implement diversion and other alternative measures.
- ✓ Lack of human resources.
- ✓ No leadership.
- ✓ Lack of support from the general public, communities, parents/guardians and/or victim(s) to diversion and other alternative measures.
- ✓ Opinion that crime should be punished among juvenile justice professionals and general public.
- ✓ Lack of CBOs, services and options for children in conflict with the law.
- ✓ Lack of coordinating, implementing and monitoring mechanisms for diversion and other alternative measures.
- ✓ No funding for diversion and other alternative measures.

### **Other barriers mentioned:** (by less than five countries)

- ✓ No champions of diversion and other alternative measures.
- ✓ Lack of specialized juvenile justice professionals (and volunteers).
- ✓ Lack of capacity building and/or awareness initiatives.

### **Potential barriers not mentioned by stakeholders:** (deduced from in-country visits and literature)

- ✓ Lack of inter-agency and/or inter-sectoral MoUs/protocols.
- ✓ No legal assistance for children in conflict with the law throughout the justice proceedings.
- ✓ Inadequate social inquiry reports/pre-sentencing reports as basis for decision-making on alternative measures.
- ✓ The root causes of the child's offending behaviour are not addressed through the child's diversion/reintegration plan/agreement.
- ✓ Placement in semi-open/closed residential facilities is considered as alternative measure.
- ✓ Emphasis on pure financial options, such as monetary bail, fine and financial compensation.
- ✓ Lack of variety of alternative measures in national law and actual practice.
- ✓ No regular review of pre-trial detention and post-trial detention.
- ✓ No comprehensive and disaggregated statistics on alternative measures.

## 4.3 Regional conclusions and recommendations

The Committee on the Rights of the Child has stated that an administration of juvenile justice in compliance with the 'Convention on the Rights of the Child' should promote, among other things, the use of diversion, alternatives to pre- and post-trial detention and restorative justice approaches. Such juvenile justice "will provide States parties with possibilities to respond to children in conflict with the law in an effective manner serving not only the best interests of these children, but also the short- and long-term interest of the society at large" [paragraph 3 of the CRC General Comment No.10]. In this last section, the conclusions of the 'Study on Diversion and Other Alternative Measures for Children in Conflict with the Law in East Asian and Pacific Island Countries' at the regional level are formulated, i.e., for the 26 East Asian and Pacific countries, as well as regional recommendations with regard to the alternative measures promoted by the CRC Committee.

### Conclusions and recommendations on the general juvenile justice context

**Conclusion 1:** There are significant differences between the East Asian and Pacific Island countries with regard to legislation on alternative measures as well as the implementation of diversion, alternatives to pre- and post-trial detention and restorative justice approaches in cases of children in conflict with the law. In general, more East Asian countries have a MACR that is in line with international standards; have established specialized child institutions relevant to juvenile justice; have specialized juvenile justice professionals; have created juvenile justice coordination mechanisms; have created implementation and monitoring mechanisms with regard to alternative measures; systematically use social inquiry reports/pre-sentencing reports; and have restorative justice approaches regulated by law.

On the other hand, more Pacific Island countries have centralized juvenile justice systems; make use of CJJ mechanisms; apply diversionary measures; use alternatives to pre-trial detention; implement alternatives to post-trial detention; apply restorative justice approaches; regularly review children's pre-trial detention and post-trial detention; monitor children released from post-trial detention; and make parents/guardians of children in conflict with the law responsible to comply with certain conditions. Significant differences in the application of alternative measures for children in conflict with the law in countries with a civil law system (six countries) and countries with a plural law system (20 countries) and in countries that have a low MACR (17 countries) versus acceptable or high MACR (nine countries) have not been found.

#### Recommendation for the region:

- 1.1 Sharing promising/good practices, systematically collected pilot outcomes, lessons learned, enablers and barriers for using diversion, alternatives to pre- and post-trial detention and restorative justice approaches in order to strengthen existing promising practices, formulate amendments of national (child-specific) legislation and harmonize juvenile justice with the 'Convention on the Rights of the Child' and other international instruments dealing with juvenile justice.

**Conclusion 2:** The terminology and definitions with regard to diversion and other alternative measures for children in conflict with the law are not used in a similar manner throughout the region. The concept 'diversion' is often confused with 'community juvenile justice', 'alternatives to pre-trial detention' and 'restorative justice approaches'. The juvenile justice professionals of the region do not spontaneously consider release from pre- and post-trial detention as alternative measures for children in conflict with the law. The region's focus is on the international standard 'deprivation of liberty as a measure of last resort' and not (also) on 'deprivation of liberty for the shortest possible period of time' for those children in conflict with the law for whom deprivation of liberty cannot be avoided at the pre-trial, trial and/or post-trial stages. The stakeholders in the region also use various interpretations of restorative justice approaches. It is important to distinguish diversion from other alternative measures for children in conflict with the law, because diversion should be applied according to specific international standards and legal safeguards that do not apply to other alternative measures, especially informed consent and definite and final closure of the case.

### Recommendations for the region:

- 2.1 Distinguishing diversion from CJJ, because – conceptually – diversion is a formal (juvenile) justice measure that has to be in line with specific international standards that should be incorporated in national laws, while CJJ is an informal (juvenile) justice measure that should be in line with basic human rights principles and standards.
- 2.2 Distinguishing diversion from alternatives to pre-trial detention, because – conceptually – diversion implies that children in conflict with the law are not formally processed through the criminal (juvenile) justice system and requires the children’s consent, while alternatives to pre-trial detention may be imposed without consent on children who are being formally processed through the criminal justice system.
- 2.3 Distinguishing diversion from restorative justice approaches, because – conceptually – diversion can be used without a restorative justice approach, especially in victimless cases and cases in which the victim(s) does not consent to diversion or withdraws from the process, as well as with a restorative justice approach such as mediation and conferencing.
- 2.4 Not considering placement of children in conflict with the law in open, semi-open and closed institutions at the various stages of the juvenile justice process as a form of diversion or an alternative to detention.
- 2.5. Not considering pure financial options, such as financial bail, financial compensation of the victim(s) or victim’s family and fines as primary and/or solely alternative measures.
- 2.6 Not considering conditions imposed on, or agreed with, parents/guardians of children in conflict with the law, such as compensation of the victim(s) or victim’s family and/or participation in parental skills programmes or counselling, as primary and/or solely alternative measures.
- 2.7 Recognizing ‘minimizing the time that children in conflict with the law spend in pre-trial detention’ (or ‘release from pre-trial detention’ and/or ‘diversion from pre-trial detention’) as an alternative measure.
- 2.8 Recognizing ‘minimizing the time that children in conflict with the law spend in post-trial detention’ (or ‘early (conditional) release from post-trial detention’ and/or ‘giving credit to pre-trial detention’) as an alternative measure.
- 2.9 Distinguishing between restorative justice processes, mainly mediation and conferencing (by both informal justice providers and formal justice actors), and restorative conditions that are part of children’s diversion/reintegration plan/agreement, such as verbal or written apology, giving back the stolen goods/money, doing a small job for the victim(s), community service hours.

**Conclusion 3:** A little bit more than half of the East Asian and Pacific countries have child-specific legislation on juvenile justice that regulates diversion, alternatives to pre-trial detention, alternatives to post-trial detention and/or restorative justice approaches for children in conflict with the law (15 countries). The other countries have general legislation that covers juvenile justice and alternative measures for children in conflict with the law (11 countries).

### Recommendation for the region:

- 3.1 Explicitly regulating diversion, alternatives to pre-trial detention, alternatives to post-trial detention and restorative justice approaches, including applicable child rights and legal safeguards, in either a separate act or law on juvenile justice or special chapters of the general criminal and procedural law. [≈CRC General Comment No.10].
- 3.2 Ensuring through child-specific law or general law on juvenile justice that children who are involved in status offences cannot be arrested, prosecuted or held criminally responsible [≈Model Law on JJ].
- 3.3 Ensuring through child-specific laws or general laws on juvenile justice that children who cannot prove their age are entitled to a medical or social investigation in order to establish their age and have the benefit of the doubt in case it cannot be decided whether they are under or at or above the MACR.
- 3.4 Ensuring through child-specific law or general law on juvenile justice that children who are forced by an adult to commit an offence are not considered children in conflict with the law, but children in need of care and protection who cannot be subject to diversion or other alternative measures.

**Conclusion 4:** In the vast majority of the East Asian and Pacific countries, the MACR is not in line with international standards, either because they have more than one MACR (16 countries) and/or a MACR below the internationally accepted minimum age of 12 years (four countries). Half of the countries have more than one MACR of which the lowest age is below the internationally accepted minimum age of 12 years (13 countries). The minority of countries have one MACR of 12 years or more (six countries).

**Recommendation for the region:**

- 4.1 Increasing a too low MACR, i.e., below 12 years, to an internationally acceptable age level. [≈CRC General Comment No.10]
- 4.2 Increasing the lowest MACR(s) to the level of the highest MACR, if there is more than one MACR, so that there is only one MACR. [≈CRC General Comment No.10]
- 4.3 Considering a child who is criminally responsible as being competent and able to effectively participate in the decision making process regarding the most appropriate juvenile justice response. [≈CRC General Comment No.10]

**Conclusion 5:** A little bit more than half of the East Asian and Pacific countries have established specialized juvenile justice institutions (14 countries), especially child courts (10 countries) and child police (seven countries), and half of the countries have specialized professionals involved in cases of children in conflict with the law (12 countries), in particular child judges (nine countries), child probation officers (five countries) and child social workers (five countries).

**Recommendation for the region:**

- 5.1 Establishing institutions within the police, prosecution office and court system that are specifically applicable to children in conflict with the law. [≈ CRC General Comment No.10]
- 5.2 Specializing professionals working in the juvenile justice system, including police, prosecutors, judges, lawyers, social workers and probation officers, in dealing with children in conflict with the law. [≈CRC General Comment No.10]
- 5.3 Specializing staff of the social welfare sector in assisting child police units, child prosecution offices and child courts. [≈Model Law on JJ]
- 5.4 Ensuring adequate trained legal assistance, free of charge, for children in conflict with the law and their parents/guardians throughout the juvenile justice process. [≈CRC General Comment No.10]
- 5.5 Building the capacity of volunteers who deal with children in conflict with the law before they start work, developing guidelines and codes of conduct for volunteers, screening volunteers especially on prior criminal records, monitoring and supervising volunteers, ensuring detailed contracts including responsibilities, expected outcomes, expected duration, support by the organization and incentives.

## Conclusions and recommendations on informal juvenile justice

**Conclusion 6:** The majority of East Asian and Pacific countries apply some form of community/village juvenile justice (23 countries), which means that there is no contact at all with the formal juvenile justice system and the proceedings are conducted by a community leader, community member or community panel/committee. Most of these countries use CJJ mechanisms in more than 50 per cent of cases of children in conflict with the law (14 countries). A quarter of the East Asian and Pacific countries do not have sufficient data on CJJ to provide an estimation (seven countries), but most of these countries assume that such mechanisms exist (five countries). Only two countries do not use any form of CJJ (two countries). In most cases of children in conflict with the law, the outcome of CJJ processes is that the parents/guardians of the child have to compensate the victim(s) or victim's family financially or materially (20 countries) and the child has to apologize to the victim(s) (19 countries). In the majority of the East Asian and Pacific countries that apply CJJ, national child-specific law recognizes such responses to children in conflict with the law (18 countries).

### Recommendations for the region:

- 6.1 Building juvenile justice programming on CJJ mechanisms that respect basic human rights principles and standards – among other reasons – to ensure that deprivation of liberty of children in conflict with the law is only used as a measure of last resort and for the shortest appropriate period of time [≈UN Common Approach to JfC].
- 6.2 Recognizing CJJ mechanisms through legislation and developing guidelines for facilitators, among other things, to ensure that the best interests of children are a primary consideration and human rights violations are prevented.
- 6.3 Collecting comprehensive data on community (juvenile) justice mechanisms, including whether and to what extent basic human rights principles and standards are respected in cases of children in conflict with the law, in order to decide on strategies and how to build bridges between community (juvenile) justice mechanisms and formal (juvenile) justice systems. [≈UN Common Approach to JfC]
- 6.4 Training facilitators of CJJ processes on the guiding principles of the CRC, restorative justice standards and basic human rights principles and standards. [≈UN Basic Principles on RJ]
- 6.5 Tailoring the agreements reached between the parties through CJJ processes to the needs of the victim(s) as well as the needs of the child in conflict with the law and making the child responsible for restoring the consequences of the offence.
- 6.6 Exploring the nature and potential of collaboration between CJJ actors and juvenile justice professionals (and volunteers) and how access to informal and formal justice that is in line with basic human rights principles and standards can be maximized.
- 6.7 Developing clear community justice procedures on dealing with children below the MACR, so that they are dealt with in a different manner than children who are at or above the MACR and are referred to social welfare services, if necessary in their best interests.

## Conclusions and recommendations on the continuum of alternative measures for children in conflict with the law

**Conclusion 7:** Only one fifth of the East Asian and Pacific countries have the continuum of six formal alternative measures for children in conflict with the law incorporated in their national (child-specific) law (five countries). While two thirds of the countries implement the continuum of six alternative measures in actual practice to a certain extent (18 countries). Only five countries have the continuum both in their law and in practice (five countries).

### Recommendations for the region:

- 7.1 Incorporating the continuum of six alternative measures in national (child-specific) law in order to increase the use of diversion and other alternative measures in actual practice and to ensure that the responses to children in conflict with the law can be tailored to their needs and circumstances.
- 7.2 Ensuring the systematic collection of detailed and segregated data for cases of children in conflict with the law who are subject to diversion, alternatives to pre-trial detention, alternatives to post-trial detention and restorative justice approaches to assess the efficiency and effectiveness of the alternative measures that aim to prevent re-offending, reintegration, rehabilitation, and highlight the child's constructive role in society and restoration.
- 7.3 Organizing nationwide awareness-raising initiatives to inform the general public and civil society stakeholders on the benefits of alternative measures for children in conflict with the law that are in line with international standards.

## Conclusions and recommendations on diversion

**Conclusion 8:** The alternative measure 'unconditional diversion', also called 'police warning', is the least regulated measure in the region. Only a quarter of the East Asian and Pacific countries have unconditional diversion incorporated in their national child-specific law (seven countries), but in the vast majority of the countries police warnings are used in actual practice (23 countries).

### Recommendations for the region:

- 8.1 Incorporating unconditional diversion at the police level in national child-specific law in order to increase the use of the alternative measure.
- 8.2 Using unconditional diversion/police warnings in cases where the offence is of a non-serious nature and where the family, the school or other informal social control institution has already reacted or is likely to react in an appropriate and constructive manner. [≈Beijing Rules]
- 8.3 Recording unconditional diversion/police warnings in administrative records in order to create a more comprehensive view on the use of alternative measures for children in conflict with the law at the different stages of the juvenile justice process.

**Conclusion 9:** The alternative measure ‘diversion from formal judicial proceedings’ is regulated by national (child-specific) law in almost all East Asian and Pacific countries (24 countries), especially at the court level (21 countries). Diversion is implemented region-wide (25 countries) and two thirds of the countries use diversion ‘rather often’ or ‘often’ (17 countries). Various promising/good practices of diversion from formal judicial proceedings have been developed in the region. Most countries use diversion both with and without a restorative justice approach (21 countries). It is rather common that not only the child in conflict with the law has to comply with certain diversion conditions, such as ‘school attendance’, ‘participation in life skills programme’ and ‘apologizing to the victim(s)’, but also the parents/guardians of diverted children (21 countries). Most parents/guardians have to financially compensate the victim(s) (20 countries), but they may also have to participate in a particular programme or counselling for parents/guardians (six countries). All countries that use diversion apply some of the international standards on diversion (25 countries), especially when the child is present during the diversion proceedings, the child is assisted by his/her parents/guardians during the diversion proceedings and/or recommendations are provided through a social inquiry report and/or conferencing meeting.

### Recommendations for the region:

- 9.1 Incorporating diversion from formal judicial proceedings in national (child-specific) law as a measure of first resort, both with and without a restorative justice approach, as well as the kinds of offences and cases in which diversion may be used, at which stages of the juvenile justice process and which juvenile justice actors may initiate and decide on diversion. [≈CRC General Comment No.10]
- 9.2 Providing the (child) court with the discretion to determine, when a child appears before the court for the first time after being charged with an offence, whether the (child) police and/or (child) prosecutor have given careful thought to the use of diversion rather than proceeding to trial and, if diversion has not been considered, referring the case back to the (child) police or (child) prosecutor for further consideration. [≈Model Law on JJ]
- 9.3 Developing guidelines, in line with international juvenile justice standards, on how to use diversion by (child) police, (child) prosecutors and/or (child) courts, the procedures for decision making, implementation and monitoring and the kinds of available (accredited) diversion services and programmes.
- 9.4 Applying diversion from formal judicial proceedings as a measure of first resort, as much as possible and not limiting diversion to children who commit minor offences and are first-time child offenders, preferably with a restorative justice approach. [≈CRC General Comment No.10]
- 9.5 Harmonizing diversion from formal judicial proceedings with international standards on juvenile justice in general and diversion in particular and, when diversion is applied with a restorative justice approach, in-line with international standards on restorative juvenile justice, especially free and voluntary admittance of responsibility, informed consent by the child (and parents/guardians), opportunity to seek legal or other appropriate assistance and compliance with the diversion conditions by the child results in a definite and final closure of the case. [≈CRC General Comment No.10]



- 9.6 Preparing social inquiry reports of good quality as soon as possible in order to ensure that diversion measures are tailored to the child's needs and circumstances, and proportionate to the offence and the root causes of the child's offending behaviour can be addressed.
- 9.7 Holding children in conflict with the law accountable for their actions and preparing child-centred diversion plans that incorporate conditions that focus on the child's reintegration and rehabilitation and address the root causes of the child's offending behaviour.
- 9.8 Developing and implementing community-based diversion services and programmes that can be tailored to the needs and circumstances of children in conflict with the law and can address the root causes of their offending behaviour.
- 9.9 Encouraging collaboration between the juvenile justice sector and social welfare sector and an interdisciplinary approach in cases of children who are subject to diversionary measures.
- 9.10 Ensuring that the child in conflict with the law can still be diverted without a restorative justice approach if the victim(s) does not provide his/her informed consent to a restorative justice process (mediation or conferencing).

## Conclusions and recommendations on alternatives to pre-trial detention

**Conclusion 10:** All East Asian and Pacific countries have incorporated alternatives to pre-trial detention for children in conflict with the law in their national (child-specific) laws. While the application of alternatives at the pre-trial stage is almost region-wide (25 countries), both with and without release conditions, but only half of the East Asian and Pacific countries use alternatives to pre-trial detention rather often or often (14 countries). Various promising/good practices of alternatives to pre-trial detention have been developed in the region. Across the region, children are allowed to await trial at home with their parents/guardians (26 countries), but they are also released to (extended) family members (17 countries) or other trustworthy or respected adults from the community (16 countries), such as community leaders. Releasing children in conflict with the law on financial bail is rather common in East Asian and Pacific countries (between 7 and 11 countries).

### Recommendations for the region:

- 10.1 Incorporating pre-trial and trial detention in national (child-specific) law as a measure of last resort that can only be imposed in exceptional cases as well as the criteria to release children in conflict with the law at the pre-trial and trial stages. [≈CRC]
- 10.2 Releasing children in conflict with the law as soon as possible and as much as possible into the care of their parents/guardians, (extended) family members or other 'responsible adults', which may include community leaders, community members and designated CSOs/NGOs, both without and with specific conditions.
- 10.3 Preparing social inquiry reports of good quality as soon as possible to ensure that children in conflict with the law are only deprived of their liberty in exceptional cases and, if children can be released, to decide on the need to impose conditions on their release and which kinds of release conditions, for example 'attendance at a named place at certain times of the day', 'certain periods of curfew' 'requirement not to associate with or contact certain persons', 'close supervision'. [≈Model Law on JJ]
- 10.4 Limiting financial bail and financial compensation of the victim(s) as conditions to release children in conflict with the law at the pre-trial and trial stages, because those conditions discriminate against children from poor backgrounds and children without parental/family care.
- 10.5 Ensuring that children in conflict with the law are not deprived of their liberty in order to prevent them from revenge/threats of the victim(s) or victim's family/community, for example through implementing alternatives such as CSO/NGO shelters, anonymous foster families and/or placement with relatives in another village.
- 10.6 Considering whether participation of children in conflict with the law in pre-trial programmes, with their informed consent, is in-line with the presumption of innocence and giving credit to the time that children have participated in pre-trial programmes if the child is found guilty.

**Conclusion 11:** The majority of East Asian and Pacific countries have provisions in their national (child-specific) laws that facilitate release from pre-trial detention so that the time children are deprived of their liberty is minimized (20 countries). The provisions are also used in actual practice (22 countries) and three East Asian and Pacific countries release children in conflict with the law at the pre-trial stage without any legal provisions (three countries). More than half of the countries have juvenile detention facilities and/or closed remand institutions where children in conflict with the law are detained during the pre-trial and trial stages (15 countries). In two thirds of the countries, children's pre-trial detention is regularly reviewed (16 countries).

#### **Recommendations for the region:**

- 11.1 Incorporating pre-trial detention in national (child-specific) law for the shortest appropriate period of time as well as the obligation for the (child) prosecution office or (child) court to continuously explore the possibilities of diversion, (conditional) release from pre-trial detention, and the criteria to release children from pre- and post-trial detention as soon as possible. [≈CRC General Comment No.10]
- 11.2 Reviewing children's pre-trial detention by the (child) court on a regular basis, preferably every two weeks, and immediately releasing the child if the updated social inquiry report shows that the reasons for the child's deprivation of liberty have been terminated. [≈CRC General Comment No.10]

## **Conclusions and recommendations on alternatives to post-trial detention**

**Conclusion 12:** All East Asian and Pacific countries have incorporated alternatives to post-trial detention ('non-custodial sentences') in their national (child-specific) laws, both without a restorative justice approach (12 countries) and with a restorative justice approach (for example, 'pre-sentencing meetings' and 'community service') (14 countries), and apply alternatives to sentencing and/or alternatives to post-trial detention in actual practice (26 countries). The majority of the countries use the available alternatives for children in conflict with the law 'rather often' or 'often' (19 countries), especially probation, suspended sentences, good behaviour bonds and fines. Various promising/good practices of alternatives to sentencing and alternatives to post-trial detention have been developed in the region. In the majority of the countries, restorative juvenile justice approaches are applied (18 countries). In less than half of the countries, (child) courts request a social inquiry report (10 countries) and/or request a conference/pre-sentencing meeting of the parties involved in the offence (three countries) in order to decide on the most appropriate measure or sentence. All East Asian and Pacific countries apply some international standards on alternatives to post-trial detention, predominantly that the child is heard during trial proceedings, the child's parents/guardians are present during trial proceedings, legal assistance is provided during trial proceedings, the measure or sentence is based on recommendations provided through a social inquiry report/pre-sentencing report and/or pre-sentencing meeting of the parties involved in the offence and/or the term of the post-trial measure or sentence is fixed.

#### **Recommendations for the region:**

- 12.1 Incorporating post-trial detention and deprivation of liberty in other kinds of closed care/rehabilitation institutions in national (child-specific) law as a measure of last resort that can only be imposed in exceptional cases as well as the criteria to apply alternatives to sentencing and alternatives to post-trial detention as much as possible in cases of children in conflict with the law. [≈CRC General Comment No.10]
- 12.2 Incorporating a wide variety of possible community/family-based alternatives to sentencing, alternatives to deprivation of liberty and alternatives to institutional care, treatment and rehabilitation for children in conflict with the law in national (child-specific) law, including for recidivists and children involved in serious offences (for example alternatives like 'conditional suspended sentence', 'probation', 'guidance/supervision order', 'community service', 'attendance at a treatment programme', 'day report centre'). [≈CRC]

- 12.3 Developing guidelines in line with international sentencing principles and juvenile justice standards, on how to use alternatives to sentencing and alternatives to post-trial detention by (child) courts, how to develop, implement and monitor reintegration/rehabilitation plans and the kinds of available (accredited) post-trial services and programmes for children in conflict with the law.
- 12.4 Ensuring that the (child) court receives, in all cases of children in conflict with the law, well-founded recommendations on the most appropriate alternative to sentencing or community/family-based sentencing through a social inquiry report/pre-sentencing report and/or pre-sentencing meeting of the parties involved in the offence.
- 12.5 Ensuring legal assistance of children in conflict with the law, free of charge, throughout the juvenile justice process, including during the trial and sentencing stages, in order to maximize the use of alternatives to sentencing and alternatives to post-trial detention.
- 12.6 Involving children in decision making with regard to the most appropriate measures and conditions and the implementation of the measure and conditions. [≈CRC General Comment No.10]
- 12.7 Applying alternatives to sentencing and alternatives to post-trial detention as a measure of second resort, i.e., if diversion is not possible, and as much as possible. [≈CRC General Comment No.10]
- 12.8 Limiting fines and financial compensation of victim(s) by the child's parents/guardians as alternative to sentencing or alternative to post-trial detention, because these measures/sentences are not considered to have rehabilitative value and discriminate against children from poor backgrounds and children without parental/family care.
- 12.9 Consider more intensive community/family-based monitoring programmes for children who have been found guilty of committing serious (violent) offences and/or who are recidivists.
- 12.10 Ensuring that a well-trained probation service is in place to allow for the maximum and most effective use of alternatives to sentencing and alternatives to post-trial detention. [≈CRC General Comment No.10]
- 12.11 Considering the involvement of the community and social support systems of children in conflict with the law and their parents/guardians/family in the implementation and monitoring of alternatives to detention.
- 12.12 Reviewing children's alternatives to sentencing and alternatives to post-trial detention on a regular basis and allowing for early termination of the measure or sentence if the child has complied with the conditions linked to the measure or sentence. [≈Model Law on JJ]
- 12.13 Encouraging collaboration between the juvenile justice sector and social welfare sector and an interdisciplinary approach in cases of children who are subject to alternatives to sentencing or alternatives to post-trial detention.

**Conclusion 13:** The vast majority of East Asian and Pacific countries have provisions in their national (child-specific) laws that facilitate release from post-trial detention and other closed care/rehabilitation institutions, so that the time children are deprived of their liberty can be minimized (24 countries). All these countries use the possibility of early releasing convicted children from post-trial detention in actual practice (24 countries), of which the majority rather often or often (16 countries). All but Vanuatu have (juvenile) detention facilities and/or closed institutions where convicted children are deprivation of liberty during the post-trial stage (25 countries). In the majority of East Asian countries, children's post-trial detention is regularly reviewed (18 countries) and released children monitored (19 countries).

#### **Recommendations for the region:**

- 13.1 Incorporating post-trial detention and placement in closed institutions in national (child-specific) law for the shortest appropriate period of time, as well as the obligation for the (child) court to regularly review children's detention and the criteria to be taken into account in order to decide whether early (conditional) release from post-trial detention can be granted as soon as possible.
- 13.2 Giving credit to the time children have spent awaiting their trial in pre-trial detention or other closed care/rehabilitation institutions.

- 13.3 Reviewing children's post-trial detention and placement in closed institutions on a regular basis, i.e., no less than once every six months, based on a quality assessment report on the child's reintegration/rehabilitative progress and readiness to be early (conditionally) released, prepared by the probation officer and/or detention-staff. [≈Model Law on JJ]
- 13.4 Starting the preparation of children's (early) release from post-trial detention facilities from the first day they enter the facility, developing an individual rehabilitation/reintegration plan together with the convicted child and his/her parents/guardians, providing effective programmes and activities that aim at the rehabilitation and reintegration of the child, gradually preparing the child for early (conditional) release, monitoring the release conditions imposed (if any), and ensuring support and supervision after release from post-trial detention facilities.
- 13.5 Encouraging collaboration between post-trial detention facilities/closed institutions and the Probation Service and/or social welfare agencies that monitor and assist children released from post-trial detention facilities/closed institutions.

## Conclusions and recommendations on restorative juvenile justice

**Conclusion 14:** In the majority of the East Asian and Pacific countries, restorative justice approaches are incorporated in child-specific law (10 countries) or general national law (five countries), especially with regard to diversion (11 countries) and alternatives to post-trial detention (14 countries).

Restorative justice approaches are applied in all stages of the juvenile justice process, mainly with regard to diversion (21 countries) and alternatives to sentencing and alternatives to post-trial detention (18 countries). Restorative justice approaches are hardly ever used in order to decide on children's release from pre-trial detention (one country) and post-trial detention (two countries).

### Recommendation for the region:

- 14.1 Incorporating restorative juvenile justice approaches, especially mediation and conferencing, in national (child-specific) law as well as the kinds of offences and cases in which restorative juvenile justice approaches may be used and at which stages of the juvenile justice process.
- 14.2 Developing guidelines, in line with international restorative (juvenile) justice standards, on how to use restorative (juvenile) justice approaches at the different levels of the juvenile justice process, the procedures for decision making, implementation and monitoring, and the kinds of available (accredited) restorative juvenile justice services and programmes.
- 14.3 Holding children in conflict with the law accountable for their actions and the harms caused to the victim(s) and preparing child-centred restorative agreements between the parties instead of making the child's parents/guardians responsible for the financial or material compensation of the victim(s).
- 14.4 Assessing whether it is good practice to hold children in conflict with the law criminally responsible and their parents/guardians civilly responsible.
- 14.5 Ensuring that restorative justice facilitators involved in child-cases are trained on – among other things – skills in conflict resolution, taking into account the particular needs of (child) victims and child offenders, knowledge of the criminal (juvenile) justice system and the operation of the restorative programme(s) in which they will be involved.
- 14.6 Ensure legal provisions on alternative measures for children in conflict with the law, both with restorative justice approaches and without restorative justice approaches, in order to ensure that children in conflict with the law may benefit from alternative measures including in victimless cases, cases in which the victim(s) does not consent to a restorative justice process, the victim(s) withdraws from the restorative justice process or no agreement is reached between the parties.

## Conclusions and recommendations on specific offences and child cases

**Conclusion 15:** Some East Asian and Pacific countries struggle with applying diversion, other alternative measures and restorative justice approaches in specific offences and cases, especially violent and sexual offences and recidivists.

### Recommendations for the region:

- 15.1 Guaranteeing that the deprivation of liberty is a measure of last resort, including cases of violent offences, sexual offences and recidivists, because detention does not address the root causes of the offending behaviour, does not improve the safety of the community and does not enable the child to lead a contributing life in the long-term. If deprivation of liberty cannot be avoided, the time the children spend in detention must be minimized.
- 15.2 Organizing restorative justice processes and ensuring multi-agency input to formulate recommendations to the (child) court on the most appropriate and tailored response to violent offences, sexual offences and recidivists, and how to address the root causes of the child's offending behaviour.
- 15.3 Ensuring long-term therapeutic programmes for sexual child offenders that enable the child to move on in a positive way.
- 15.4 Ensuring the confidentiality of all cases, including cases of violent offences, sexual offences and recidivists, so that the children can return to their communities and have a second chance.

## Conclusions and recommendations on running costs of alternative measures

**Conclusion 16:** Most East Asian and Pacific countries that have provided detailed information on their promising/good practices of alternative measures for children in conflict with the law have almost no insight into the running costs of the measures. Calculating the daily costs of the alternative measures was found to be difficult, if not impossible, for stakeholders and some countries, although the information was considered crucial for advocacy and programming purposes.

### Recommendation for the region:

- 16.1 Including the running costs as one of the components of each pilot/project on alternative measures for children in conflict with the law and systematically calculating and reporting on the amount of the various daily costs, such as salaries, allowances, child-friendly environment, brochures, telephone/mobile bills, electricity, water, stationary, travelling/monitoring/house visits, rent for venue, programme tools and food/drinks for beneficiaries.

# REFERENCES AND ANNEXES

## International references

### International instruments: [chronological order]

- ✓ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) (1985).
- ✓ United Nations Convention on the Rights of the Child (CRC) (1989).
- ✓ United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) (1990).
- ✓ United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules/JDLs) (1990).
- ✓ United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) (1990).
- ✓ Guidelines for Action on Children in the Criminal Justice System, ECOSOC Resolution (Vienna Guidelines) 1997/30.
- ✓ United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (2002).
- ✓ Committee on the Rights of the Child, General Comment N°10 - Children's Rights in Juvenile Justice (2007).
- ✓ European Rules for Juvenile Offenders Subject to Sanctions or Measures (2008).
- ✓ Lima Declaration on Restorative Juvenile Justice (2009).
- ✓ Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice (2010).
- ✓ United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (2014) (draft).

### International documents, reports and websites: [alphabetical order]

- ✓ Committee on the Rights of the Child, CRC Concluding Observations (various dates). [[www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx](http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx)]
- ✓ Child Rights International Network (CRIN), Rights, Remedies and Representation: Global Report on Access to Justice for Children, CRIN, 2016, 44p. [[www.crin.org](http://www.crin.org)]
- ✓ Janine Ubink, Research and Policy Note Customary Justice Sector Reform, IDLO, 2011, 23p. [[www.idlo.org/english/publications/Pages/Details.aspx?ItemsID=338](http://www.idlo.org/english/publications/Pages/Details.aspx?ItemsID=338)]
- ✓ Paulo Sérgio Pinheiro, World Report on Violence against Children, United Nations (2006). [[www.unviolencestudy.org](http://www.unviolencestudy.org)]
- ✓ Raoul Wallenberg Institute, A Measure of Last Resort? The Current Status of Juvenile Justice in ASEAN Member States (2015).
- ✓ UNICEF, Toolkit on Diversion and Alternatives to Detention (2009). [[www.unicef.org/tdad/index\\_55673.html](http://www.unicef.org/tdad/index_55673.html)]
- ✓ UN Common Approach to Justice for Children' (2008). [[www.unrol.org/doc.aspx?n=uncommonapproachjfcfinal.doc](http://www.unrol.org/doc.aspx?n=uncommonapproachjfcfinal.doc)]
- ✓ UNODC, Model Law on Justice in Matters Involving Children in Conflict with the Law (2013). [[www.unodc.org/documents/justice-and-prison-reform/Justice\\_Matters\\_Involving-Web\\_version.pdf](http://www.unodc.org/documents/justice-and-prison-reform/Justice_Matters_Involving-Web_version.pdf)]
- ✓ UNODC, Handbook on Restorative Justice Programmes, United Nations (2006). [[www.unodc.org/pdf/criminal\\_justice/06-56290\\_Ebook.pdf](http://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf)]
- ✓ UNODC, Custodial and Non-Custodial Measures, Alternatives to Incarceration (2006). [[www.unodc.org/documents/justice-and-prison-reform/cjat\\_eng/3\\_Alternatives\\_Incarceration.pdf](http://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/3_Alternatives_Incarceration.pdf)]



- ✓ UNODC, Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment (2007).  
[[www.unodc.org/pdf/criminal\\_justice/Handbook\\_of\\_Basic\\_Principles\\_and\\_Promising\\_Practices\\_on\\_Alternatives\\_to\\_Imprisonment.pdf](http://www.unodc.org/pdf/criminal_justice/Handbook_of_Basic_Principles_and_Promising_Practices_on_Alternatives_to_Imprisonment.pdf)]
- ✓ UN-Women, UNICEF and UNDP, Informal Justice Systems (2011). [[www.undp.org/content/dam/undp/library/Democratic%20Governance/Access%20to%20Justice%20and%20Rule%20of%20Law/Informal-Justice-Systems-Charting-a-Course-for-Human-Rights-Based-Engagement.pdf](http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Access%20to%20Justice%20and%20Rule%20of%20Law/Informal-Justice-Systems-Charting-a-Course-for-Human-Rights-Based-Engagement.pdf)]
- ✓ Van Welzenis, I. and Rishmawi, M., Research Study: Promotion of Diversion and Alternative Measures to Detention for Children in Conflict with the Law, UNICEF-IDLO and UNICEF Regional Office MENA (2015). [[www.idlo.int](http://www.idlo.int)]
- ✓ Van Welzenis, I., Development of a Regional Continuum of Community-Based Responses to Children in Conflict with the Law in Five MENA-Countries, UNICEF Regional Office MENA (2015). [[www.unicef.org/mena](http://www.unicef.org/mena)]



## Annex 1 Desk review documents for each selected country

Below, we list the 71 initially reviewed documents and 64 additionally reviewed documents as well as the 22 most recent CRC Concluding Observations and 23 CRIN-reports on Access to Justice for Children relating to the East Asian and Pacific-region (see §6). We start the list with the 5 regional documents.

### Regional documents [and East Asian and Pacific-countries involved]:<sup>35</sup>

Initial regional documents:

- ✓ Raoul Wallenberg Institute, *A Measure of Last Resort? The Current Status of Juvenile Justice in ASEAN Member States*, Sweden, 2015, 214p. [Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand and Viet Nam]
- ✓ South Pacific Council of Youth and Children's Court, *Jurisdictional/Operational Summary of South Pacific Council of Youth and Children's Court*, 2008, 111p. [Fiji, Samoa, Tonga, Vanuatu, Kiribati and Solomon Islands].

Additional regional documents:

- ✓ UNICEF Papua New Guinea, 'Traditional' Justice Systems in the Pacific, Indonesia and Timor-Leste, EAPRO Sub-Regional Workshop, 2009, 19p. [Papua New Guinea, Fiji, Solomon Islands, Vanuatu, Kiribati, Samoa, Indonesia and Timor-Leste]
- ✓ UNICEF, *A Regional Summary of the Fiji, Kiribati, Solomon Islands and Vanuatu; Child Protection Baseline Reports 2008*, 12p. [Fiji, Kiribati, Solomon Islands and Vanuatu]
- ✓ UNICEF-Pacific, *Child Protection Programme in the Pacific: A Regional Programme Strategy for Building a Protective Environment for Children in the Pacific*, 2007, 48p. [Kiribati, Solomon Islands, Vanuatu, Fiji and Samoa]

### East Asian countries [and documents reviewed]:

**Cambodia:** [7 documents in total]

- ✓ Committee on the Rights of the Child, *Concluding Observations, Cambodia*, CRC/C/KHM/CO/2-3, 3 August 2011. [paragraphs 76 and 77]
- ✓ CRIN, *Access to Justice for Children: Cambodia*, 2013.
- ✓ Raoul Wallenberg Institute, *A Measure of Last Resort? The Current Status of Juvenile Justice in ASEAN Member States*, Chapter III, *The State of Juvenile Justice in Cambodia*, Sweden, 2015, p.32-51.
- ✓ Draft Law on Juvenile Justice
- ✓ Ministry of Justice, *Circular on the Implementation of the Provision on Judicial Supervision of a Charged Person Judicial Supervision*, 2014.
- ✓ Ministry of Justice, *Circular on the Implementation of the Provision on Community Service*, 2014.
- ✓ Ministry of Justice, *Circular on the Implementation of the Provision on Suspended Sentence with Probation*, 2014.

**China:** [4 documents in total]

- ✓ Committee on the Rights of the Child, *Concluding Observations, China*, CRC/C/CHN/CO/3-4, 29 October 2013. [paragraphs 3, 92, 93 and 94]
- ✓ CRIN, *Access to Justice for Children: China*, 2013.

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<sup>35</sup> See footnotes 6 and 8 that explain that these regional documents are also included in the desk review documents listed for the countries covered by the regional document.

Additional documents:

- ✓ Amendments to the Criminal Procedure Law of the People's Republic of China (2012) (working translation)
- ✓ [www.duihua.org](http://www.duihua.org) [Dui Hua is a non-profit humanitarian organization.]

**Indonesia:** [21 documents in total]

- ✓ Committee on the Rights of the Child, Concluding Observations, Indonesia, CRC/C/IDN/CO/3-4, 10 July 2014. [paragraphs 77 and 78]
- ✓ CRIN, Access to Justice for Children: Indonesia, 2013.
- ✓ Raoul Wallenberg Institute, A Measure of Last Resort? The Current Status of Juvenile Justice in ASEAN Member States, Chapter IV, The State of Juvenile Justice in Indonesia, Sweden, 2015, p.52-67.
- ✓ Republic of Indonesia Bill on Juvenile Justice System, No: 11, 2011.
- ✓ Government of the Republic of Indonesia, Guideline for Implementing Diversion and the Handling of Children below 12 (Twelve) Years of Age, Number 65 of 2015. [Google translation]
- ✓ Ministerial Regulation of the Minister of Social Affairs of the Republic of Indonesia about Standard of Service of the Social Welfare Institution for Children in Conflict with the Law, Number 15 of 2014.
- ✓ Draft of Ministerial Regulation of the Minister of Social Affairs of the Republic of Indonesia about Guideline for the Social Welfare Institution in Providing Social Rehabilitation of Children who Are in Conflict with the Law.
- ✓ Sandra Manzardo, Review of Implementing Legislation of the Indonesian Law on Juvenile Justice, 2015.
- ✓ Sandra Manzardo, Review of Implementing Legislation of the Indonesian Law on Juvenile Justice, Review of Draft of Government Regulation on Guideline for Implementing Diversion and the Handling of Children under 12 (Twelve) Years of Age, 2015.
- ✓ Indonesia's Children: In their Best Interests.
- ✓ UNICEF-Indonesia, One mistake, what price to pay?, 2011.
- ✓ UNICEF-Indonesia, UNICEF Visit a Rehabilitation Institution for Diverted Children in Conflict with the Law, 2015.
- ✓ UNICEF-Indonesia, Statistics Juvenile Justice, 2015.  
[DG Correction's data website: <http://smslap.ditjenpas.go.id/public/bps/current/monthly>]
- ✓ Putri Kusuma Amanda, Juvenile Sex Offender Rehabilitation: How the US Approach Can Help Indonesia Satisfy its Commitment to Restorative Justice Principles, Indonesia Law Review, Volume 4, Number 1, January - April 2014.
- ✓ UNICEF-Indonesia, Justice for Children Reform in Indonesia, Final Report, 1 September 2009 - 31 December 2012.
- ✓ UNICEF, RWI, PUSKAPA UI, Position Paper, Draft Government Regulation on Diversion and Handling of Children below 12 Years of Age of Law regarding Juvenile Criminal Justice System, Number 11 of 2012.
- ✓ Felisa Tibbitts, Review of Training Module on the Indonesian Law on Juvenile Justice, RWI, Jakarta, Indonesia, May 2015.
- ✓ UNICEF Indonesia, Justice for Children Reform in Indonesia 2013–2016, Report to the Government of Norway, 1 May 2015 – 31 October 2015, 30 November 2015.
- ✓ Agency Empower Women and Children Protection, PowerPoint 'Conditions of Children in Central Java', 2014. [Google translation]
- ✓ UNICEF Indonesia, Paying too high a price for a childhood mistake: juvenile justice in Indonesia, 2009.

Additional documents:

- ✓ UNICEF Papua New Guinea, 'Traditional' Justice Systems in the Pacific, Indonesia and Timor-Leste, EAPRO Sub-Regional Workshop, 2009, 19p.

**Lao PDR:** [7 documents in total]

- ✓ Committee on the Rights of the Child, Concluding Observations, Lao PDR, CRC/C/LAO/CO/2, 8 April 2011. [paragraphs 71 and 72]
- ✓ CRIN, Access to Justice for Children: Lao PDR, 2015.
- ✓ Raoul Wallenberg Institute, A Measure of Last Resort? The Current Status of Juvenile Justice In ASEAN Member States, Chapter V, The State Of Juvenile Justice In Laos, Sweden, 2015, p.68-74.
- ✓ MoJ and UNICEF-Lao PDR, Assessment of Existing Mediation Practices Involving Children in Lao PDR, 2013.
- ✓ Law on Juvenile Criminal Procedure, 2013.
- ✓ Draft Prime Minister's Agreement on Mediation of Offences Committed by Children, 2015.

Additional documents:

- ✓ Law on the Protection of the Rights and Interests of Children (2007)

**Malaysia:** [6 documents in total]

- ✓ Committee on the Rights of the Child, Concluding Observations, Malaysia, CRC/C/MYS/CO/1, 25 June 2007. [paragraphs 103 and 104]
- ✓ CRIN, Access to Justice for Children: Malaysia, 2015.
- ✓ Raoul Wallenberg Institute, A Measure of Last Resort? The Current Status of Juvenile Justice in ASEAN Member States, Chapter VI, The State of Juvenile Justice in Malaysia, Sweden, 2015, p.75-91.
- ✓ Draft Proposal for a Pilot Diversion Model, 2015.

Additional documents:

- ✓ Child Act (2001)
- ✓ UNICEF-Malaysia, The Malaysian Juvenile Justice System, A Study Of Mechanisms For Handling Children In Conflict With The Law, 2013, 144p.

**Mongolia:** [5 documents in total]

- ✓ Committee on the Rights of the Child, Concluding Observations, Mongolia, CRC/C/MNG/CO/3-4, 4 March 2010. [paragraphs 75 and 76]
- ✓ CRIN, Access to Justice for Children: Mongolia, 2014.
- ✓ Jane S. Kim and Oyunbileg Rentsendorj, Evaluation of UNICEF Mongolia's Child Protection Programme: Juvenile justice and Legislative Reform, UNICEF-Mongolia, April 2009.

Additional documents:

- ✓ Criminal Code of Mongolia (Revised) (xxxx)
- ✓ Criminal Procedure Law of Mongolia (2001)

**Myanmar:** [6 documents in total]

- ✓ Committee on the Rights of the Child, Concluding Observations, Myanmar, CRC/C/MMR/CO/3-4, 14 March 2012. [paragraphs 93 and 94]
- ✓ CRIN, Access to Justice for Children: Myanmar, 2014.
- ✓ Raoul Wallenberg Institute, A Measure of Last Resort? The Current Status of Juvenile Justice in ASEAN Member States, Chapter VII, The State of Juvenile Justice in Myanmar, Sweden, 2015, p.92-114.

- ✓ Cyndi Banks, An Evaluation of 'Strengthening Juvenile Justice in Myanmar', 18 August 2011.
- ✓ New Perimeter, Perseus Strategies, and the Jacob Blaustein Institute for the Advancement of Human Rights, Myanmar Rule of Law Assessment, March 2013.

Additional documents:

- ✓ The Child Law (1993)

**Papua New Guinea:** [9 documents in total]

- ✓ Committee on the Rights of the Child, Concluding Observations, Papua New Guinea, CRC/C/15/Add.229, 26 February 2004. [paragraphs 3, 63 and 64]
- ✓ CRIN, Access to Justice for Children: Papua New Guinea, 2015.
- ✓ National Juvenile Justice Committee, Annual Report 2011.
- ✓ National Juvenile Justice Committee, National Juvenile Justice Report 'Pathways to Justice', 2008.
- ✓ Julia Einbond, Evaluation of the Village Courts, Women and Children's Access to Community Justice (Child Protection) Programme, Columbia Group for Children in Adversity, LLC, 2010.
- ✓ UNICEF-PNG, Police Juvenile Justice Policy and Protocols, February 2006.
- ✓ Royal-PNG Constabulary, Diversion and Alternatives to Detention, February 2006.

Additional documents:

- ✓ Juvenile Justice Act (2014)
- ✓ UNICEF Papua New Guinea, 'Traditional' Justice Systems in the Pacific, Indonesia and Timor-Leste, EAPRO Sub-Regional Workshop, 2009, 19p.

**Philippines:** [8 documents in total]

- ✓ Committee on the Rights of the Child, Concluding Observations, Philippines, CRC/C/PHL/CO/3-4, 22 October 2009. [paragraphs 5, 80 and 81]
- ✓ CRIN, Access to Justice for Children: Philippines, 2014.
- ✓ Raoul Wallenberg Institute, A Measure of Last Resort? The Current Status of Juvenile Justice in ASEAN Member States, Chapter VIII, The State of Juvenile Justice in Philippines, Sweden, 2015, p.115-142.
- ✓ Sadie Xinxin Yang, Evaluation of the Intervention and Rehabilitation Programme in Residential Facilities and Diversion Programmes for Children in Conflict with the Law, Final Report, Universalialia, June 2015.

Additional documents:

- ✓ An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council Under the Department of Justice, Appropriating Funds Therefor and for Other Purposes, Republic Act No. 9344 (2006)
- ✓ An Act Establishing A Comprehensive Juvenile Justice And Welfare System, Creating The Juvenile Justice And Welfare Council Under The Department Of Justice, Appropriating Funds Therefor And For Other Purposes, Republic Act No. 10630 (2013)
- ✓ Revised Rules and Regulations Implementing Republic Act No. 7 9344, As Amended By R.A. 1063 (2014)
- ✓ Supreme Court Revised Rule on Children in Conflict with the Law, A.M. No. 02-1-18-SC (2009)

**Thailand:** [8 documents in total]

- ✓ Committee on the Rights of the Child, Concluding Observations, Thailand, CRC/C/VNM/CO/3-4, 22 August 2012. [paragraphs 79 and 80]
- ✓ CRIN, Access to Justice for Children: Thailand, 2014.

- ✓ Raoul Wallenberg Institute, A Measure of Last Resort? The Current Status of Juvenile Justice in ASEAN Member States, Chapter X, The State of Juvenile Justice in Thailand, Sweden, 2015, p.166-180.
- ✓ Department of Juvenile Observation and Protection, Annual Report, Case Statistics, 2014.
- ✓ Act on Juvenile and Family Court and Procedure B.E. 2553 (2010)
- ✓ Kattiya Ratanadilok, Restorative Justice Practices in Thailand, Department of Juvenile Observation and Protection Ministry of Justice, Thailand, 2015.
- ✓ Decha Sungkawan, Thai Community-Based Correctional Programs for Narcotics Addict in Response to the 2002 Rehabilitation Act: A Systems Approach, Tammasat Review, 200X.
- ✓ Wanchai Roujanavong, Restorative Justice: Family and Community Group Conferencing (FCGC) in Thailand, Juvenile Observation and Protection Thailand Ministry of Justice, November 200X.

**Timor-Leste:** [7 documents in total]

- ✓ Committee on the Rights of the Child, Concluding Observations, Timor-Leste, CRC/C/TLS/CO/1, 14 February 2008. [paragraphs 73, 74 and 75]
- ✓ CRIN, Access to Justice for Children: Timor-Leste, 2015.
- ✓ Cecilia Kline, Juvenile Justice Assessment and Strategy Paper, UNICEF- Timor-Leste, 2012.
- ✓ Terms of Reference for a National Juvenile Justice Coordinating Mechanism Timor-Leste, 2012.

Additional documents:

- ✓ Decree-Law No. 13/2005 of Approving the Criminal Procedure Code (2005)
- ✓ Roles and Responsibilities during Justice Process of Children in Conflict with the Law (2014)
- ✓ UNICEF Papua New Guinea, 'Traditional' Justice Systems in the Pacific, Indonesia and Timor-Leste, EAPRO Sub-Regional Workshop, 2009, 19p.
- ✓ Draft 'Law on Justice for Children and Young People'

**Viet Nam:** [11 documents in total]

- ✓ Committee on the Rights of the Child, Concluding Observations, Viet Nam, CRC/C/VNM/CO/3-4, 22 August 2012. [paragraphs 73 and 74]
- ✓ CRIN, Access to Justice for Children: Viet Nam, 2014.
- ✓ Raoul Wallenberg Institute, A Measure of Last Resort? The Current Status of Juvenile Justice in ASEAN Member States, Chapter XI, The State of Juvenile Justice in Viet Nam, Sweden, 2015, p.181-207.
- ✓ XXXX, Guidelines on Development of Community-Based Support Model for Juvenile in Conflict with the Law, 2012.
- ✓ XXXX, Social Reintegration of Juveniles in Conflict with the Law: Hai Phong Pilot Project Service, Service Description Protocol, 2011.
- ✓ MOLISA and UNICEF, Evaluation of the Pilot Project on Non-Custodial Measures, Reintegration and Support Services to Juveniles in Conflict with the Law in Haiphong, Vietnam, 2008.

Additional documents:

- ✓ Criminal Procedure Code (2003)
- ✓ Penal Code (1999)
- ✓ XXXX, Report on Diversion and Restorative Justice in Viet Nam, 20XX, 108p.
- ✓ XXXX, An Assessment of Juvenile Crime Prevention Programs in Vietnam, Final Report – Draft 2 – January 30, 2010, 132p.
- ✓ UNICEF-Viet-Nam, Recommendations and the Way Forward, 20XX, 1p.



## **Pacific Island Countries [and documents reviewed]:**

### **Cook Islands:** [2 documents in total]

- ✓ Committee on the Rights of the Child, Concluding Observations, Cook Islands, CRC/C/COK/CO/1, 22 February 2012. [paragraphs 58 and 59]
- ✓ Crimes Act (1969, amended 2007) [added by EAPRO]

Additional documents:

- ✓ The Government of Cook Islands and UNICEF, A Situation Analysis of Children, Youth and Women, 2004, 70p.

### **Fiji:** [14 documents in total]

- ✓ Committee on the Rights of the Child, Concluding Observations, Fiji, CRC/C/FJI/CO/2-4, 13 October 2014. [paragraphs 30, 71 and 72]
- ✓ CRIN, Access to Justice for Children: Fiji, 2014.
- ✓ UNICEF-Pacific, Child Protection System, Governance Indicators Framework, Assessment Fiji, 2014.
- ✓ South Pacific Council of Youth and Children's Court, Jurisdictional/Operational Summary of South Pacific Council of Youth and Children's Court, 13. Fiji, 2008.
- ✓ Robin Taylor, Evaluating Rehabilitation Programmes in the Fiji Corrections System, 2007.
- ✓ Fiji Judiciary, BA Pilot Community Correction, Fiji Judiciary Annual Conference, 5 December 2006.

Additional documents:

- ✓ Juveniles Act (2003)
- ✓ Crimes Decree (2009)
- ✓ Sentencing and Penalties Decree (2009)
- ✓ UNICEF-Pacific, Fiji; A Situation Analysis of Children, Women and Youth, 2007, 88p.
- ✓ UNICEF-Fiji, Key Findings; Protect Me With Love And Care, A Question and Answer On The Baseline Report For Creating A Future Free From Violence, Abuse And Exploitation Of Girls And Boys In Fiji, 2008, 2p.
- ✓ UNICEF Papua New Guinea, 'Traditional' Justice Systems in the Pacific, Indonesia and Timor-Leste, EAPRO Sub-Regional Workshop, 2009, 19p.
- ✓ UNICEF, A Regional Summary of the Fiji, Kiribati, Solomon Islands and Vanuatu; Child Protection Baseline Reports, 2008, 12p.
- ✓ UNICEF-Pacific, Child Protection Programme in the Pacific: A Regional Programme Strategy for Building a Protective Environment for Children in the Pacific, 2007, 48p.

### **Kiribati:** [17 documents in total]

- ✓ Committee on the Rights of the Child, Concluding Observations, Kiribati, CRC/C/KIR/CO/1, 29 September 2006. [paragraphs 64 and 6]
- ✓ CRIN, Access to Justice for Children: Kiribati, 2015.
- ✓ Teanneki Nemta, PowerPoint – SPCYCC Canberra Act (2015), Kiribati, 2015. [not relevant/violence against children]
- ✓ Kiribati Police Service, Standard Operating Procedures (SOPs), Child Protection and Handling Young People, 2012.
- ✓ Kiribati Police Service, Standard Operating Procedures (SOPs), Diversion Options for Youth, 2012.
- ✓ Kiribati Police Service Training Centre, Child Protection Training for Police, 2015.
- ✓ Police Policy For Youth Diversion, 2012.
- ✓ Comments on the Police Policy For Youth Diversion, 2012.
- ✓ Flowchart 1 – Diversion, 2015.

- ✓ Flowchart 2 – Diversion, 2015.
- ✓ UNICEF-Pacific, Salote Kaimacuata, PowerPoint - SPCYCC Canberra Act (2015), 2015.

Additional documents:

- ✓ An Act To Make Provision For Proceedings In Reference To Juvenile Offenders (2015)
- ✓ UNICEF-Pacific, How Ground-Breaking Legislation Is Promoting Child Protection In Kiribati, 2012, 6p.
- ✓ UNICEF Papua New Guinea, 'Traditional' Justice Systems in the Pacific, Indonesia and Timor-Leste, EAPRO Sub-Regional Workshop, 2009, 19p.
- ✓ UNICEF, A Regional Summary of the Fiji, Kiribati, Solomon Islands and Vanuatu; Child Protection Baseline Reports, 2008, 12p.
- ✓ South Pacific Council of Youth and Children's Court, Jurisdictional/Operational Summary of South Pacific Council of Youth and Children's Court, 2008, 111p.
- ✓ UNICEF-Pacific, Child Protection Programme in the Pacific: A Regional Programme Strategy for Building a Protective Environment for Children in the Pacific, 2007, 48p.

**Marshall Islands:** [4 documents in total]

- ✓ Committee on the Rights of the Child, Concluding Observations, Marshall Islands, CRC/C/MHL/CO/2, 19 November 2007. [paragraphs 70 and 71]
- ✓ CRIN, Access to Justice for Children: Marshall Islands, 2014.

Additional documents:

- ✓ UNICEF-Pacific, Child protection Baseline Report; Value and Protect Our Precious Children, 2012, 180p.
- ✓ UNICEF-Pacific, Children in the Republic of the Marshall Islands An Atlas of Social Indicators, 2013, 80p.
- ✓ Criminal Code (2011) [added by EAPRO]

**Micronesia:** [3 documents in total]

- ✓ Committee on the Rights of the Child, Concluding Observations, Micronesia, CRC/C/15/Add.86, 4 February 1998. [paragraphs 21 and 41]
- ✓ CRIN, Access to Justice for Children: Micronesia, 2015.

Additional documents:

- ✓ UNICEF-Pacific, Protect Me with Love and Care, Child Protection Baseline Report for the Federated States of Micronesia, 2014, 144p.
- ✓ Revised Criminal Code Act (Code of FSM 1982, revised 2014) [added by EAPRO]

**Niue:** [1 document in total]

Additional documents:

- ✓ UNICEF-Pacific, Niue; A Situation Analysis of Children, Women and Youth, 2004, 71p.
- ✓ Niue Act (1966, amended 2004) [added by EAPRO]

**Nauru:** [2 documents in total]

- ✓ CRIN, Access to Justice for Children: Nauru, 2015.

Additional documents:

- ✓ UNICEF-Pacific, Nauru; A Situation Analysis of Children, Women and Youth, 2005, 77p.
- ✓ Child Protection and Welfare Bill (2016)
- ✓ Crimes Act (2016) [added by EAPRO]

**Palau:** [4 documents in total]

- ✓ Committee on the Rights of the Child, Concluding Observations, Palau, CRC/C/15/Add.149, 21 February 2001. [paragraphs 60 and 61]
- ✓ CRIN, Access to Justice for Children: Palau, 2015.
- ✓ Penal Code (2013, amended 2015) [added by EAPRO]

Additional documents:

- ✓ UNICEF-Pacific, The Republic of Palau, Child Protection Baseline Report, Value and Protect Our Precious Resources: Our Children, 2014, 152p.
- ✓ UNICEF-Pacific, Palau; A Situation Analysis of Children, Women and Youth, 2008, 90p.

**Samoa:** [7 documents in total]

- ✓ Committee on the Rights of the Child, Concluding Observations, Samoa, CRC/C/WSM/CO/1, 16 October 2006. [paragraphs 58 and 59]
- ✓ CRIN, Access to Justice for Children: Samoa, 2015.
- ✓ South Pacific Council of Youth and Children's Court, Jurisdictional/Operational Summary of South Pacific Council of Youth and Children's Court, 14. Samoa, 2008.

Additional documents:

- ✓ Young Offenders Act (2007)
- ✓ Crimes Act (2013) [added by EAPRO]
- ✓ Criminal Procedure Act (2016) [added by EAPRO]
- ✓ UNICEF-Pacific, Samoa; A Situation Analysis of Children, Women and Youth, 2006, 111p.
- ✓ UNICEF Papua New Guinea, 'Traditional' Justice Systems in the Pacific, Indonesia and Timor-Leste, EAPRO Sub-Regional Workshop, 2009, 19p.
- ✓ UNICEF-Pacific, Child Protection Programme in the Pacific: A Regional Programme Strategy for Building a Protective Environment for Children in the Pacific, 2007, 48p.

**Solomon Islands:** [8 documents in total]

- ✓ Committee on the Rights of the Child, Concluding Observations, Solomon Islands, CRC/C/15/Add.208, 2 July 2003. [paragraphs 20, 58 and 59]
- ✓ CRIN, Access to Justice for Children: Solomon Islands, 2014.
- ✓ South Pacific Council of Youth and Children's Court, Jurisdictional/Operational Summary of South Pacific Council of Youth and Children's Court, 19. Solomon Islands, 2008.

Additional documents:

- ✓ Juvenile Offenders Act (1972)
- ✓ Penal Code (1963, amended 2016) [added by EAPRO]
- ✓ UNICEF-Pacific, Child Protection System Governance Indicators Framework; Assessment Summary, 2014, 24p.
- ✓ UNICEF Papua New Guinea, 'Traditional' Justice Systems in the Pacific, Indonesia and Timor-Leste, EAPRO Sub-Regional Workshop, 2009, 19p.
- ✓ UNICEF, A Regional Summary of the Fiji, Kiribati, Solomon Islands and Vanuatu; Child Protection Baseline Reports, 2008, 12p.
- ✓ UNICEF-Pacific, Child Protection Programme in the Pacific: A Regional Programme Strategy for Building a Protective Environment for Children in the Pacific, 2007, 48p.

**Tokelau:** [1 document in total]

Additional documents:

- ✓ UNICEF-Pacific, Tokelau; A Situation Analysis of Children, Women and Youth, 2006, 30p.
- ✓ Crimes, Procedure and Evidence Rules (2003) [added by EAPRO]

**Tonga:** [3 documents in total]

- ✓ CRIN, Access to Justice for Children: Tonga, 2014.
- ✓ South Pacific Council of Youth and Children's Court, Jurisdictional/Operational Summary of South Pacific Council of Youth and Children's Court, 15. Tonga, 2008.

Additional documents:

- ✓ UNICEF-Pacific, Tonga; A Situation Analysis of Children, Women and Youth, 2006, 97p.
- ✓ Criminal Offenses Act (1926, amended 2015) [added by EAPRO]

**Tuvalu:** [3 documents in total]

- ✓ Committee on the Rights of the Child, Concluding Observations, Tuvalu, CRC/C/TUV/CO/1, 30 October 2013. [paragraphs 62 and 63]
- ✓ CRIN, Access to Justice for Children: Tuvalu, 2015.

Additional documents:

- ✓ UNICEF-Pacific, Tuvalu; A Situation Analysis of Children, Women and Youth, 2006, 40p.
- ✓ Penal Code (1965, amended 2014) [added by EAPRO]

**Vanuatu:** [12 documents in total]

- ✓ Committee on the Rights of the Child, Concluding Observations, Vanuatu, CRC/C/15/Add.111, 10 November 1999. [paragraphs 16 and 23]
- ✓ CRIN, Access to Justice for Children: Vanuatu, 2014.
- ✓ Moses Peter, PowerPoint – Vanuatu Country Report to SPCYCC, 2015.
- ✓ Moses Peter, PowerPoint – SPCYCC Canberra Act (2015), 21-25 September, 2015. [not relevant/Violence against Children]
- ✓ South Pacific Council of Youth and Children's Court, Jurisdictional/Operational Summary of South Pacific Council of Youth and Children's Court, 16. Vanuatu, 2008.

Additional documents:

- ✓ Correctional Services Act (2006)
- ✓ Criminal Procedure Code (xxxx)
- ✓ Penal Code (xxxx)
- ✓ UNICEF-Pacific, Vanuatu; A Situation Analysis of Children, Women and Youth, 2005, 70p.
- ✓ UNICEF Papua New Guinea, 'Traditional' Justice Systems in the Pacific, Indonesia and Timor-Leste, EAPRO Sub-Regional Workshop, 2009, 19p.
- ✓ UNICEF, A Regional Summary of the Fiji, Kiribati, Solomon Islands and Vanuatu; Child Protection Baseline Reports, 2008, 12p.
- ✓ UNICEF-Pacific, Child Protection Programme in the Pacific: A Regional Programme Strategy for Building a Protective Environment for Children in the Pacific, 2007, 48p.

## Annex 2 Available alternative measures in national law and practice at country level

Below we present the continuum of alternative measures for children in conflict with the law for each of the 12 East Asian and five Pacific Island countries, plus the collective continuum for the nine Pacific Island countries. The information is based on the findings of the desk review, questionnaire and Skype interviews and verified by the UNICEF COs (and their local counterparts).

Available alternative measures in Cambodia <sup>36</sup>					
Informal juvenile justice measures	In law		In practice		
	No		Yes (often used/compensation)		
Formal juvenile justice measures (for children from 14 to 18 years)	Without RJJ approach			with RJJ approach	
	In law	In practice	In law	In practice	
	Unconditional caution/warning	Yes (Juvenile Justice Law/police warning)	Yes (limited use/by police and prosecution/verbal or written warning and refer to parents/guardians)	--	--
Diversion from formal judicial proceedings	Yes (Juvenile Justice Law/prosecutor and investigation judge)	Yes (very limited use/mainly by police)	Yes (Juvenile Justice Law/police, prosecutor and investigation judge/apology to victim(s))	Yes (limited use/mainly by police/mediation, conferencing, compensation and apology)	
Alternatives to pre-trial/trial detention	Yes (Juvenile Justice Law and other general Codes/ release to designated representative/with or without bail and judicial supervision order)	Yes (very limited use/release to parents/guardians and close supervision/need to regularly report)	No	No	
Minimizing time in pre-trial/trial detention	Yes	No	No	No	
Alternatives to post-trial detention	Yes (Criminal Code and Criminal Procedure Code/community service and simple suspended sentences)	Yes (very rarely used/suspended sentences)	Yes (Criminal Code and Circular on Community Service)	No	
Minimizing time in post-trial detention	Yes (Juvenile Justice Law/early conditional release)	Yes (very rarely used/pardon by the King)	No	No	
<b>Total of available alternative measures</b>	<b>6</b>	<b>5</b>	<b>2</b>	<b>1</b>	

<sup>36</sup> During the course of this study, Cambodia adopted the Juvenile Justice Law (July, 2016) which incorporates police warning, diversion without and with a restorative justice component, alternatives to pre-trial detention and conditional release from post-trial detention. Information pertaining to Cambodia's legislative regime represents is based on a preliminary English translation (February, 2017) of the Juvenile Justice Law and general laws.

Available alternative measures in China				
Informal juvenile justice measures	In law		In practice	
	No		No	
Formal juvenile justice measures (for children from 14 years and 16 years to 18 years)	Without RJJ approach		With RJJ approach	
	In law	In practice	In law	In practice
Unconditional caution/warning	No	No	–	–
Diversion from formal judicial proceedings	Yes (Criminal Procedure Law/prosecution and court level)	Yes (nationwide/different practices/minor offences/conditional non-prosecution)	Yes (Criminal Procedure Law/mediation, reconciliation, compensation and apology)	Yes (nationwide and case-by-case basis/mediation and compensation)
Alternatives to pre-trial/trial detention	Yes (Criminal Law and Criminal Procedure Law/release to parents/guardians without or with bond or bail)	Yes (scale unknown/release to parents/guardians without or with bond or bail)	Yes (Criminal Procedure Law/mediation, reconciliation, compensation and apology)	Yes (nationwide and case-by-case basis)
Measures to minimize time in pre-trial/trial detention	Yes (Criminal Procedure Law/release to parents/guardians without or with bond or bail and or residential surveillance)	Yes (sometimes used/release to parents/guardians without or with bond or bail)	No	Unknown
Alternatives to post-trial detention	Yes (Criminal Law and Criminal Procedure Law/exempt from criminal punishment, fine and other alternatives like probation)	Yes (sometimes used/mainly probation)	Yes (Criminal Law/mediation, reconciliation, compensation and apology)	Yes (nationwide and case-by-case basis)
Measures to minimize time in post-trial detention	Yes (Criminal Procedure Law/reduced sentencing or parole)	Yes (rather often used/release to parents/guardians)	Yes (Criminal Law/mediation, reconciliation, compensation and apology)	Yes (nationwide and case-by-case basis)
<b>Total of available alternative measures</b>	<b>5</b>	<b>5</b>	<b>4</b>	<b>4</b>



Available alternative measures in Indonesia				
Informal juvenile justice measures	In law		In practice	
	Yes (Constitution and provincial law Aceh)		Yes (used in some regions/many and various mechanisms)	
Formal juvenile justice measures (for children from 12 to 18 years)	Without RJJ approach		With RJJ approach	
	In law	In practice	In law	In practice
Unconditional diversion/police warning	Yes (Juvenile Justice Law/return to parents/guardians)	Yes	–	–
Diversion from formal judicial proceedings	Yes (Juvenile Justice Law/victimless cases)	Yes (often used/diversion plan/supervision by parents/guardians, education or training course)	Yes (Juvenile Justice Law/negotiation and consensus between parties)	Yes (often used/diversion agreement/settlement, compensation and community service)
Alternatives to pre-trial/trial detention	Yes (Juvenile Justice Law/release to parents/guardians on bond)	Yes (nationwide/scale unknown/release to parents/guardians on bond)	No	No
Minimizing time in pre-trial/trial detention	Yes (Juvenile Justice Law)	Yes (nationwide/release to parents/guardians on bond)	No	No
Alternatives to post-trial detention	Yes (Juvenile Justice Law/reprimand, conditional punishments, vocational training, supervision)	Yes (scale unknown/probation, fine and school attendance)	Yes (Juvenile Justice Law/community service)	No
Minimizing time in post-trial detention	Yes (Juvenile Justice Law/early conditional release)	Yes (scale unknown/early conditional release)	No	No
<b>Total of available alternative measures</b>	<b>6</b>	<b>6</b>	<b>2</b>	<b>1</b>

Available alternative measures in Lao PDR				
Informal juvenile justice measures	In law		In practice	
	Yes (Draft Agreement on Child Mediation/mediation by Village Mediation Committees)		Yes (nationwide/scale unknown/mediation at village/community level)	
Formal juvenile justice measures (children from 15 to 18 years)	Without RJJ approach		With RJJ approach	
	In law	in practice	In law	In practice
Unconditional diversion/ police warning	Yes (LPRC/warning to re-educate the child)	Yes (warning by police and prosecutor)	--	--
Diversion from formal judicial proceedings	No	No	Yes (LPRC/all child-specific laws/community, police and prosecution level)	Yes (scale unknown/ apology, compensation, mediation by VCMUs, police and prosecutors)
Alternatives to pre-trial/trial detention	Yes (LJCP/release to parents/guardians/family and village authorities with or without bail)	Yes (hardly used/release to parents/guardians, family and village authorities with or without bail)	No	No
Measures to minimize time in pre-trial/trial detention	Yes (LJCP/release to parents/guardians/family and village authorities with or without bail)	Yes (often used/release to parents/guardians/family and village authorities with or without bail)	No	No
Alternatives to post-trial detention	Yes (LJCP/education and handing over to parents/guardians or others)	Yes (hardly used/handover to parents/guardians and suspended imprisonment)	Yes (LJCP/apology, compensation and community work)	Yes (hardly used/ compensation)
Measures to minimize time in post-trial detention	Yes (LJCP/early release from detention)	Yes (often used/release from prison to parents/guardians/family)	No	No
<b>Total of available alternative measures</b>	<b>5</b>	<b>5</b>	<b>2</b>	<b>2</b>

Available alternative measures in Malaysia				
Informal juvenile justice measures	In law		In practice	
	No		Unknown	
Formal juvenile justice measures (from children from 10-12 years to 18 years)	Without RJJ approach		With RJJ approach	
	In law	In practice	In law	In practice
Unconditional diversion/police warning	No	Yes (scale unknown/simple warning by police)	--	--
Diversion from formal judicial proceedings	Yes (Federal Constitution and Criminal Procedure Code/discontinuing proceedings by prosecutors)	Yes (scale unknown/not actively encouraged/petty offences)	No	No
Alternatives to pre-trial/trial detention	Yes (Child Act and Criminal Procedure Code/release to parents/guardians and relatives on bond and bail)	Yes (nationwide/rather often used/release to parents/guardians and relatives on bond and bail)	No	No
Measures to minimize time in pre-trial/trial detention	No	Yes (hardly used/release to parents/guardians and relatives on bond and bail)	No	No
Alternatives to post-trial detention	Yes (Child Act/reprimand, good behaviour bond, custody order, probation, fine and compensation of costs)	Yes (nationwide/often used/good behaviour bond, admonishment, care to parents/guardians/fit persons, fines, probation and interactive workshop)	Yes (community service)	No
Measures to minimize time in post-trial detention	Yes (Child Act/early conditional release)	Yes (hardly used/ad hoc basis/supervision of a probation officer)	No	No
<b>Total of available alternative measures</b>	<b>4</b>	<b>6</b>	<b>1</b>	<b>0</b>

Available alternative measures in Mongolia				
Informal juvenile justice measures	In law		In practice	
	No		No	
Formal juvenile justice measures (for children from 16 and 14 years to 18 years)	Without RJJ approach		With RJJ approach	
	In law	In practice	In law	In practice
Unconditional diversion/police warning	No	Yes (scale unknown/simple warning by police)	--	--
Diversion from formal judicial proceedings	Yes (Criminal Code/court level/measure of coercion of educational character/supervision)	Yes (hardly used/nationwide pilot/referral by police and prosecutors/school attendance, vocational training, life skills programme and leisure activities)	Yes (Criminal Code/court level/measure of coercion of educational character/redress)	Yes (hardly used/nationwide pilot/writing an essay and written apology)
Alternatives to pre-trial/trial detention	Yes (Criminal Procedure Code/supervision of parents/guardians without or with restrictive conditions)	Yes (pilot/hardly used/supervision of parents/guardians or extended family without or with conditions)	No	No
Measures to minimize time in pre-trial/trial detention	Yes (Criminal Procedure Code/release to parents/guardians without or with conditions)	Yes (rarely used/release to parents/guardians without or with conditions)	No	No
Alternatives to post-trial detention	Yes (Criminal Code and Criminal Procedure Code/fine, compulsory work, conditional sentence and probation conditions)	Yes (rather often/probation to parents/guardians and JJC on conditions like find a job, undertake studies, labour collective, educational and reformation work)	Yes (Criminal Code/probation conditions like redress damage caused)	Yes (hardly used/victim-offender meetings to advice on sentencing options)
Measures to minimize time in post-trial detention	Yes (Criminal Procedure Code/release to parents/guardians)	Yes (rather often used/release to parents/guardians)	No	No
<b>Total of available alternative measures</b>	<b>5</b>	<b>6</b>	<b>2</b>	<b>2</b>

Available alternative measures in Myanmar				
Informal juvenile justice measures	In law		In practice	
	No		Yes (rather often used/mediation/reprimand, fine, apology and financial or symbolic compensation)	
Formal juvenile justice measures (for children from 7 and 12 years to 16 years)	Without RJJ approach		With RJJ approach	
	In law	In practice	In law	In practice
Unconditional diversion/police warning	No	Yes (hardly used)	--	--
Diversion from formal judicial proceedings	No	Yes (by police/scale unknown)	No	No
Alternatives to pre-trial/trial detention	Yes (Child Law/bond plus conditions)	Yes (rarely used/Release on bond to parents/guardians, family and other custodian)	No	No
Measures to minimize time in pre-trial/trial detention	No	No	No	No
Alternatives to post-trial detention	Yes (Child Law/admonition, fine, custody of parents/guardians on bond and probation)	Yes (rather often/probation)	No	No
Measures to minimize time in post-trial detention	Yes (Child Law/release to parents/guardians with or without bond)	Yes (not often and not systematically)	No	No
<b>Total of available alternative measures</b>	<b>3</b>	<b>5</b>	<b>0</b>	<b>0</b>

Available alternative measures in Papua New Guinea				
Informal juvenile justice measures	In law		In practice	
		Yes (Village Court Act and Juvenile Justice Act)		Yes (Village Court magistrate/semi-informal/widely used with/without a restorative justice approach)
Formal juvenile justice measures (for children from 10 to 18 years)	Without RJJ approach		With RJJ approach	
	In law	In practice	In law	In practice
Unconditional diversion/police warning	Yes (JJ Act and Protocol)	Yes (very often used/warning and 'counselling')	--	--
Diversion from formal judicial proceedings	Yes (JJ Act, Arrest Act and Protocol/police, prosecutor and court level/school attendance, vocational training and rehabilitation programme)	Yes (used nationwide, but non-systematically/ minor offenses/ police and court level)	Yes (JJ Act and Protocol/police, prosecutor and court level/ mediation and community based conferencing)	Yes (used nationwide, but non-systematically/ mediation, community work and community panel)
Alternatives to pre-trial/trial detention	Yes (JJ Act/bail, support and supervision)	Yes (hardly used/release to parents/guardians/ family and bail)	No	No
Measures to minimize time in pre-trial/trial detention	Yes (JJ Act/bail, support and supervision)	Yes (hardly used/release to parents/guardians/ family and bail)	No	No
Alternatives to post-trial detention	Yes (JJ Act/reprimand, good behaviour, supervision, guidance, fine and suspended imprisonment sentence)	Yes (frequently used/ reprimand, good behaviour, supervision, guidance, fine and suspended imprisonment sentence)	Yes (JJ Act/ community-based conferencing)	Yes (frequently used/restitution, compensation, community service and conferencing)
Measures to minimize time in post-trial detention	Yes (JJ Act/credit to pre-trial detention and early conditional release)	Yes (often used/credit to pre-trial detention and early conditional release)	No	Yes (early conditional release/ mediation and conferencing)
<b>Total of available alternative measures</b>	<b>6</b>	<b>6</b>	<b>2</b>	<b>3</b>



Available alternative measures in the Philippines				
Informal juvenile justice measures	In law		In practice	
	Yes (RA 9344/imposable penalty < 6 years imprisonment/mediation, family conferencing, conciliation and indigenous modes of conflict resolution)		Yes (scale unknown/village justice or community diversion/mediation and family conferencing)	
Formal juvenile justice measures (for children from 15 to 18 years)	Without RJJ approach		With RJJ approach	
	In law	In practice	In law	In practice
Unconditional diversion/police warning	No	No	--	--
Diversion from formal judicial proceedings	Yes (RA 9344 and other child-specific laws/police, prosecution and court level)	Yes (sporadically used/supervision, counselling, training, life skills programme, fine, residential programme, etc.)	Yes (all child-specific laws/police, prosecution and court level/victim-offender mediation and conferencing)	Yes (hardly used/victim-offender mediation)
Alternatives to pre-trial/trial detention	Yes (RA 9344/release to parents/guardians or suitable person on recognizance or bail)	Yes (exact scale unknown/release to parents/guardians on recognizance or bail)	No	No
Measures to minimize time in pre-trial/trial detention	Yes (RA 9344/release on bail or recognizance, close supervision, intensive care, placement in family, educational setting or home)	Yes (exact scale unknown/release on bail or recognizance, close supervision, intensive care)	No	No
Alternatives to post-trial detention	Yes (Revised Rule on CICL/suspended sentence plus care, guidance, supervision, drug alcohol treatment, group counselling and probation)	Yes (exact scale unknown/probation without a prior residential component)	Yes (Revised Rule on CICL/suspended sentence plus community service)	No (only within the closed residential setting)
Measures to minimize time in post-trial detention	Yes (Revised Rule on CICL/no further conditions or measures)	Yes (exact scale unknown/release to parents/guardians)	No	No
<b>Total of available alternative measures</b>	<b>5</b>	<b>5</b>	<b>2</b>	<b>1</b>

Available alternative measures in Thailand <sup>37</sup>				
Informal juvenile justice measures	In law		In practice	
	No (draft bill 'Community Justice' is in progress)		Yes (hardly used/minor offences/restorative justice approach/mediation)	
Formal juvenile justice measures (for children from 10 to 18 years)	Without RJJ approach		With RJJ approach	
	In law	In practice	In law	In practice
Unconditional caution/warning	No	Yes (police warning)	--	--
Diversion from formal judicial proceedings	Yes (Act JFC and JFP/police, prosecution and court level)	Yes (often used/rehabilitation plan/school attendance, employment and religious activity)	Yes (Act JFC and JFP/police, prosecution and court level/conferencing)	Yes (often used/compensation and community work)
Alternatives to pre-trial/trial detention	Yes (Act JFC and JFP/release on bail to parents/guardians, others and institution)	Yes (used rather often/release on bail to parents/guardians, NGOs and institution)	No	No
Measures to minimize time in pre-trial/trial detention	Yes (Act JFC and JFP)	Yes (hardly used/on bail to parents/guardians)	No	No
Alternatives to post-trial detention	Yes (Act JFC and JFP/probation)	Yes (often used/restrictions, treatment, rehabilitation, occupation, training, residential programme)	Yes (conference)	Yes (not often/conference)
Measures to minimize time in post-trial detention	Yes (Act JFC and JFP)	Yes (often used/probation conditions)	No	No
<b>Total of available alternative measures</b>	<b>5</b>	<b>6</b>	<b>2</b>	<b>2</b>

<sup>37</sup> Thailand amended its Juvenile and Family Court and Juvenile and Family case Procedure legislation in late December, 2016. The changes are not reflected in this study.

Available alternative measures in Timor-Leste				
Informal juvenile justice measures	In law		In practice	
	Yes (Law on Community Leaders and their Election)		Yes (vast majority of cases/mediation, traditional practices and community service)	
Formal juvenile justice measures (for children from 16 to 18 years)	Without RJJ approach		With RJJ approach	
	In law	In practice	In law	In practice
Unconditional diversion/police warning	No	Yes (hardly used/warning by community police and court)	–	–
Diversion from formal judicial proceedings	Yes (Criminal Procedure Code/prosecution level)	No	No	No
Alternatives to pre-trial/trial detention	Yes (Criminal Procedure Code)	No (rarely used/only in the form of house arrest and residential placement (FCJ))	No	No
Measures to minimize time in pre-trial/trial detention	Yes (Criminal Procedure Code)	No	No	No
Alternatives to post-trial detention	Yes (Penal Code and Criminal Procedure Code/fine and suspended prison sentence)	Yes (rarely used/discharge plus house arrest or probation and fine)	Yes (Penal Code and Criminal Procedure Code/community service and redress, reparation and apology as part of suspended prison sentence)	No
Measures to minimize time in post-trial detention	Yes (Criminal Procedure Code/early conditional release/parole)	Yes (rarely used/parole)	Yes (Criminal Procedure Code/same as parole conditions)	Unknown
<b>Total of available alternative measures</b>	<b>5</b>	<b>3</b>	<b>2</b>	<b>0</b>

Available alternative measures in Viet Nam				
Informal juvenile justice measures	In law		In practice	
	Yes (Law on Grassroots Mediation/mediation by 'grassroots mediation teams')		Yes (hardly used/informal mediation/compensation, apology and supervision)	
Formal juvenile justice measures (for children from 12 years and 14 years to 18 years)	Without RJJ approach		With RJJ approach	
	In law	In practice	In law	In practice
Unconditional diversion/police warning	Yes (LHAV and Penal Code)	Yes (most probably used rather often/simple warning by police, prosecutor and court)	–	–
Diversion from formal judicial proceedings	Yes (LHAV and Penal Code/police, prosecution and court level/exempt from penal liability and supervision and education by their families, agencies or organizations)	Yes (most probably hardly used/exemption of criminal liability)	Yes (new Penal Code and Law on Mediation at Grassroot Level)	No
Alternatives to pre-trial/trial detention	Yes (Penal Procedure Code/release to parents/guardians and social welfare organizations/close supervision and bail)	Yes (hardly used/release to parents/guardians and social welfare organizations/close supervision and bail)	No	No
Measures to minimize time in pre-trial/trial detention	Yes (Penal Procedure Code/release to parents/guardians and social welfare organizations/ close supervision and bail)	Yes (scale unknown/release to parents/guardians and social welfare organizations/close supervision and bail)	No	No
Alternatives to post-trial detention	Yes (LHAV and the Penal Code/warning, fine, community-based education and non-custodial reform and suspended sentence)	Yes (hardly used (criminal) and often used (administrative)/ warning, fine, community-based education, non-custodial reform and suspended sentence)	No	No
Measures to minimize time in post-trial detention	Yes (Penal Code/released to community)	Yes (rather often used/ released to community)	No	No
<b>Total of available alternative measures</b>	<b>6</b>	<b>6</b>	<b>1</b>	<b>0</b>

Available alternative measures in Fiji				
Informal juvenile justice measures	In law		In practice	
	Yes (Constitution)		Yes (often used/indigenous children and children from ethnic groups/informal mediation by community leaders)	
Formal juvenile justice measures (for children from 10, 12 and 14 years to 16 years)	Without RJJ approach		With RJJ approach	
	In law	In practice	In law	In practice
Unconditional diversion/police warning	No	Yes (often used/simple warning by police)	--	--
Diversion from formal judicial proceedings	Yes (Juvenile Act/court level/good behaviour bond)	Yes (often used/police level and court level/good behaviour bond and specific programme, school attendance, church activities, curfew)	No	Yes (often used/police level and court level/family conferencing meeting, apology and community work)
Alternatives to pre-trial/trial detention	Yes (Juvenile Act/release on recognizance to parents/guardians or other responsible person)	Yes (rather often used/parents/guardians, community leaders, others and NGOS/CSOs)	No	No
Measures to minimize time in pre-trial/trial detention	Yes (Juvenile Act/release on recognizance to parents/guardians)	Yes (often used/release to parents/guardians or others)	No	No
Alternatives to post-trial detention	Yes (Juvenile Act/discharge, fine or compensation by child or parents/guardians, good behaviour order, care order; probation order)	Yes (rather often used/probation orders and community service orders)	Yes (Juvenile Act/any other lawful measure)	Yes (often used/ community service and other restorative measures)
Measures to minimize time in post-trial detention	Yes (Juvenile Act)	Yes (often used/early conditional release to parents/guardians or others)	No	No
<b>Total of available alternative measures</b>	<b>5</b>	<b>6</b>	<b>1</b>	<b>2</b>

Available alternative measures in Kiribati				
Informal juvenile justice measures	In law		In practice	
	No		Yes (often used/informal mediation by community leaders)	
Formal juvenile justice measures (for children from 14 to 18 years)	Without RJJ approach		With RJJ approach	
	In law	In practice	In law	In practice
Unconditional diversion/police warning	No	No	--	--
Diversion from formal judicial proceedings	Yes (Juvenile Justice Act/court level/ fine or good behaviour bond)	Yes (often used/court level/fine or good behaviour bond/counselling, curfew, life skills programme)	Yes (Juvenile Justice Act/payment of fine, damages or costs by parents/guardians)	Yes (often used/police level/warning in mediation style and conferencing/ apology, compensation, community service)
Alternatives to pre-trial/trial detention	Yes (Juvenile Justice Act/release on bail to parents/guardians and other adults)	Yes (hardly used/release on bail to parents/guardians and other adults)	No	No
Measures to minimize time in pre-trial/trial detention	No	Yes (often used/release from police custody on bail to parents/guardians and other adults)	No	No
Alternatives to post-trial detention	Yes (Juvenile Justice Act/discharge, care order, good behaviour order, suspended sentence)	Yes (very often/counselling, curfew, life skills programme)	Yes (Juvenile Justice Act/pay a fine, damages or costs by child or parents/guardians)	Yes (very often/community service, compensation by child or parents/guardians)
Measures to minimize time in post-trial detention	Yes (Juvenile Justice Act/discharged by the Minister)	Yes (release to parents/guardians on conditions)	No	No
<b>Total of available alternative measures</b>	<b>4</b>	<b>5</b>	<b>2</b>	<b>2</b>

Available alternative measures in Samoa				
Informal juvenile justice measures	In law		In practice	
	Yes (Village Fono Act and Young Offenders Act)		Yes (Majority of cases/traditional mediation by chiefs/community leaders)	
Formal juvenile justice measures (for children from 10 to 18 years)	Without RJJ approach		With RJJ approach	
	In law	In practice	In law	In practice
Unconditional diversion/police warning	Yes (Young Offenders Act/police level)	Yes (very often used/by police)	–	–
Diversion from formal judicial proceedings	Yes (Young Offenders Act/court level)	Yes (often used/school attendance and homework at police level and family placement at court level)	Yes (Young Offenders Act/pre-sentencing meeting at court level)	Yes (often used/small restorative job at police level and pre-sentencing meeting/restoration and rehabilitation plan)
Alternatives to pre-trial/trial detention	Yes (Young Offenders Act/bail plus conditions)	Yes (often used/bail plus conditions)	No	No
Measures to minimize time in pre-trial/trial detention	No	Yes (scale unknown/bail plus conditions)	No	No
Alternatives to post-trial detention	Yes (Young Offenders Act/measure without conviction, fine, rehabilitation order and supervision order)	Yes (very often used, school attendance, probation and supervision order)	Yes (Young Offenders Act/pre-sentencing meeting and community service)	Yes (pre-sentencing meeting, restitution and community service)
Measures to minimize time in post-trial detention	No	No	No	No
<b>Total of available alternative measures</b>	<b>4</b>	<b>5</b>	<b>2</b>	<b>2</b>



Available alternative measures in Solomon Islands				
Informal juvenile justice measures	In law		In practice	
	No		Yes (very often used/traditional mediation)	
Formal juvenile justice measures (for children from 8 to 18 years)	Without RJJ approach		With RJJ approach	
	In law	In practice	In law	In practice
Unconditional diversion/police warning	Yes (Juvenile Offender Act/court level)	Yes (often used/by police and court/payment of fine, damages or costs by parents/guardians/traditional mediation)	–	–
Diversion from formal judicial proceedings	Yes (Juvenile Offender Act/court level)	Yes (often used/police and court level/security for good behaviour)	No	No
Alternatives to pre-trial/trial detention	Yes (Juvenile Offenders Act/recognizance)	Yes (hardly used/release to parents/guardians, family, others and CBOs)	No	No
Measures to minimize time in pre-trial/trial detention	Yes	Yes (hardly used/with or without bail and reporting)	No	No
Alternatives to post-trial detention	Yes (Juvenile Offenders Act/discharge, probation, release to the care of a relative or other fit person, pay fine, damages or costs, security by parents/guardians and good behaviour bond)	Yes (hardly used/fine)	Yes (Juvenile Offenders Act/payment of fine, damages or costs)	No
Measures to minimize time in post-trial detention	Yes (Juvenile Offenders Act/Criminal Procedure Code)	Yes (scale unknown/early release)	No	No
<b>Total of available alternative measures</b>	<b>6</b>	<b>6</b>	<b>1</b>	<b>0</b>

Available alternative measures in Vanuatu				
Informal juvenile justice measures	In law		In practice	
	Yes (Constitution)		Yes (very often used/informal mediation by chiefs and religious leaders)	
Formal juvenile justice measures (for children from 10 and 14 years to 18 years)	Without RJJ approach		With RJJ approach	
	In law	In practice	In law	In practice
Unconditional diversion/police warning	No	Yes (used in minor offences by police)	–	–
Diversion from formal judicial proceedings	No	Yes	No	Yes (often used/police level/conferencing meeting/apology, compensation and counselling)
Alternatives to pre-trial/trial detention	Yes (Criminal Procedure Code/release on bail)	Yes (all cases (100%)/released to parents/guardians, family, other respected adults and community leaders)	No	No
Measures to minimize time in pre-trial/trial detention	No	N/A (there are no pre-trial detention facilities)	No	N/A (there are no pre-trial detention facilities)
Alternatives to post-trial detention	Yes (Penal Code and Correctional Service Act/probation)	Yes (all cases (100%)/probation conditions like life skills programmes)	Yes	Yes (all cases (100%)/probation conditions like community service hours)
Measures to minimize time in post-trial detention	No	N/A (there are no post-trial detention facilities)	No	N/A (there are no post-trial detention facilities)
<b>Total of available alternative measures</b>	<b>2</b>	<b>4</b>	<b>1</b>	<b>2</b>

Available alternative measures in the nine Pacific Island countries [Cook Islands, Marshall Islands, Micronesia, Nauru, Niue, Palau, Tokelau, Tonga and Tuvalu]				
Informal juvenile justice measures	In law		In practice	
	Yes (recognized by national law in 9 Pacific Island countries)		Yes (significant extent/customary courts and traditional customs applied by the formal legal system/compensation)	
Formal juvenile justice measures (for children from 7, 10 and 16 years to 18 years)	Without RJJ approach		With RJJ approach	
	In law	In practice	In law	In practice
Unconditional diversion/police warning	No	Yes (often used/police level)	--	--
Diversion from formal judicial proceedings	Yes (court level)	Yes (rather often used/police level and court level/placement in foster family)	No	Yes (police level and court level/family group conference/compensation by parents/guardians and community work)
Alternatives to pre-trial/trial detention	Yes (release to parents/guardians, family, others)	Yes (often used/release to parents, family, others, community leader and NGOs/SCOs)	No	No
Measures to minimize time in pre-trial/trial detention	Yes (release to parents/guardians, family, others)	Yes (hardly used/release to parents/guardians, family, others, community leader and NGOs/SCOs)	No	No
Alternatives to post-trial detention	Yes (conditional discharge and probation)	Yes (rather often/discharge, probation, strict supervision and participation in programmes)	No	Yes (community service work)
Measures to minimize time in post-trial detention	Yes (early conditional release)	Yes (often used/early conditional release)	No	No
<b>Total of available alternative measures</b>	<b>5</b>	<b>6</b>	<b>0</b>	<b>2</b>

## Annex 3 Information on social inquiry reports on children in conflict with the law

Beijing Rule 16 'Social inquiry reports' states that "In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority". The commentary on this rule reads as follows: "Social inquiry reports (social reports or pre-sentence reports) are an indispensable aid in most legal proceedings involving juveniles. The competent authority should be informed of relevant facts about the juvenile, such as social and family background, school career, educational experiences, etc. For this purpose, some jurisdictions use special social services or personnel attached to the court or board. Other personnel, including probation officers, may serve the same function. The rule therefore requires that adequate social services should be available to deliver social inquiry reports of a qualified nature".

In this annex, additional information on social inquiry reports from countries outside the East Asian and Pacific region is provided, from Afghanistan, the United Kingdom and Malawi, and an example of a social inquiry report from the United Kingdom.

### Social Inquiry Report: Afghanistan

"A Social Inquiry Report (SIR) has been developed together by social workers, prosecutors and police and officially adopted by the Office of the Attorney General (AGO), the Ministry of Interior (MoI) and the Ministry of Labour, Social Affairs, Martyrs and Disabled Affairs (MoLSAMD). SIR is intended to be prepared on the findings of two assessments conducted by social workers with children in conflict with the law or at risk of coming into conflict with the law – the 'Child and Home Study' and 'Children in Conflict with the Law Study'. These assessment systems were tested with different social workers in 2008. The format is designed to be completed by a trained social worker on any child accused of being in conflict with the law who has a case filed against him or her (i.e., any case referred to the juvenile prosecutor). It is made up of six sections. Five of these sections deal with the background and circumstances of the child leading up to point of coming into conflict with the law. The final section presents the conclusions and recommendations of the social worker who has compiled the report.

**Section 1** of the SIR details the basic personal data of the child and his or her contact details. It also identified all officials from the juvenile justice involved in the case – social worker, prosecutor and police. This provides clear information on who is responsible from each agency for follow-up.

**Section 2** summarises details of the offence of which the child is accused including the date, place and nature of the alleged offence. Information on other parties involved in the case and their roles is also specified. This section also details the child's experience and perception of the alleged offence as well as his or her intention. This information places the offence in a context to enable a judgement to be made on the circumstances surrounding the offence. This is of particular importance in understanding what external factors or actors may have contributed to alleged committal of the offence.

**Section 3** incorporates a description and assessment of the child's family situation and home environment. Again this information is to understand what circumstances might have led the child to coming in to conflict with the law. Information included are the child's financial and social background, living situation and educational experience. It details presence of different factors which are recognised as risks for a child offending – history of abuse or neglect, history of drug or alcohol abuse, or developmental issues. The social worker includes any other factors which might have resulted in the child making poor judgements or being susceptible to influence by negative actors in the offence.

**Section 4** examines the child's history of offending to provide an indication of risks related to future offending. It details whether the child presents a significant risk to his or her family, peers and community with particular reference to violent and serious offences. To assess this, details are recorded concerning the child's history of offending (the number of prior convictions, the age of first conviction, the severity of previous convictions and the attitude of the child to these convictions). From this information an initial opinion can be made about the risk of the child reoffending in the future. After consideration of all of the information submitted in sections 2 to 4 of the report, the social worker is required to make a professional judgement concerning the child in section 5 summarising the factors and circumstances that led the child to commit the offence.

The social worker must then make a recommendation of the most appropriate measure to address the child's behaviour and/or circumstances which led to the offence. The following principles must be adhered to:

- The measure must be proportionate to the seriousness of the offence, the circumstances surrounding the offence and the degree of responsibility of the child;
- The measure must not exceed any sanction that is detailed in the Juvenile Code;
- The measure must promote rehabilitation of the child as well as recognising any accountability of the child;
- The measure should also recognise and emphasise the importance of the responsibility of parents for the upbringing of their children. Home and family-based interventions to enhance parent-child interaction and home visit programmes should be recommended;
- If several options promise to have the same success, the measure which represents least infringement on the child's best interests should be recommended;
- Any form of deprivation of liberty should be used as a measure of last resort and for the shortest time possible.
- This recommendation should be taken into serious consideration by the juvenile prosecutor and the juvenile judge (if the case is registered in the court). The social worker must be available and prepared to provide clear justification for his/her recommendation".

[UNICEF/Afghanistan, Social Investigation Report; Understanding Children's Circumstances, Justice for Children in Afghanistan Series, Issue 4, February 2009]





### **BOX 5: STRUCTURE OF SOCIAL INQUIRY REPORT**

The SIR includes the following information:

- Personal data of the child (address, age, etc.)
- Present offence and child's experience and perception of the offence
- Brief overview of family history and environment and the child's own development
- History of substance abuse
- Emotional status
- Risk analysis

The Social Worker is asked to make the following professional judgements:

- **ASSESSMENT:** What happened to the child that led him/her to commit this offence?
- **RECOMMENDATION:** What diversion programme would he or she recommend to address the child's behaviour which led to the commitment of an offence?



# Brochure 'Social Enquiry Reports' (United Kingdom)



<p><b>ABOUT THE PROBATION SERVICE</b></p> <p>The Probation Service helps Courts to make their decisions by preparing reports on people.</p> <p>The Service also provides constructive ways of dealing with people who have broken the law. These are Probation Orders and Community Service Orders. We have leaflets about these Court Orders.</p> <p><b>WHAT IS A SOCIAL ENQUIRY REPORT?</b></p> <p>A report which gives information about you to the Court. A report can only be ordered if you admit or are found guilty of an offence and can only be ordered by the Court.</p> <p>The purpose of the report is to assess your risk of re-offending and if appropriate to suggest ways in which this risk can be reduced.</p> <p style="text-align: center;"><b>Information for you about Social Enquiry Reports</b></p> <p><b>WHY HAS A REPORT BEEN ORDERED?</b></p> <p>The information about you in the report will help the Magistrate or Judge to understand you and your situation more clearly and help them to decide how to sentence you.</p> <p><b>WHO PREPARES THE REPORT?</b></p> <p>A Probation Officer or sometimes a Child Care Officer.</p> <p><b>ARE THERE OTHER KINDS OF REPORTS?</b></p> <p>Yes. Courts can order other reports too, such as medical reports.</p> <p><b>WHO GETS TO READ THE REPORT?</b></p> <ul style="list-style-type: none"> <li>● You – the report will be discussed with you.</li> <li>● Your Advocate.</li> <li>● The Magistrate.</li> </ul>	<ul style="list-style-type: none"> <li>● The Royal Court Judge and Jurats.</li> <li>● The Royal Court Prosecutor.</li> <li>● The Prison if you are sent there.</li> <li>● Neither the Police nor the Press are handed a copy and the Probation Officer does not read the report aloud in Court.</li> </ul> <p><b>WHAT WILL THE PROBATION OFFICER ASK?</b></p> <p>About your life up to now, your job, your family, your financial situation (because the Court may wish to fine you), your hobbies and interests, any previous Court appearances and all the circumstances about the offence/s.</p> <p>He/she may also want to talk to other people who know you such as your doctor, family, or employer – usually with your consent.</p> <p>Your reading, writing and number skills will be assessed.</p> <p>You will also be assessed regarding your suitability to do Community Service.</p> <p>Reports generally suggest a sentence.</p> <p><i><b>It should be noted, however, that the Probation Officers' recommendations are not always accepted because it is the Court that decides sentence.</b></i></p> <p><b>WHAT ABOUT APPOINTMENT TIMES?</b></p> <p>The Probation Officer will want to see you at least once at the Probation Office and may wish to visit you at home. The Probation Officer will contact you either by letter or telephone. Interviews for reports vary, but it is best to allow an hour for each interview.</p> <p>If you are unable to keep your appointments please let us know beforehand. If you do not attend for your interview, it may not be possible to provide a report for the Court, who may then sentence you without one.</p>	<p><b>Other information we want to tell you . . .</b></p> <p><b>Report contents:</b> The report is written for the Court and will contain the Probation Officer's assessments. Before the report is sent to the Court it will be discussed with you. If you disagree with any part of it this may not be changed but you may tell the Court or your Advocate (if you have one).</p> <p><b>Limits to confidentiality:</b> Though Probation Officers try to respect your privacy there are many things we do not treat as "confidential" – your Probation Officer will explain this.</p> <p>Our expectations of you: We expect our callers to treat all our staff and property with respect. We will not hesitate to report unruly behaviour to the police and press charges.</p> <p><b>If you have a complaint:</b> If you have good cause for complaint this can be made to the Assistant Chief Probation Officer. Any complaint must be made in writing. A member of staff will assist you with this if you have difficulty in writing.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p style="text-align: center;"><b>Jersey Probation Service</b></p> <p style="text-align: center;">PO Box 656, 1 Lemprière Street, St Helier, Jersey JE4 8YT</p> <p style="text-align: center;">Tel: 01534 441900 Fax: 01534 441944 Email: probation@gov.je</p> <p style="text-align: center;">We can be found around the corner from the Magistrate's Court.</p> </div>
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[Jersey Probation and After-Care Service, Social Enquiry Reports, What You Need to Know, United Kingdom <http://probation.je/leaflets>]

# Psychosocial Report for Diversion Programmes (Malawi)

Report compiled by: \_\_\_\_\_ Court centre: \_\_\_\_\_  
Mr/Mrs/Miss. \_\_\_\_\_ Court Case No: \_\_\_\_\_  
Designation/Title: \_\_\_\_\_ CR No: \_\_\_\_\_  
Tel: \_\_\_\_\_ Email address: \_\_\_\_\_  
Mobile No: \_\_\_\_\_ Date: \_\_\_\_\_

## 1. Personal details of the child

(A) Name \_\_\_\_\_ (B) Other Names \_\_\_\_\_

(C) Sex \_\_\_\_\_ (D) Age/Date of birth \_\_\_\_\_

(E) Nationality: \_\_\_\_\_

(F) Home address: \_\_\_\_\_

(G) Residential address(es) if different from home address.

\_\_\_\_\_  
(H) Social Group (school going/school drop out/child labourer/child living on the street/child headed family).

\_\_\_\_\_  
Language of communication: \_\_\_\_\_

Religious denomination: \_\_\_\_\_

Last school: \_\_\_\_\_

Standard/Form/University level passed: \_\_\_\_\_

## 2. Report: (Pre-trial/during trial/post trial)

### 3. Introduction.

\_\_\_\_\_ hereafter referred to as the accused has been charged with the offence of \_\_\_\_\_. The 1st Grade/2nd Grade/3rd Grade/SRM/PRM/CRM court requested a psycho-social investigation as well as a recommendation of further actions. For that purpose the following persons were consulted:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

### 4. Reports from other experts attached.

1. \_\_\_\_\_
2. \_\_\_\_\_

### 5. Offence and child's experience and perception thereafter.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### 6. Previous court orders

\_\_\_\_\_  
\_\_\_\_\_

**7. Family background and child's own development (including adjustment and behaviour at school)**

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**8. Work record.** \_\_\_\_\_

8.1 Occupation/Type of work: \_\_\_\_\_

8.2 Present Employer: \_\_\_\_\_

8.3 Date of employment: \_\_\_\_\_

8.4 Salary/Wage: \_\_\_\_\_

8.5 Work history: \_\_\_\_\_

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**10. Substance abuse:**

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**11. Emotional problems:**

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**12. Assessment:**

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**13. Recommendation.**

It is recommended that the child attend the following diversion programme(s):

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

Signature of Probation Officer/Paralegal Officer/Juvenile Justice Officer:

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Date: \_\_\_\_\_

Date stamp:

(UNICEF Toolkit on Diversion and Alternatives to Detention)

## Example of a Social Enquiry Report about a Young Offender (United Kingdom)

<b>Report for:</b>	A specific named Court or other Agency
<b>Dated on:</b>	xx/xx/xxxx
<b>This report concerns:</b>	Name of the child concerned: Mr. John FLETCHER (not the real name)
<b>DOB:</b>	Age: 17 years
<b>Address:</b>	Last permanent address was: — — —
<b>Offence(s):</b>	Shoplifting (12 times)
<b>Report Writer:</b>	A named social worker or probation officer: — — —
<b>Date of Report:</b>	xx/xx/xxxx

### Basis of Report

This report is based on a single interview that I conducted with Mr. John FLETCHER at Her Majesty's Prison Winchester where he is currently remanded in custody and a report from the Hampshire Drug and Alcohol Action Team. Several attempts were also made to interview Mr. FLETCHER's mother, Jennifer FLETCHER, but she declined the opportunity to contribute as she stated that she wished to have no further contact with her son.

### Background

Mr. John FLETCHER is one of a family of three having two younger half-brothers. His father left the family when Mr. John FLETCHER was 6 years old and there has been no further contact. Mrs. FLETCHER has been co-habiting with a new partner (Mr. Michael James DASON) for ten years and he is the father of both of Mr. John FLETCHER's half-brothers. Mr. John FLETCHER claims he had a poor relationship with his mother's co-habitee (Mr. DASON) and left the family home when he was 15 years because of persistent and escalating violence from him. I spoke with Mr John FLETCHER's mother by telephone and she explained that she wishes no further contact with her son due to the problems his drug use has caused the family. On leaving the family home Mr. John FLETCHER initially lived with his maternal grandmother who has always been supportive of him. He claims however that she asked him to leave, because she was so distressed by frequent visits to her home by the police as a consequence of Mr. John FLETCHER's persistent offending behaviour. Mr. John FLETCHER's grandmother remains supportive of him and provides him with occasional meals and financial assistance. She states that she could again offer him temporary accommodation, but not permanent. The maximum term of such a temporary arrangement would not and could not exceed one calendar month.

### Current Circumstances

Prior to his remand in custody, Mr. John FLETCHER was living with various friends, usually sleeping on a sofa or on the floor.

### Finances

Mr. John FLETCHER was unemployed prior to his remand in custody. He had no income and was suspended from receiving state benefits due to his failure to co-operate with the job search programme.

### Education

Mr. John FLETCHER was educated locally. He enjoyed his time at primary school where he enjoyed most subjects. Mr. John FLETCHER says that he disliked secondary school and was suspended on numerous occasions for disruptive behaviour. He says he stopped going to school when he left home aged 15 years.

**Health**

Mr. John FLETCHER states that he is in good health. Two months ago he approached his doctor for assistance with his drug dependency and was referred to the local Drug and Alcohol Action Team and the Chronic Illness and Disability Payment Scheme (CDPS). He had, however, not received an appointment prior to his remand in custody. Mr. John FLETCHER's General Practitioner (Dr O'Riley) has confirmed this information.

**Alcohol/Drug Use**

Mr. John FLETCHER began smoking cannabis when he was 15 years and has experimented with some different drugs since then. He began smoking heroin 8 months ago and has now developed a dependency. Mr. John FLETCHER advises that he will use any drugs available and uses alcohol as a substitute when there is nothing else available.

**Offending Behaviour**

Since the age of 15 years, Mr. John FLETCHER has 3 previous convictions for offences of theft, shoplifting and breach of the peace. He has been sentenced to probation, community service and two separate custodial sentences in a Youth Offenders' Institution. Mr. John FLETCHER failed to co-operate with probation and was breached. He did however respond positively to community service and his supervisor reported that although his attendance was sporadic, he worked well when he attended and did complete his order.

**Attitude to Current Offence**

Mr. John FLETCHER claims that he has no memory of his offending behaviour although he does not deny that he is responsible. He appears ambivalent about his offending feeling that he has no choice about shoplifting because of his drug dependency and current financial position.

**Conclusion**

Mr. John FLETCHER is assessed as presenting a high risk of re-offending. This conclusion is based on his drug dependency, number of previous convictions, lack of reliable family support, absence of meaningful employment, and lack of suitable accommodation or any means of financial support. In view of this it is my opinion that Mr. John FLETCHER would benefit from intensive support. In the light of his drug dependency and consequent chaotic behaviour I believe he would benefit from a Drug Treatment and Testing Order (DTTO). The DTTO-scheme can only assess people in the community. I respectfully request that the Court further defer sentence for a period of three weeks to allow such an assessment to take place. This timescale would also enable the Homeless Assessment Team to find suitable supported accommodation for Mr. John FLETCHER.

Signed

Social Worker


## Annex 4 WellStop Youth Services for young people who have sexually harmful behaviours

The Committee on the Rights of the Child addresses 'cases of severe offences by children' in its General Comment No.10. Paragraph 71 reads as follows: "The Committee wishes to emphasize that the reaction to an offence should always be in proportion not only to the circumstances and the gravity of the offence, but also to the age, lesser culpability, circumstances and needs of the child, as well as to the various and particularly long-term needs of the society. A strictly punitive approach is not in accordance with the leading principles for juvenile justice spelled out in article 40 (1) of CRC. ... In cases of severe offences by children, measures proportionate to the circumstances of the offender and to the gravity of the offence may be considered, including considerations of the need of public safety and sanctions. In the case of children, such considerations must always be outweighed by the need to safeguard the well-being and the best interests of the child and to promote his/her reintegration".

In this Annex, an example of a programme designed for children who come into conflict with the law as a result of serious offences, called 'WellStop' (New Zealand) has been provided. 'WellStop' provides assessment and a range of treatment services to young people who have engaged in sexually harmful/abusive behaviour. The service aims to change their behaviour so they can live a healthy life in the community. Working with the families of young offenders to support this change is an extremely important part of the service.



## WellStop Youth Services for young people who have sexually harmful behaviours (New Zealand)

<h3>About WellStop</h3> <ul style="list-style-type: none"> <li>WellStop is an independent not-for-profit organisation that is governed by a board of people from the community.</li> <li>We were established in 1993 as Wellington Stop and changed our name to WellStop in 2005.</li> <li>In dealing with issues of abuse we keep in mind the need for safety for the victim, family and community.</li> <li>We work from the understanding that people who sexually abuse can and do change, especially when they have good support from treatment providers, families and the community.</li> <li>We employ well-trained experienced staff, including psychologists, counsellors and social workers. In some areas Maori staff are available to work with Maori clients and in Wellington we have a relationship with an organisation to help us to better meet the needs of Pacific Peoples.</li> </ul> <h3>Making a Referral</h3> <ul style="list-style-type: none"> <li>Anyone is welcome to contact WellStop to discuss concerns or make a referral.</li> <li>Referrals come from a wide range of sources including CYFS, schools, health professionals, social workers, parents, caregivers, and other family or whanau.</li> <li>WellStop is a private counselling agency so all referrals need to be funded by the referrer or family, however we receive some funding to work with young people referred by CYFS. Social workers need to check first to see if places are available.</li> </ul>	<h3>Contact Details</h3> <p><b>Wellington Region:</b> PO Box 45-109 Eputi Lower Hutt 5042 Ph: (04) 566-4745 Fax: (04) 569-5556 staff@wellstop.org.nz</p> <p><b>Palmerston North Region:</b> PO Box 420 Palmerston North 4440 Ph: (06) 356-9666 Fax: (06) 356-9699 pnorth@wellstop.org.nz</p> <p><b>East Coast Region:</b> PO Box 3265 Onekawa Napier 4142 Ph: (06) 842-2430 (Hawke's Bay) Fax: (06) 842-2470 Ph/Fax: (06) 867-0145 (Gisborne) eastcoast@wellstop.org.nz</p> <p><b>For more information visit our Website:</b> <a href="http://www.wellstop.org.nz">www.wellstop.org.nz</a></p> <p>All branches are regionally based and provide outreach services to most major towns and cities in their region e.g. Wanganui, Masterton.</p> <p><b>For services in the Taranaki region contact Safer Centre:</b> Phone: (06) 758-4178 Website: <a href="http://www.safercentre.org.nz">www.safercentre.org.nz</a></p> <p><b>For general youth enquiries email:</b> youthprogrammes@wellstop.org.nz</p>	 <h3>Youth Programme</h3> <p>We offer help and support for young people aged 13-18 years who have engaged in sexually harmful behaviours and their families.</p> <div style="border: 1px solid green; padding: 5px; text-align: center;"> <p><b>Our Mission:</b> To work towards the elimination of sexual abuse in our region</p> </div> <p><b>Programmes also available for:</b></p> <ul style="list-style-type: none"> <li>Children 5-12 with sexualised behaviour, and their families</li> <li>Adults who are ready to stop their sexual abuse of children and others, and support for their families</li> </ul>
<h3>What does WellStop do?</h3> <ul style="list-style-type: none"> <li>We help young people who have sexually harmful behaviours to have safer and more positive futures.</li> <li>We work as a team with families, professionals and other support people to ensure a safe and caring environment for all concerned.</li> <li>We provide information and support to families and agencies especially schools, who are supporting particular young people.</li> <li>We also provide consultation and training to professional and community groups about young people with sexually harmful behaviour.</li> </ul> <h3>What is Sexually Harmful Behaviour?</h3> <p>Sexually harmful behaviour includes a range of behaviour from unwanted sexual comments right through to rape or sexual assault against a child, teenager or adult.</p> <p>It can also include such things as exposure or flashing; stealing underwear; peeping at or stalking someone; making obscene phone calls or misuse of chat lines, chat rooms or messaging; and looking at or making child abuse images or violent pornography.</p>	<h3>WellStop Youth Services</h3> <p><b>Assessments:</b></p> <ul style="list-style-type: none"> <li>To understand the reason a young person has sexually harmed.</li> <li>To estimate the risk of the behaviour happening again, identify safety concerns and develop a safety plan.</li> <li>To find out about the strengths and hopes of the family and young person.</li> <li>To recommend treatment and support for the young person and their family.</li> </ul> <p>Assessments involve the young person, parents and caregivers, other appropriate family and the referring person or agency. A report can be made available to Family Group Conferences or Court if required.</p> <p><b>Treatment:</b></p> <ul style="list-style-type: none"> <li>Therapy is tailored to meet the needs of the young person and their family. It is based on the assessment and discussed at a care plan meeting at the start of therapy.</li> <li>Individualised treatment programmes may include a combination of:             <ul style="list-style-type: none"> <li>One to One Therapy</li> <li>Family Therapy</li> <li>Family Education</li> <li>Group Therapy</li> <li>Social Work support</li> <li>Collaboration with other agencies</li> </ul> </li> <li>Treatment usually lasts between 3 – 18 months. Progress is reviewed every three months at a review meeting with family and others who are involved.</li> </ul>	<h3>Managing Safety</h3> <p>The safety of children and the community is very important. If we believe a child is at risk we will make sure that Child Youth and Family Service (CYFS) is aware of this.</p> <p>Safety plans are developed for all clients in consultation with the family, support people and involved professionals.</p> <p>Adults who care for the young person are expected to manage the safety plan. As things progress the young person may take more responsibility for managing their part of the safety plan.</p> <h3>Positive Family Relationships</h3> <p>WellStop works with families to improve relationships, especially where these have broken down or the family has been separated as a result of the sexually harmful behaviour. We discuss what is needed for the family to be together again safely and work with the family to achieve these goals.</p> <p>We listen to the concerns and hopes of family members, especially those affected by the abuse. If for some reason the family is not able to live together again we look at ways to restore the relationships and have safe contact between family members.</p>

[<http://www.wellstop.org.nz/>]





PHOTOS:

**Cover:** 'Daghang Salamat' (Thank you very much) – a young detainee at a juvenile rehabilitation facility scribbled on his palm from one of the life-skills sessions.

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**Page xiii and 102:** Buddhist monks play a prominent role in providing alternative measures in Thailand.

©Thailand Juvenile and Family Court

**Page xxiv:** Invest in open and not closed centres.

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**Page 2 and 79:** Invest in education and keep children in school regardless of status.

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**Page 18:** Judges teach children handicrafts.

©Thailand Juvenile and Family Court

**Page 39:** Ensure children's views are heard.

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**Page 57:** Invest in child friendly staff working on juvenile justice.

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**Page 82:** Family and psychosocial support are provided.

©Thailand Juvenile and Family Court

**Page 87:** A male child in conflict with the law with his support persons and young child witnesses before village court magistrates during an informal village court session in Goroko province.

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**Page 90 and 117:** Child and adolescent offenders are detained pending their cases and, when decided by Court, are released to re-integrate with their families and communities with new skills to take on employment or continued studies.

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**Page 135:** Juvenile justice professionals share about policies and practices on alternative measures during the data collection by EAPRO consultant.

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**Page 165:** Playing music after a restorative justice conference brings the community together for the child.

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**Page 172:** The community contributes to repair the harm.

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