



Juvenile Justice Officers Handbook 2019

Papua New Guinea



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Defines the purpose and target group of this handbook and provides key definitions

INTRODUCTION

1 RIGHTS OF CHILDREN

Details the rights of the children in the criminal justice system and guiding principles from the Juvenile Justice Act 2014

2 JJ NATIONAL FRAMEWORK

Defines how Juvenile Justice is structured in PNG: it's legislation, institution and main stakeholders' roles

3 CASE MANAGEMENT

Provides theoretical and practical on knowledge on how to support juveniles in the criminal justice system

4 ARREST DIVERSION

Section 4 to 7 describe the step-by-step role of the JJO at each stage of the process from arrest to reintegration

5 PRE-TRIAL BAIL & REMAND

6 COURT PROCEEDINGS

7 COURT PROCEEDINGS

7.4 EXECUTION OF SENTENCE

8 REINTEGRATION

Provides guidance on how to map different JJ services available in the province

9 RECORDS & REPORTING

Details the different forms and formats used for confidential records, data collection and reporting

HOW TO USE THIS HANDBOOK

INTRODUCTION

Purpose of this Handbook

This handbook is intended to guide Juvenile Justice Officers in their work, through practical step-by-step guides, checklists, flowcharts and standard forms. It was developed in consultation with Senior Juvenile Justice Officers and other key juvenile justice stakeholders, through a set of individual consultations and workshops in early 2019.

The handbook is based on the Juvenile Justice Act 2014 and other applicable legislation, international standards and norms applicable to children in the justice systems, the latest scientific literature on case management for juveniles in the criminal justice system and the experience of Juvenile Justice Officers as they carry out their duty as well as the JJ Director and other key stakeholders.

Who is this Handbook for?

This Manual is intended to be used by Juvenile Justice Officers (hereafter JJOs) and Volunteer Juvenile Justice Officers (hereafter VJJOs), and those Probation and Parole Officers who are acting as Juvenile Justice Officers.

Important to note: Note that “JJOs” in the present manual refers to both JJOs and VJJOs.

This handbook includes a set of challenges faced by JJOs to help newly recruited officers understand the everyday realities of the work with juveniles. These challenges are based on real-life experiences of senior JJOs and the handbook offers solutions to address and resolve these issues. these challenges are as follows.

Key challenges for Juvenile Justice Officers challenges

1. Lack of adequate resources	p18
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Terms used in this Handbook

The terms used in this Manual are the same as those used in the Juvenile Justice Act 2014, and the Criminal Code Act 1974. JJA 2014 means the Juvenile Justice Act 2014, which replaces the Juvenile Courts Act 1991.

“Authorised facilitator” A person authorised as a facilitator of community-based conferences under Section 37 of the JJA 2014.

“Bail” means approval, whether or not subject to conditions, for the release of the juvenile from custody.

“Bail authority” means a person or court empowered or required under this Act, the Bail Act (Chapter 340) or any other law to grant bail;

“Care” Includes custody and control, but not guardianship.

“Child” means a person including a boy or girl child under the age of 18 years;

“Child Protection Officer” has the same meaning as in the Lukautim Pikinini Act 2015;

“Civil society group” includes a church group, a non-government organisation, a women’s group, a community-based organisation, a law and order committee, and any other similar non-State organisation or group;

“Community based conference” means a community-based conference held in accordance with Part III.B, and includes a mediation;

“Correctional officer” has the same meaning as in the Correctional Services Act 1995;

“Court” means -

a) a Juvenile Court; or

b) a court of summary jurisdiction or the National Court exercising jurisdiction under the JJA 2014;

“Custody” means the custody of the juvenile in an institution.

“Diversion” in relation to a juvenile, means diverting the juvenile alleged to have committed an offence away from the formal justice system and resolving the conflict through informal measures;

“Diversion agreement” means a diversion agreement made under Section 35 of the JJA 2014;

“Diversion option” means an option for the diversion of a juvenile referred to in Section 29 of the JJA 2014;

“Director of Lukautim Pikinini” means the Director of Lukautim Pikinini appointed under the Lukautim Pikinini (Child) Act 2015;

“Director” means the Director of the Juvenile Justice Service;

“Institution” means -

a) the juvenile section of a correctional institution; or

b) a juvenile institution; or

c) a remand centre;

“Indictment” means a written charge against an accused person in order for his or her trial before a court other than a court of summary jurisdiction

“Juvenile” means a person who is, or in the absence of evidence to the contrary appears to be, ten years old or older, but less than 18 years old;

“Juvenile Court” means a Juvenile Court established under Section 14 of the JJA 2014;

“Juvenile Court Magistrate” means Magistrate of a Juvenile Court appointed under Section 15 of the JJA 2014;

“Juvenile institution” means a juvenile institution approved under Section 95 of the JJA 2014

“Juvenile justice officer” means a juvenile justice officer appointed to the Juvenile Justice Service under Section 8, and includes a volunteer juvenile justice officer.

“Juvenile section of a correctional institution” means the juvenile section of a correctional institution approved under Section 95 of the JJA 2014;

“Magistrate” means -

a) a Juvenile Court Magistrate; or Juvenile Justice

b) a Magistrate of a court of summary jurisdiction exercising jurisdiction in accordance with Section 19 and includes a Principal Magistrate;

“Medical practitioner” includes a dentist, a nurse and a health extension officer;

“Minister” means the Minister responsible for justice matters;

“National Juvenile Justice Committee” means the National Juvenile Justice Committee (NJJC) established by Section 23 of the JJA 2014;

“Parent” in relation to a juvenile, means a parent of the juvenile, and includes a guardian of the juvenile;

“Police” means any sworn member of the Royal Papua New Guinea Constabulary

“Police Juvenile Officer” means any sworn member of the Royal Papua New Guinea Constabulary appointed to a specialist juvenile justice position

“Pre-sentencing report” means a report prepared under Section 79 of the JJA 2014;

“Principal Magistrate” means a Principal Magistrate appointed under the District Courts Act (Chapter 40);

“Probation officer” means a probation officer appointed under the Probation Act (Chapter 381), and includes a volunteer probation officer;

“Probationer” means a person in relation to whom a probation order is in force under the JJA and the Probation Act 1979;

“Provincial Juvenile Justice Committee” means a Provincial Juvenile Justice Committee (PJJC) under Section 26 of the JJA 2014;

“Remand centre” means an institution approved as a remand centre under Section 95 of the JJA 2014;

“Responsible person” in relation to a juvenile, means a person other than a parent of the juvenile, who agrees to accept care of the juvenile, and includes a civil society group providing for the care of juveniles;

“Restorative justice” in relation to a juvenile, means a process which promotes reconciliation, restitution and accountability through the involvement of the juvenile, the juvenile’s parents and family members, victims and communities;

“Review” means a review of a sentence under Part VIII of the JJA 2014;

“Review report” means a report prepared under Section 89 of the JJA 2014;

“Serious indictable offence” means an offence listed in Annexe;

“Service” means the Juvenile Justice Service established by Section 7 of the JJA 2014;

“Volunteer juvenile justice officer” means a person appointed as a volunteer juvenile justice officer under Section 13 of the JJA 2014.

It is important for a Juvenile Justice Officers (JJOs) to have a good understanding of the rights of children and guiding principles that guide their work – this offers background on the fundamental principles that drive their work.

1.1.Children's rights

1.1.1.Universal Children's Rights (CRC)

The United Nations has developed a set of rights for children in the United Nations Convention on the Rights of the Child, or CRC. The Papua New Guinea Government signed the CRC in 1993. This means that the Government has made a commitment to ensure that the rights of all children become a reality.

There are four key principles in the CRC:

- Non-discrimination – all rights apply to all children without exception.
- Best interests of the child.
- Child's rights to survival and development – all children should be supported to their full potential.
- Participation – girls and boys have the right to be involved in decisions affecting them.

Key children's rights in the CRC are:

- The right to education.
- The right to good health
- The right to play and have fun.
- Protecting children from violence, abuse, exploitation and neglect.

1.1.2.Rights of Children in conflict with the law in the CRC

The Convention on the Rights of the Child, specifically protects the rights of children in conflict with the law, notably in:

- Article 37 provides protection rights for children in conflict with the law:
 - Prohibition of torture or other cruel, inhuman or degrading treatment
 - Prohibition of capital punishment or life imprisonment without possibility of release
 - Prohibition of unlawful or arbitrary deprivation of liberty
 - Arrest, detention and imprisonment in conformity with the law, and as a measure of last resort and for the shortest appropriate period of time
 - Right to be treated with humanity and respect, and in a manner that takes into account the needs of the persons of his or her age
 - Separation of children from adults, unless in the best interest of the child
 - Right to maintain contact with the family through correspondence and visits
 - Right to prompt access to legal and other appropriate assistance
 - Right to a prompt decision from a court or other competence, independent and impartial authority
 - Right to be treated in a manner consistent with the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others, and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society
- Article 40 protects the procedural rights of children in conflict with the law:

- Prohibition of arrest, accusation or guilt for acts or omissions outside the national and international law
- Right to be presumed innocent until proven guilty according to law
- Right to be informed promptly of the charges against him or her
- Right to have appropriate legal or other appropriate assistance
- Right to have the matter determined without delay by a competent, independent and impartial authority or judicial body
- Right not to be compelled to give testimony or to confess guilt
- Right to examine or have examined adverse witnesses
- Right to appeal of a decision by a higher competent, independent and impartial authority or judicial body according to law
- Right to free assistance of an interpreter
- Right to full privacy at all stages of the proceedings

1.1.3. The rights of children in conflict with the law in the Juvenile Justice Act 2014

The JJA 2014 also protects the following rights of children¹

- The right to freedom from arbitrary search and entry
- The right to freedom of assembly and association
- The right to privacy
- The right to freedom of movement
- The right of equality of citizens
- The goal of integral human development, which calls for every person to be dynamically involved in the process of freeing himself or herself from every form of domination or oppression so that each man or woman will have the opportunity to develop as a whole person in relationship with others.
- Basic social obligation places an equal obligation on parents, to support, assist and educate their children without discrimination

1.2. Guiding Principles from the Juvenile Justice Act 2014

The Juvenile Justice Act 2014 (JJA 2014) provides in Section 6 a series of principles guiding the juvenile justice system in Papua New Guinea. These principles are essential to understand the purpose of the system and should guide the work of JJOs on a daily basis.

- a. because of their youth and **vulnerability**, special considerations apply in respect to proceedings against juveniles, and -
 - i. at all stages, the criminal justice system for juveniles must be separate from that of adults; and
 - ii. juveniles are entitled to enhanced protections to ensure that they are treated fairly and that their rights are respected; and
- b. in all actions concerning a juvenile, **the best interests** of the juvenile are the primary consideration; and
- c. a juvenile must, as far as possible, be given an **opportunity to express** his or her views before any decision affecting the juvenile is taken; and
- d. a juvenile is to be addressed in a **manner appropriate to his or her age** and intellectual development and is to be spoken to in his or her language of choice, through an interpreter if necessary; and
- e. a juvenile is to be treated in a manner which takes into account his or her **cultural values and beliefs**; and
- f. all procedures under this Act or any other law in respect of a juvenile are to be conducted and **completed speedily**; and
- g. a juvenile being dealt with under this Act or any other law is to have **access to legal and other support services**; and
- h. **parents of a juvenile have the right to assist him or her** in proceedings under this Act or any other law, hand, if possible, to participate in decisions affecting the juvenile; and
- i. unless the interests of justice require otherwise, **criminal proceedings are not to be instituted against a**

juvenile if there is an alternative means of dealing with the matter; and

- j. while juveniles must be held accountable for their actions, this should be done in a manner that –
 - i. emphasises rehabilitation and reintegration; and
 - ii. recognises their lack of maturity and limited capacity to understand the consequences of their actions; and
 - iii. deals with each juvenile in an individualised way; and
- k. all **consequences** arising from the commission of an offence must be **proportionate** to the circumstances of the juvenile, the nature of the offence, and the interests of society; and
- l. within the limits of **fair and proportional accountability**, measures taken against a juvenile are to –
 - i. **reinforce** respect for societal values; and
 - ii. **encourage** repair of harm done to victims and the community; and
 - iii. if appropriate, **involve parents, family, the community** and other agencies in the juvenile’s rehabilitation and reintegration; and
- m. **parents, family members** and other role models are to be encouraged to support juveniles in taking responsibility for their actions and to promote responsible behaviour in the future; and
- n. a juvenile is to be **detained in custody** for an offence (whether on arrest, in remand or under sentence) **as a measure of last resort, and for the shortest period of time** necessary; and
- o. in order to avoid labelling and stigma, the **dignity and privacy** of juveniles shall be respected at all times; and
- p. **female juveniles** who are in conflict with the law are particularly vulnerable and require special protections, and special attention is to be paid to their particular needs and problems at all stages of the juvenile justice system.

SECTION 1. CHILDREN’S RIGHTS AND GUIDING PRINCIPLES ON JUVENILE JUSTICE.

It is important for JJOs to understand PNG’s applicable juvenile justice laws as well as the institutions working in the field of juvenile justice in PNG. These provide a framework for JJOs to understand their role, as well as important information such as the minimum age for criminal responsibility, and important functions of guiding bodies such as the National and Provincial Juvenile Justice Committees.

2.2.1. Relevant laws and regulations

- The Papua New Guinea Constitution 1975

The Constitution of Papua New Guinea 1975 provides the general framework of the laws of PNG and institutions and protects human rights applicable country wide.

- The Papua New Guinea Criminal Code Act 1974, revised 2008

Defines the criminal offences, and classifies them according to three levels of severity (from the most to the less serious):

- a. crimes; and
- b. misdemeanours; and
- c. simple offences.

Crimes and misdemeanours are indictable offences, for which offenders can be prosecuted or convicted on indictment. For juveniles, simple offences can be prosecuted summarily. A list of serious indictable offences can be found in annex (schedule of serious indictable offences).

- The Juvenile Justice Act 2014 (JJA 2014)

The JJA 2014 replaces the previous Juvenile Courts Act 1991 and defines the procedure and rights applicable to children in conflict with the criminal law.

Its objectives are to:

- a. Establish a separate juvenile justice system, based on the principles of restorative justice, Melanesian tradition and contemporary juvenile justice practices;
- b. Establish a code for dealing with juveniles charged with or alleged to have committed an offence;
- c. Ensure that their rights are respected and protected;
- d. Provide for the jurisdiction and proceedings of courts dealing with juveniles;
- e. Recognize the role of the family unit as the fundamental basis of society, and the importance of involving the parents, families, victims and society in juvenile justice process in order to rehabilitate and reintegrate juveniles who have committed offences into the community;
- f. Promote cooperation between government and civil society agencies and organisations involved in juvenile justice

- The Juvenile Justice Regulation 2018 (JJ Regulation)

The Juvenile Justice Regulation 2018 (hereafter JJ Regulation) sets additional procedures to the JJA 2014 related to the treatment and process of children in conflict with the law in PNG and provides the official forms.

- The Lukautim Pikinini Act 2015

The Lukautim Pikinini Act (hereafter LPA) is the applicable legislation for child protection. It defines notably

the procedures applicable and the institutions in charge of child protection. The LPA also provides provisions on how to deal with vulnerable children, children victims and children in need of protection.

- Other relevant legislation and policies

Other relevant legislation and policies in the field of juvenile justice includes the Juvenile Justice Police Policy and Protocols 2018, the Proceeds of Crime Act 2005, the Family Protection Act 2013, the Probation Act 1979, the Village Court Act 1989, the Arrest Act 1977, the Arrest Regulation 1977, the District Courts Act 1963, the Bail Act 1977, the Bail Regulation 1977, the Parole Act 2018, the Correction Services Act 1995, the Police Juvenile Justice Policy and Protocol 2017, the Behaviour Management Policy 2009, the National Policy on Disability, etc.

2.2. Juvenile Justice Institutions

2.2.1. Juvenile Justice Service

According to Sections 7 and 8 of the JJA 2014, the Juvenile Justice Service is constituted of the Director, the Juvenile Justice Officers, the Volunteers Juvenile Justice Officers, and other officers and employees of Public Service and officers of the Court.

2.2.2. Juvenile Justice Director

The Director is responsible for the operation of the Juvenile Justice Service². He or she directs and supervises JJOs and other officers of the service by assigning them their tasks and cases. He or she oversees the development of policies, procedures and guidelines applicable to juvenile institutions and Corrections. He or she may accredit non-residential programs operated by individuals or civil society groups for the education, rehabilitation and vocational training of juveniles in the community. He or she may exercise any powers or perform any duties or functions of a juvenile justice officer. He or she reports on an annual basis to the Minister of Justice.

The JJ Regulation sets some additional functions that are performed by the Director, such as instructing the Public Solicitor for bail, or advertise expressions of interest for the accreditation of non-residential programs³

2.2.3. Juvenile Courts and Juvenile Magistrates

Juvenile Courts have exclusive jurisdiction for simple offences, misdemeanours and crimes, except for offences of homicide, rape or any other offence punishable by death or imprisonment for life.

Type of offence	Procedure
Simple offence	Summary hearing and determination
Misdemeanours and crimes	Summary charge, but Juvenile Court constituted by a Juvenile Court Magistrate
Homicide, rape or any other offence punishable by death or imprisonment for life	The Juvenile Court deals with the committal proceedings and the National Court hears and determines the trials

A list of serious indictable offence can be found in Annex of this Handbook. These offences must be referred to the National Court. Any other offence can be tried summarily. In case of misdemeanours and crimes that can be tried summarily, JJO should seek an 'Election Certificate' from the public prosecution for the matter to be dealt by the Juvenile Court constituted by a Juvenile Court Magistrate rather than by the National Court, considering its specialization on juvenile matters.

Juvenile Courts have competence for crimes that occurred when the child was:

- Above 10 years of age. Offences committed when the child was under 10 years, result in a discharge of the person.
- Below 18 years of age. Offences committed when the individual was above 18 years of age are prosecuted by adult courts (District Court or National Court).

In principle, Village Courts have a limited jurisdiction over criminal matters. In practice, Village Courts deal with several situations of children in conflict with the law. While doing so, the JJA 2014 prescribe that they ought to follow the General Principles of the Act (Section 6). Acting VJJOs should apply the JJA 2014 in front of the Village Courts (e.g. to fill the Pre-sentencing report, or to supervise community service). VJJOs with Village Courts should report to JJOs and their PJCC like other JJOs.

2.2.4. National Juvenile Justice Committee

The National Juvenile Justice Committee (NJJC) has 5 main roles as prescribed by Section 25 of the JJA 2014:

- a. Overseeing and monitoring the implementation of the JJA 2014;
- b. Promoting co-operation between all government departments, agencies and civil society groups involved in the implementation of juvenile justice;
- c. Developing national plans for the implementation of juvenile justice initiatives and prevention of juvenile crime programmes;
- d. Sharing information, review progress and coordinate implementation of JJ initiatives;
- e. Promoting training and specialization for the personnel of agencies and organisations involved in the administration of juvenile justice.

Additionally, Section 14 of the JJ Regulation sets the additional functions of National Juvenile Justice Committees:

- a. Planning and coordinating the national delivery of diversion and rehabilitation to a juvenile by relevant government, community services and other key juvenile justice stakeholders;
- b. Sourcing additional funding to support the implementation of the JJA 2014;
- c. Monitoring and supporting the work of a Provincial Juvenile Justice Committee;
- d. Gathering and disseminating national data that relates to the implementation of the JJA 2014 and the state of juvenile justice services in the country to:
 - i. Inform the development of national plans for the implementation of juvenile justice initiatives, policies, priorities and programs; and
 - ii. Aid in meeting the Committee's reporting obligations under this Regulation;
- e. Making such recommendations to the Minister as the Committee thinks fit for changes to the JJA;
- f. Reporting to the Minister on an annual basis on the implementation of the Act and on the state of juvenile services within the country;
- g. Following an inspection of an institution conducted under Section 104 of the JJA 2014 or a visit by a magistrate or a certain judge under Section 105 of the JJA 2014, note any findings and take appropriate action in response to the findings;
- h. Advising the Director on minimum standards for a juvenile institution and juveniles in detention; and
- i. Setting penalties for failure to meet minimum standards for a juvenile institution and juveniles in detention.

The National JJ Committee is composed of **15 permanent members**, plus additional members as appointed by the Minister himself or an organization or group approved by the Minister⁴

2.2.5. Provincial Juvenile Justice Committees

The role of Provincial Juvenile Justice Committees (PJJC) is to implement the JJA 2014, the JJ Regulation and the National Plans determined by the National Juvenile Justice Committee in the provinces of PNG. PJJC are an important arena for JJOs to voice their concern and address individual or systemic issues they may face in their work or validate new ideas.

The functions of Provincial Juvenile Justice Committees include the following:

1. Planning and coordinating the implementation of the JJA 2014 within a province or autonomous region;
2. Planning and coordinating the local delivery of diversion and rehabilitation to a juvenile by relevant government and community services;
3. Sourcing additional funding to support the implementation of the JJA in the province or autonomous region;
4. Improving the conditions of detention and welfare of juveniles in a province or autonomous region;
5. Gathering provincial data that relates to the implementation of the Act and the state of juvenile justice services in a province or autonomous region to:
 - i. Inform the development of local plans for the implementation of juvenile justice initiatives, policies, priorities and programs; and
 - i. Share this data with the National Juvenile Justice Committee;
6. Reporting to the National Juvenile Justice Committee on an annual basis on the implementation of the Act and on the state of juvenile justice services within the province or autonomous region.
7. Following an inspection of an institution conducted under Section 104 of the JJA 2014 or a visit by a magistrate or a certain judge under Section 105 of the JJA 2014, note any findings and take appropriate action in response to the findings;
8. Providing recommendations to the Director on a suitable Volunteer Juvenile Justice Officer and a Community Based Conference Facilitator; and
9. Providing advice to the Director on a Juvenile Remand Centre and or a Juvenile Institution in a province or an autonomous region.

Challenge 1 - Lack of adequate resources

"I found it very difficult when I was asked to transport some juveniles from their place of remand to the court for their trial. I did not have any personal escort, and there were some security risks related to my duty, especially because the warrant had expired, but I tried to create a relationship with the juveniles and understand their situation and everything went well".

This story of one VJJO teaches us that it is sometimes difficult for JJOs and VJJOs to fulfil their roles with limited resources. It is important for JJOs to consult with their colleagues and managers to try and find resources or work on ways to best carry out the role. The National and Provincial Juvenile Justice committees are also committed to help JJOs carry out their role where needed. It is important for JJOs to consult these important networks and tap into these resources.

The **members** of the Provincial Juvenile Justice Committees are listed in Section 15 of the JJ Regulation [Provincial Administrator or his or her equivalent in an autonomous region; a Senior Provincial Magistrate; a Juvenile Court Magistrate; a Provincial Police Commander; a Provincial Juvenile Justice Officer; a Police Prosecutor; a Provincial Commanding Officer of the Correctional Institution; a Provincial Health Advisor; a Provincial Education Advisor; a Provincial Community Development Advisor; a representative of the churches nominated by the Provincial churches; the President of the Provincial Council of Women; a representative of the Provincial Youth Groups; a Provincial Village Court Liaison Officer; a Solicitor in charge of the Public

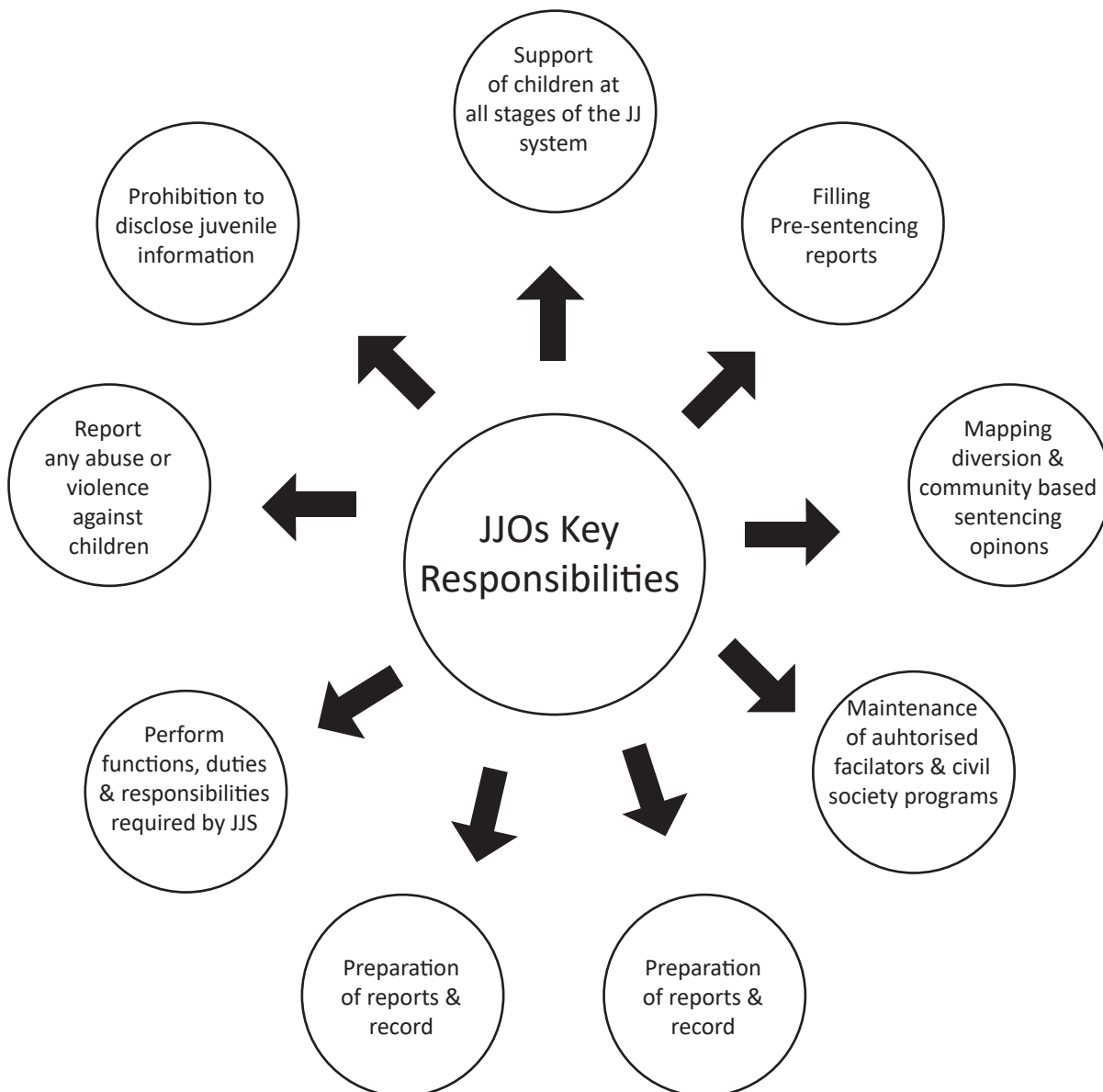
Solicitor’s Office; and a person in charge of any Institution in the province.]. The Provincial Juvenile Justice Committees are, in principle, chaired by the Provincial Administrator or an elected member. The Deputy chair is, in principle, the Senior Provincial Magistrate or an elected member.

2.3.Role of JJOs and VJJOs

JJOs and VJJOs are key stakeholders in the juvenile justice system, acting for the purpose of justice in the best interests of children. They are appointed and revoked by the Director of the JJ services. Where a JJO is not appointed in a province, the Director may, subject to the consent of the Chief Probation Officer, direct a Probation Officer to fulfil the duties of a JJO until such time a JJO is appointed.

JJOs and VJJOs benefit from a protection of their acts and omissions in good faith in the exercise of their powers, performance of functions, duties or responsibilities⁶. Hindering or obstructing the work of a JJO in the exercise of his or her function can result in an offence⁷.

JJOs and VJJOs carry several key-responsibilities, that are defined in Section 10 of JJA 2014 and introduced below, and detailed in the different sections of this manual.



2.3.1.Support of children at all stages of the juvenile justice system

The main role of JJOs is to support juvenile at all stages of the juvenile justice system. The present JJO handbook describes this support at each step of the judicial justice process:

- Section 3 provides general guidance on case management of juveniles in conflict with the law
- Section 4 on Arrest and Diversion
- Section 5 on Pre-trial Period: bail and remand
- Section 6 on Proceedings in front of the Juvenile Court
- Section 7 on the Execution phase of criminal sentences and Post-sentence Reintegration

2.3.2.Pre-sentencing reports

Pre-sentencing reports are filled by JJOs. They contain information about the juvenile's background and circumstances and provide advice and recommendations to the police and courts. They are a key tool for case-management of the juvenile, especially in relation to diversion, bail and sentencing of the juvenile. For detailed information on pre-sentencing report, please refer to Section 6.1.2 of this handbook.

2.3.3.Mapping of diversion and community-based sentencing options

A key role of the JJO is also to promote the development of diversion and community-based sentencing options for juveniles by enlisting support from provincial governments and local-level governments, civil society groups, churches and members of the community.

For detailed information on mapping diversion and community-based sentencing options, please refer to Section 8.1 of this handbook.

2.3.4.Maintenance of authorised facilitators and civil society programs

It is the role of JJO to maintain lists of authorised facilitators for community-based conferences, and of civil society groups or individuals providing programs, supervision and mentoring for diversion and community-based sentencing options in their province.

For detailed information on maintenance of authorised facilitators and civil society programs, please refer respectively to Sections 8.1 and 8.2 of this handbook.

2.3.5.Preparation of reports and records

JJOs may be required to prepare and submit reports and records as a Court or the Director requirement. Especially, this handbook provides guidance on the key aspects of filling the following forms and reports:

- Pre-Sentencing Report template, see Section 6.1.2.
- Age determination - Form 1 JJ Regulation, see Section 4.1.1.
- Diversion Agreement - Form 4 JJ Regulation, see Section 4.3.5.
- Diversion Agreement Compliance Report - Form 5 JJ Regulation, see Section 4.3.5.
- Court Approved Diversion Agreement - Form 6 JJ Regulation, see Section 6.2.2.
- Authorised Community Based Conference Facilitator - Form 7 JJ Regulation, see Section 8.2.
- Application to Review an Order - Form 11 JJ Regulation, see Section 7.2 on Review Orders.
- Review reports, see Section 7.2.4 on Review Orders.
- Notification of Discharge from an institution – Form 14 JJ Regulation, see Section 7.3 on Post-sentence reintegration.

For detailed information on data collection and reporting, please refer to Section 9 of this handbook, as well as the JJO forms at the end of this handbook.

2.3.6. Maintenance of confidential records system

In their role in supporting juveniles in conflict with the law, JJOs have to establish and maintain an adequate system of confidential records.

For detailed information on data collection and reporting, please refer to Section 9 of this handbook.

2.3.7. Perform functions, duties and responsibilities required by the Service

JJOs may also be required to perform such other functions, duties or responsibilities by the Director or as are prescribed by the JJA.

The JJO handbook should cover most of the aspects of the JJO work, but in certain circumstances, JJOs may also be required, for instance, to perform as facilitators in community-based conferences or as probation officers. However, JJOs should never carry out duties for adult offenders.

2.3.8. Report any case of abuse or violence against children

JJOs may witness or may be aware of possible abuse of children they meet in their work. Section 38 of the Lukautim Pikinini Act 2015 provides that JJOs and other professionals performing duties with respect to a child and who believes that a child is in need of protection shall immediately report the case to the Director of Lukautim Pikinini (for a definition of a child in need of protection, see Section 3.3.3 Children as victims and offenders of this Handbook).

Additionally, if a JJO witnesses a case of family violence (as described in Section 5 of the Family Protection Act), he or she may request a Family Protection Order from a District Court or a Village Court to address the situation. In order to apply to a Family Protection Order, JJOs should have the written consent of the person in need of protection to act on their behalf. The case should also be referred to a Child Protection Officer. The Director of Lukautim Pikinini may under Section 55 of the LPA request from a Court that - if he or she considers it to be in the best interest of the child – a transfer of a child is ordered from a Corrective Institution or a Police lock-up to an institution or other places or persons appointed by the Director.

2.3.9. Prohibition to disclose juvenile information (right to confidentiality)

In addition to their key responsibilities, JJOs have a duty to protect the confidentiality of children in contact with the justice system. The identity and proceedings of juveniles are protected and should not be made public.

A person who publishes a report of proceedings, or the result of proceedings, before a Court under this Act or any other law, except in accordance with this section, is guilty of an offence. The penalty in the case of an individual person is a fine not exceeding K5,000.00 and a fine not exceeding K10,000.00 for corporations.

2.4. Ages of criminal responsibility

Ages of criminal responsibility are detailed in Section 18 of the JJA 2014, which defines the competence of the different actors (courts or other) in relation to the age of the alleged offender. The age always refers to the age of the person at the time of the alleged offence, as opposed to the age of the person when they are processed by the justice system. In case of uncertainty on the age of the individual, the age determination described in Section 4.1.1 of this handbook applies.

2.4.1. Minimum age of criminal responsibility

In Papua New Guinea, the minimum age of criminal responsibility, which is the minimum age at which a person can be recognized criminally responsible, is 10 years of age (at the time of the offence). If the child who

has committed the offence is under the age of 10 years, the member of the Police should notify the parents or guardian of the child and render the child to them. If for some reasons the child cannot be delivered to the parents, the member of the Police should contact the Director or a JJO.

In that case, the JJO should contact the Director of Lukautim Pikinini 2015 or a Child Protection Officer to inform them about the circumstances of the child. This referral is compulsory according to Section 21 of the JJ Regulation. It is recommended to organize a follow-up of the case referred during the following Provincial Juvenile Justice Committees. In case the child age is above 10, but his or her mental health appears to be below 10, the JJO can require a Child Protection Officer to request a best interest determination procedure (namely 'Review of circumstances, Section 61 of the LPA) for the juvenile to be handled in more adapted and child friendly manner.

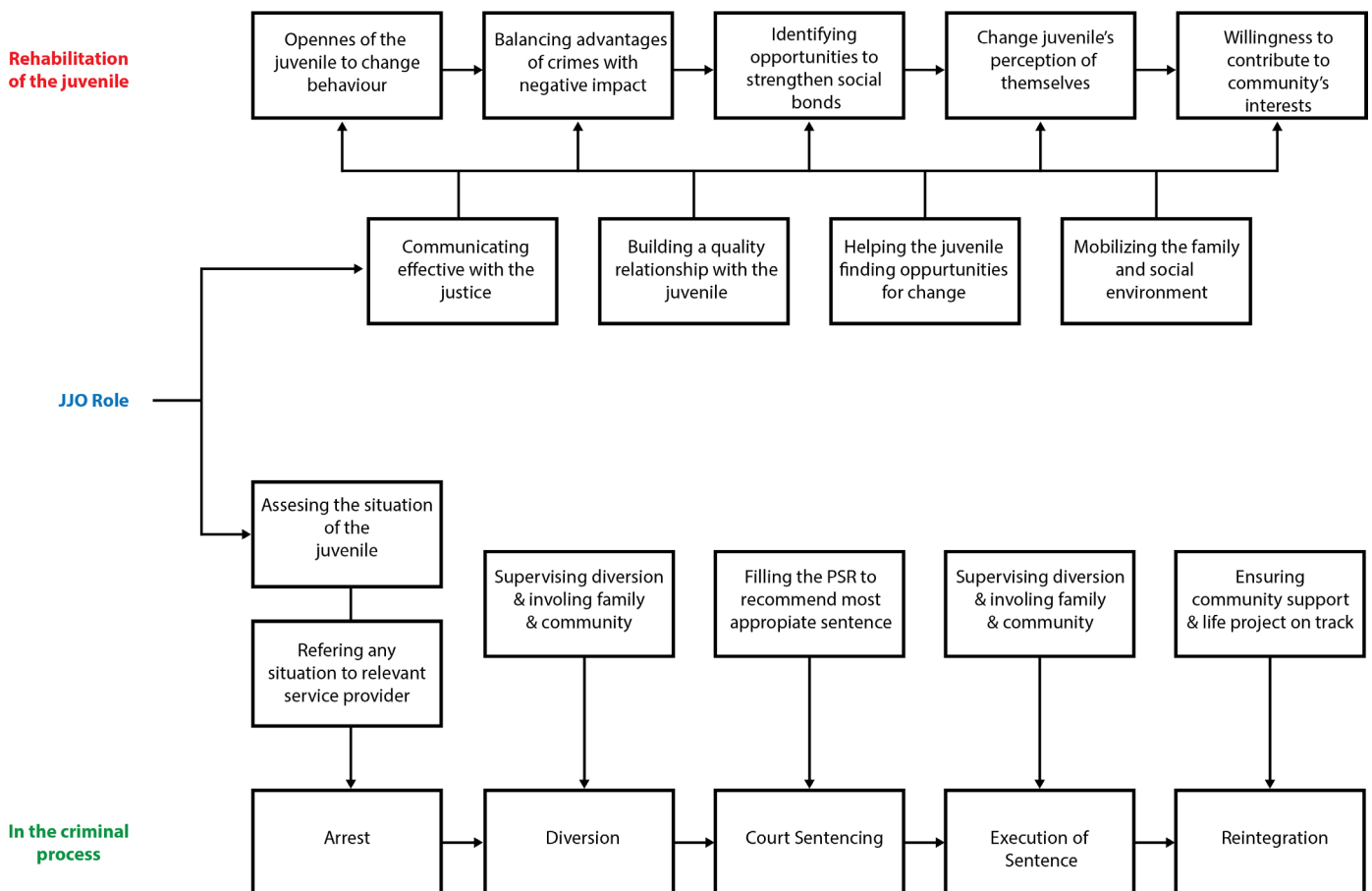
From age 10 to 14, children cannot be sentenced to imprisonment (see Section 6.3.4 on Special conditions applicable to some sentences on Special conditions applicable to some sentences below).

2.4.2. Age of criminal majority

In Papua New Guinea, the age of criminal majority is 18 years old, which means that if an offence was committed when the individual was more than 18 years of age, then he or she should be dealt by the adult criminal justice system. In that situation, the JJA 2014 does not apply, the JJ Court does not have jurisdiction over the case and JJOs are not responsible to deal with the case.

SECTION 3. CASE MANAGEMENT GUIDANCE FOR JUVENILE JUSTICE OFFICERS

The JJA sets out that rehabilitation and reintegration of juveniles into society are key goals of juvenile justice in PNG. Therefore, the role of JJOs in managing the cases of juveniles is to help achieving these goals. In the last decades, research in criminal sciences has made some considerable improvements on explaining the mechanisms that help young people ending their delinquent behaviour and reintegrating the society. This process, called desistance, has been widely documented in the last decades, and conceptualised in the “Good Lives Model[For more information on the Good Lives Model, see among others Fortune, C. A., Ward, T. & Willis, G. M. (2012). The rehabilitation of offenders: Reducing risk and promoting better lives. *Psychiatry, Psychology and Law*, 19(5), 646-661; Maruna, S., & King, A. (2008). Selling the public on probation: Beyond the bib. *Probation Journal*, 55(4), 337-351; Barry, M. (2010). Youth transitions: from offending to desistance. *Journal of Youth Studies*, 13(1), 121-136; Ward, T. & Maruna, S. (2007). *Rehabilitation*. Routledge; Purvis, M., Ward, T., & Willis, G. (2011). The Good Lives Model in practice: Offence pathways and case management. *European Journal of Probation*, 3(2), 4-28.]”, which has earned considerable recognition among practitioners[The following developments are based on a literature review by Stoll, Aurélie, and Manon Jendly. “(Re) connaître les mécanismes de la désistance: un état des savoirs”. *Jusletter* (2018): 1-23.]. This important approach to case management can be carried into the everyday work of the JJO. Section 3.1 below offers more background on the principle of desistance to help JJOs better understand the approach and Section 3.2 guides the JJOs on how to apply it in their work. The graph below provides an overview of the role of JJOs in case management of juveniles.



3.1.Desistance: what makes juveniles stop offending?

From a general perspective desistance could be defined as a reduction in the number and seriousness of offending by a person, to the point that the person stops offending completely. Two phases can be distinguished that translate a certain level of rehabilitation and reintegration into society:

1. a first phase during which the criminal behaviours do not occur, and
2. a second phase characterized by the juvenile adopting more conventional and positive social roles¹⁰

These phases do not necessarily occur one after the other. In other words, desistance from crime can be the result of a process over a short or longer period of time, which is made of attempts, failures, learnings and eventually (and hopefully) success.

3.1.1.The process of desistance explained

The process of desistance is influenced by both **internal and external** factors. Previous practice focused heavily on understanding the risks and obstacles in the life of young people, but more recently, the focus shifted on the individuals themselves – their **strengths** and **potential** – and how they manage to escape the cycle of crime to lead “a good life”. Therefore, JJOs should help juveniles identifying positive levers and pathways that will support the process of change.

At an individual level, the process of desistance involves several key steps. At a minimum, the young person needs to have a **mental openness** to change. Furthermore, the juvenile needs to realize – through a **conscious cost-benefit decision** process – that the advantages of committing the crime (i.e. economic gain from stealing, or the thrill of damaging property, etc.) do not compare with the potential risks linked to a threat of arrest (including detention, shame of arrest, etc.)¹¹

Desistance can also be the result of a **series of changes and events that support social bonds**¹², such as the person finding a job, a new education opportunity or a partner. These events explain the development of quality social bonds between the individual and his or her social environment. The more the person invests into family and positive life aspects, the more they consider the potential loss of remaining involved in crime. In fact, delinquent behaviour by young people increases the likelihood of losing positive social bonds. Therefore, by identifying and investing in constructive ‘turning points’, this helps the individual transition from a problematic to a more positive life.

This process of change happens in a conscious or unconscious manner and should be encouraged by the promotion of the individual’s ability to control one’s life for him or herself. The **perception by juveniles of themselves** and their ability to influence their own life is of critical importance (“it is inappropriate for someone like me to do something like that”)¹³. Interestingly, juveniles involved in crime often link their criminal behaviours to their own sense of identity, but conversely, they attribute the positive events in their lives to external factors beyond their control. They feel bound to some sort of idea that life events occur as a result of fate. However, individuals who desist from crime recognize

Challenge 2 – Preventing juvenile reoffending and the role of the family

“In my work, I am constantly wondering how I can support juveniles not to reoffend. I try to identify the underlying causes that led the juvenile to commit the offence in the first place. I go and visit his or her parents to discuss the issue with them. I try to convince the juvenile and his or her parents on his or her potential. I make sure that the child is enrolled back to school or to some vocational programme. And I follow up with counselling sessions to ensure that the juvenile is mobilised to make his or her life project a reality, and that he or she is supported in their efforts”

This story of one JJO’s work demonstrates the need for JJOs to find social support around the juvenile to rehabilitate him or her, but this can be very difficult. The family and the community can play a role in that regard, and the JJO should look at these resources for support.

the possibility to influence their future positively. Through a ‘redemption script’ the juvenile starts to own the positive changes in their lives and the necessity to abandon crime. They also start building a willingness to **contribute positively to others**, the society and the next generation.

3.1.2. Triggers of change: the interactions of the juvenile with others

Desistance does not happen by itself and requires interactions between the individual and others. Evidence shows that “we begin to believe that we are able to change our lives when the people around us think we can”¹⁴. This process involves the environment of the individual influencing them changing their perceptions of themselves and their opinions on social and official institutions. It can, for instance, happen through activities and commitment into community social activities. It also involves considering the juvenile as someone who is going to become an adult and who is worthy of being treated with respect and consideration.

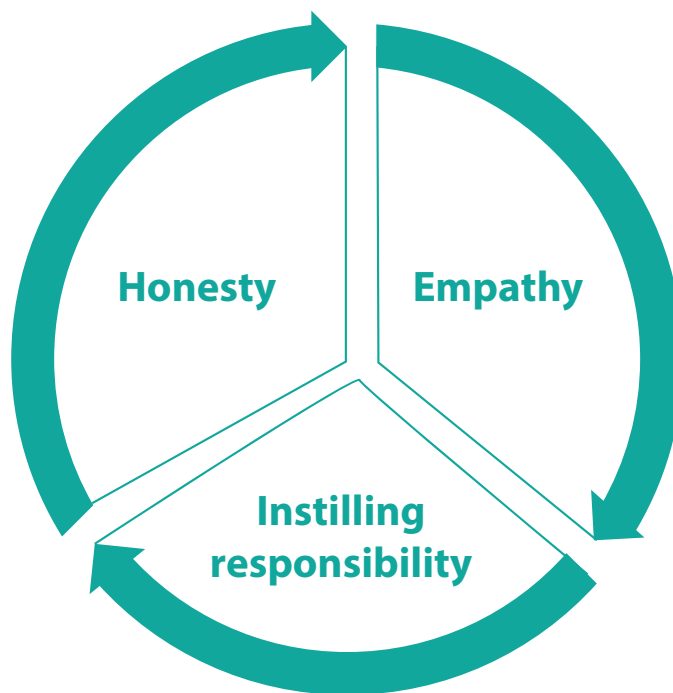
Therefore, from the beginning it is important that the JJOs try to make time to interact with the juveniles and help them look for opportunities to positively influence the opinions they have about themselves, and to help shape their social environment. Section 3.2 below sets out in detail how JJOs can make this a reality through their everyday work.

3.2. The role of JJOs in supporting desistance: key principles in case management

JJOs work with children from different backgrounds, ages, ethnicities and whose life stories are all very different. It is fundamental that JJOs tailor their approach to the needs of the individual young people they work with. Below are some key principles in supporting juveniles at each stage of the process.

3.2.1. Communicating effectively with young people

When interacting with a juvenile, JJOs should respect a simple but effective communication framework aimed at supporting them to develop a sense of emotional maturity and responsibility. These principles can also be shared with families who want to grow responsible emotionally mature children.¹⁵



- **Honesty:** means saying the truth about our own point of view, in order to help juveniles facing the reality, make appropriate decisions, and cooperate with others.
- **Empathy:** means showing juveniles that we care for them and creating a relationship based on trust and respect, despite the issues at stake or the bad behaviours.
- **Instilling responsibility:** is recognizing the agency of juveniles over their own lives, without blaming, judging or over-indulging and excusing.

It is important that the adult facing the child is neither over-managing (telling them what they should or should not do), nor over-indulging (finding excuses for the wrong they have done).

The outcomes of these principles of communication should be a sense of trust, self-worth and maturation.

3.2.2. Building a quality relationship with the juvenile

JJOs' communication skills and the quality of their relationship with a juvenile offender are central to the process of rehabilitation¹⁶. The professional skills of the JJOs include **transparency, respect, mind openness, a warm personality and sense of humour**. The relationship should be active, dynamic, engaging as well as encouraging. Without such a link, JJOs' interventions are less likely to succeed in rehabilitating the juvenile.

JJOs should see their role as threefold:

- **Psychosocial counsel:** to encourage and support the motivation for change
- **Educator:** to mobilize the skills, strength and agency of the juvenile
- **Personal support:** to help the juvenile identifying opportunities

These roles can be achieved at all the stages of the juvenile justice system and enough time should be made available by JJOs to build a relationship with the juvenile, prioritizing the juveniles who present with the greatest needs at a given time (i.e. serious offenders, very young offender, offender with mental health issues, re-offender, etc.).

JJOs should therefore dedicate some time with juveniles to discuss at each stage of the juvenile process:

- At the police station
- During a diversion measure
- While visiting the juvenile in remand
- Before and after a Court trial
- Before and after a Community-Based Conference
- During the supervision of the sentence
- At the end of the sentence
- During the reintegration process

3.2.3. Helping the juvenile finding opportunities for change

The work of JJOs is to help the juvenile identify these levers for change and support him or her in using them positively to achieve a better life. Several levers to desistance can be identified:

- **At individual level:** develop the belief of the juvenile in one-self (self-esteem):
 - Hope in the possibility of a better future
 - Motivation to reach this new identity
 - Sense of control over one's life and capacity to achieve it
 - Develop a sense of spirituality
- **At community level:** develop the number and quality of positive social relationships:
 - Reinforcing positive relationships and abandonment of negative relationships

- Family, schooling prospects, sporting opportunities, life skills
- Willingness to contribute to community's interests and next generations
- Recognition of the efforts by the social and family environment

• **At societal level: develop life opportunities:**

- Absence of stigmatization
- Recognition of the efforts
- Concrete opportunities for employment or skill development

For JJOs, the Pre-Sentencing Report is very important tool, and can be used to recommend a sentence that takes into consideration these aspects (See Section 6.1.2 on Pre-Sentencing Reports below).

3.2.4. Mobilising the family and social environment around the juvenile

Each juvenile is different and needs different approaches to address their issues. It is important that JJOs mobilise all the actors around the juvenile to help them address their issues and support their progress. When interacting with other stakeholders, JJOs should encourage them to be sensitive to the needs of the juvenile. The table below provides non-exhaustive list developed by JJOs in PNG of what juveniles might need from their environment.

Family	Community	Justice Stakeholders
<ul style="list-style-type: none"> - Love and care - Be supportive - Accept the child and not the behaviour - Be present - Show interest, and encourage participation - Remain calm and respectful 	<ul style="list-style-type: none"> - Should avoid stigmatizing - Accept the child - Recognize them as members of the community - Involve them in community activities 	<ul style="list-style-type: none"> - Respect the child - Respect the rights and criminal process - Act quickly - Engage juveniles in rehabilitation program

3.3. An approach tailored to the needs of each individual child

For JJOs to carry out effective case management, this means to adopt an individualised approach that involves taking into consideration the specific needs of each child. A JJO's time is often very limited due to a high workload, and it is important to prioritize the time spent with children with the most critical needs. Coordination and collaboration with other stakeholders are key, and where relevant, referrals and information about the child's welfare should be shared with the appropriate professionals (Child Protection Officers, medical doctor, drug rehabilitation, counselling services, etc.). The circumstances in which this information is shared or where referrals to other services, it detailed throughout the handbook.

3.3.1. Understanding gender in the work of a JJO

Girls and boys are not equal in the criminal justice system. While boys are over-represented, girls often lack attention and are more vulnerable to various forms of violence and abuse. Therefore, it is important for the JJOs to acknowledge these differences and adapt the delivery of services according to the needs.

The JJA recalls that "female juveniles who are in conflict with the law are particularly vulnerable and require special protections, and special attention is to be paid to their particular needs and problems at all stages of the juvenile justice system[Section 6(p) of the JJA 2014]". The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (also called 'Bangkok Rules') also provide guidance on the need to have more attention d women offenders. It recalls for example, that most of the women and girl offenders do not pose a threat to security, while are more sensitive to the negative impact of detention (desocialization, stigmatization, unemployability, etc.), therefore encouraging justice stakeholders to prefer non-custodial measures over imprisonment. Female juveniles should also have the same access as boys to community-based rehabilitation programmes and other services (education, health, counselling, etc.).

JJOs should encourage efforts to eliminate gender-based violence (verbal, physical, psychological and sexual harm) at all the stages of the justice system (arrest, custody, trial, incarceration and reintegration), and that the attitudes and their special needs are taken into consideration. In particular, female juveniles who are pregnant or who have children should be dealt with specific attention and care. Sections 56 to 62 of the Lukautim Pikinini Act 2015 provide guidance for the care of pregnant female inmates and children of inmates.

3.3.2. Children living with disabilities and children with special needs

It is not uncommon for children with disabilities and with special needs to fall into the criminal justice system, and a JJO needs to ensure that these considerations are taken into account in their work.

In PNG, a child with disabilities “means a child with physical, psychological, or intellectual impairment¹⁸”

In PNG, a child with special needs can be defined as “a child who is not likely to achieve or maintain, or to have the opportunity to achieve or maintain, a reasonable standard of health, education or normal development without the provision of services by the Director of Lukautim Pikinini; or who is vulnerable or subjected to violence, abuse, neglect or exploitation¹⁹”.

Children with disabilities or special needs, must be assessed as soon as possible by a medical practitioner to establish if a child is fit to face court proceedings or be

detained in police or CS custody. It is important for the JJO to assist in seeking referral options for the children facing mental health issues. This can be challenging to find in many parts of PNG but referring these queries to JJ stakeholders such as PJC members and health and child Protection colleagues will assist the JJO.

It should be noted that, in extreme cases, the criminal law provides options for people who have committed crime to be rendered unfit to proceed in criminal proceedings due to poor mental health. Section 28 of the Criminal Code on Insanity provides that the persons should not be recognized criminally responsible, if at the time of the offence, their mental disease or natural mental infirmity as to deprive them of capacity:

- a. to understand what he or she is doing; or
- b. to control his or her actions; or
- c. to know that he or she ought not to do the act or make the omission.

It is also for this reason that the JJO should assist to involve medical authorities for assessment and treatment at the earliest opportunity when required.

3.3.3. Children as victims and offenders

It is considered that a large proportion of children in conflict with the law are or have been victims of an abuse of some sort. While addressing the offence for which they have been arrested, the justice system should also try and identify any victimisation that children face or may face in the future, notably because the direct implication between victimisation and delinquency have long been proven, but also because providing a sense of justice to young people also implies taking into account any victimisation the individual has suffered previously.

During the first interview with juveniles, if it appears that they have been or are victims of some sort, for

Challenge 3 – Self-harm in detention

“A mentally ill juvenile was brought to the facility on remand. It was the first time for me to handle that sort of situation, which I find very complicated and challenging. After two days, the child had harmed himself and broken his head in the cell. We advised the JJO and called a medical officer for medical check and interview. We called the parents to advised them to withdraw the case. We transferred the child to the mental health institution for medical treatment”.

This Correctional Service officer’s story tells us that some juveniles are possibly not suited for detention or to stand a criminal trial and should be properly assessed and referred to the adequate service provider as soon as possible.

example victim of exploitation or trafficking, or if the child is in need of protection according to the LPA (see annexe 2 of this handbook), JJOs should liaise with Child Protection Officers (CPO) to make sure that the issues are addressed and bring these facts to the attention of the public prosecution. Section 208 of the Amendment to the Criminal Code Act 2013 provides that a trafficked person is not liable to be prosecuted in respect of any offences that is a direct consequence of being trafficked.

The CPO should make a 'Safety Assessment' of the case (Form 19 LPA Regulation) and prepare a 'Care Plan' (Form 20 of the LPA Regulation). The Care Plan identifies the options to meet identified needs. It is developed through participation of a JJO, the child, a caregiver and other relevant stakeholders. The JJO and the CPO can then make recommendations to the Court on how to preserve the best interest of the child.

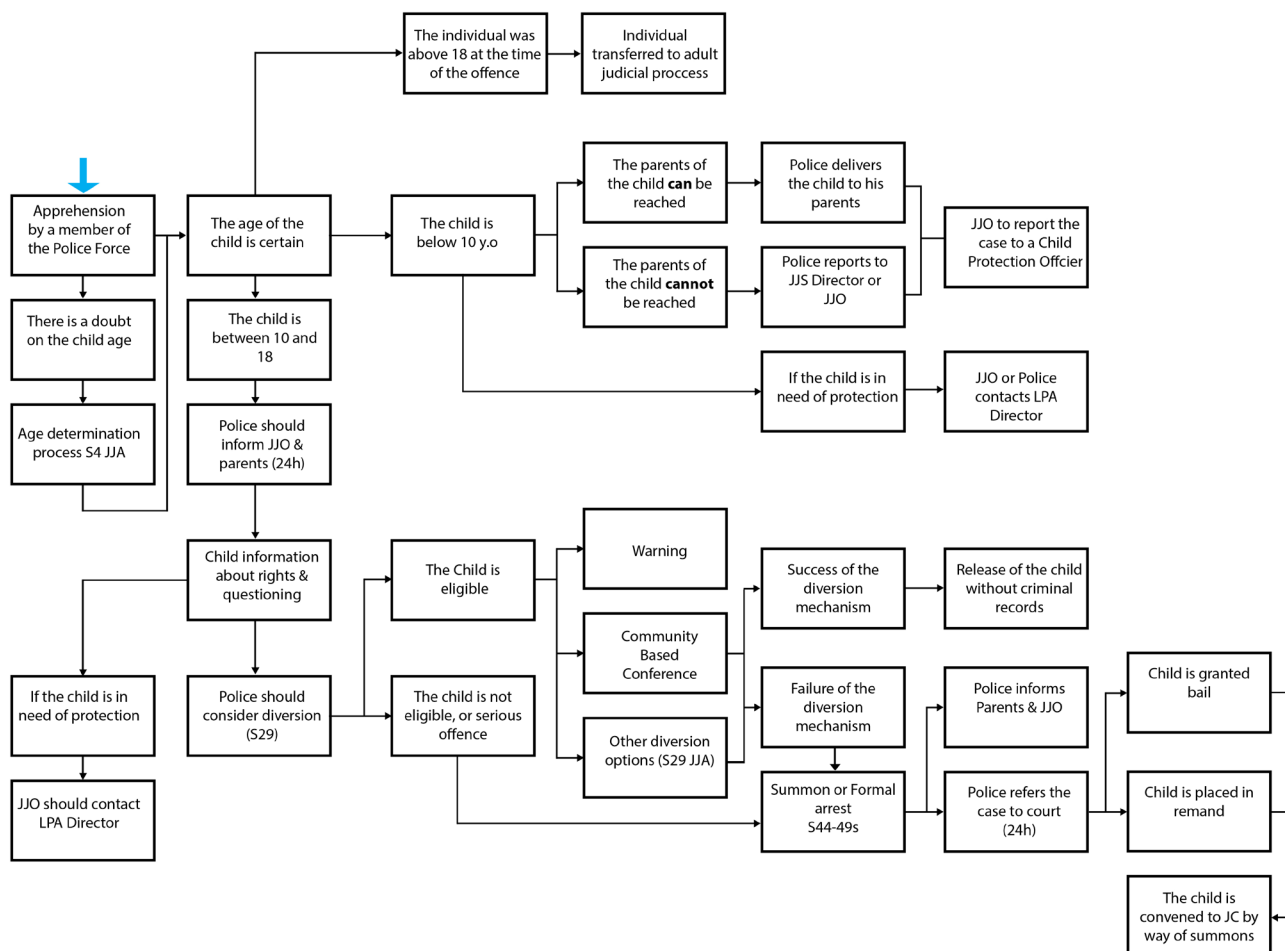
In case of immediate threat to the health or physical integrity of the child, JJOs should contact the police or public hospital, or apply for a Family Protection Order from the District Court if the issue is related to the family of the juvenile.

For more guidance on JJOs' duty to report abuse against children, please see Section 2.3.8 of this handbook.

SECTION 4: POLICE DIVERSION AND ARREST

When a juvenile is suspected of having committed a criminal offence, the Police has the powers to apprehend him or her under the provisions of Sections 38 to 53 of the JJA 2014. The Police phase can be subdivided into several key steps: apprehension, investigation, diversion, custody and formal arrest.

The flowchart “Diversion and Arrest” summarizes the different steps of the process.



4.1. Initial arrest (apprehension)

Upon initial arrest and before questioning, the Police should make a first determination of the age of the person. In case of doubt regarding the person’s age, the age determination process should be applied (see below). A JJO may be requested to support this process.

If the person is below 18 years of age, the Police should inform a JJO and the parents or the guardians of the child²⁰. If the child is below the minimum age of criminal responsibility, the Police should render him to his or her parents, or if this is not possible, to the Director of Lukautim Pikinini.

If the child is above the minimum age of criminal responsibility (10-year-old), the child should then be informed about his or her rights (See Annex). The Police can then proceed to the questioning of the child. The juvenile must be questioned in the presence of a parent or responsible person, a JJO, a legal representative

and/or any other adult support person nominated by the juvenile²¹.

4.1.1. Age determination

At the time of the arrest of a person who is suspected of having committed a criminal offence, it is the responsibility of the Police to make a first determination of the age of the person. In some instances, it may not be possible to the Police to determine the age of the individual with certainty. In that case, the Police should treat the person as a child if he or she alleges or appears to be under the age of 18 years.

If later in the judicial proceedings, the Court must determine the age with certainty. In order to do so, the Court should have regard to any of the following information that is available, in the order of strength of evidence²²:

- a. the person's **birth certificate** or **baptismal certificate**; and
- b. a **previous determination** of the age of the person by a Court; and
- c. **hospital or health clinic records, church records** or **school records** of the person; and
- d. an entry about the person in a **clinic book, a village record book, or other documentation** of a similar nature; and
- e. **statements made by the person, a parent** or any other person likely to have direct knowledge of the age of the person; and
- f. an estimation of the age of the person made by a **medical practitioner**; and
- g. the **person's physical appearance**.

A Court should not determine the age of a person solely on the basis of the person's physical appearance. The functions of JJO include assisting the Court or a member of the Police to obtain evidence to establish the individual's age²³. In doing so, as a good practice, age determination based on statements should be cross-referenced with at least two different persons who can give solid testimonies enabling the determination of the age of the person. If no other relevant information is available, a JJO may request that a medical practitioner, including a dentist, provide an assessment of the person's age using the dedicated form.

JJOs should fill the 'Age determination form' to request this process and submit it to the medical practitioner.

4.1.2. Powers of a JJO upon arrest or detention of a juvenile

Upon apprehension, arrest or detention of a juvenile, a JJO has specific powers described in Section 49 of the JJA 2014. According to this provision, a juvenile justice officer may:

- a. enter any police station, lock-up or any other place of detention, for the purpose of interviewing a juvenile; and
- b. be present for any police questioning or interrogation of the juvenile; and
- c. advise the juvenile of his or her legal rights and of his or her right to refuse to answer questions; and
- d. counsel or advise the juvenile; and
- e. question an arresting officer in respect of a juvenile who is arrested or who is charged with, or in connection with, an offence; and
- f. make recommendations to the arresting officer with respect to the appropriateness and availability of diversion options; and
- g. make recommendations to the bail authority with respect to releasing the juvenile on bail.

The juvenile himself or herself or a member of the Police can request the **presence of a JJO during their questioning**²⁴. Likewise, JJO may decide to attend the questioning of a juvenile to ensure the juvenile is treated with care and dignity during the process. It is highly recommended that JJO attend questioning of juvenile arrested as suspects of serious offences. It should be recalled that the JJO does not take the place of the lawyer and should not offer legal advice to the juvenile.

If a JJO witnesses any **use of force or restraint** against a juvenile by a member of the Police, he or she must

bring this to the attention of the officer in charge of the police station²⁵, and the Director of JJS, as well as Director of Lukautim Pikinini.

Additionally, in case the juvenile is suspected, charged with or convicted of an indictable offence, the juvenile may be **fingerprinted** and / or **photographed**. In that case, a JJO, a legal representative, a parent or a responsible person ought to be present²⁶. Photographs and fingerprints are then surrendered to the court, which must destroy them.

4.1.3. First encounter with the juvenile

During the first encounter with the child, a JJO should follow the following steps:

1. Introduce his or her name, position and role of JJOs;
2. Explain to the child the next stages of the process, including the different justice actors they are going to encounter;
3. Fill the 'first contact' form or assess the situation of the juvenile.
4. Explain to the child his or her rights (see below);

Explanation of the rights of the juvenile

1. "You are currently under arrest by Police because of your presumed involvement in some criminal offence against the criminal law of PNG.
2. During this process, you are not obliged to make or give any statement.
3. If you consent to make a statement, you may withdraw that consent at any time.
4. Any statement that you make or give may be used in evidence in any proceedings.
5. You can consult, and make any statement, in the presence of a legal representative, a parent or any other adult who would like to support you".

During this first encounter with the child, it is important to adopt a child-friendly approach, using words that can be understood easily by him or her, adopt appropriate body language (for example, sit next to him or her rather than standing in front of them), and give them the opportunity to express themselves freely and listen to them actively. JJO should ensure that the child has received appropriate food and medical care if needed.

- If during the interview, it appears that the child has been **victim of an abuse or physical, sexual or psychological abuse**, please follow the recommendations of section 2.3.8 above.
- If during the interview it appears that the juvenile is a **victim of substance abuse** (drug or alcohol), the JJO should refer him or her to a rehabilitation service (e.g. Laloki institution).
- If during this interview, there is a **doubt on the mental health of the juvenile**, the JJO should refer him or her to a medical check-up in order to determine if the juvenile can stand the criminal proceedings and whether his or her criminal responsibility can be challenged.

Additional guidance on how to conduct an interview with a juvenile can be found in Annexe of this Handbook.

Challenge 4 – Working with juveniles who become aggressive

"I have had to face several juveniles who were defensive rather than submissive. At times some of them can be aggressive, threatening or even violent. My approach in that situation is to keep a positive attitude by smiling or taking a soft approach. I remind them that as a JJO, I am on their side, and I care for their best interests".

This JJO's story tells us that it is not always easy to deal with juveniles, and despite the difficulty, it is important to keep positive and caring, to show interest and compassion rather than giving up or reject the person. If a JJO feels that their security is under threat, he or she should only interview him/her in secure environment such as a police station, or in custody, while trying to preserve the confidentiality of the dialogue. If the JJO does not feel safe – they should not continue until to work with the juvenile until the situation is rendered safe.

4.1.4. Procedural rights to be checked

During the criminal process, JJOs ensure that the process and the rights of the child are respected, and notably the following:

- The **parents of** the child have been **informed** of his or her arrest.
- The **age** of the child has been determined with **certainty**²⁷.
- The child knows the reasons of **his or her arrest** and was explained his rights in a manner and language appropriate to his or her age and level of understanding²⁸.
- The child was given an opportunity to **express himself or herself** and to **ask any questions** they may have²⁹.
- The child was **explained the different steps of the legal process**, especially when and where he or she will appear before the Court.
- The child is brought to the Court within the 24h of his or her arrest or detention³¹.
- The detention of the child takes into consideration the age of the child.
- The child has **not been victim of physical, emotional or sexual violence**³².
- The child is kept **separate from adults**³³.
- The child was given the opportunity, without delay and in private to **communicate with a member of his or her family** or a friend and a legal representative of his or her choice³⁴.
- The child was made aware that if the above-mentioned provisions were not respected, he or she may be able to claim **civil remedy** in the National Court or a District Court.
- If any of the above has not been followed, you should remedy the situation or inform the Director of the JJS.

Challenge 5 – Dealing with a conflict of interest

“One of the most important challenge I faced was when I did a cell visit, is that I met a juvenile who happened to be the perpetrator who stabbed my son a few days before. I left the cell and informed another JJO to interview him instead of me, because it was emotionally too difficult for me”.

What this JJO’s challenge teaches us, is that when there is a conflict of interest or the emotions attached to the situation are too strong, then JJO should request some support from peers, and remove him or herself from dealing with the case.

4.2. Diversion

The procedures of Diversion are described in Part III of the JJA 2014, at sections 27 to 37. Diversion can be decided either by the Police upon arrest of the juvenile (Section 40 JJA 2014), or by the Court after the first appearance inquiry (Section 62(2) of the JJA 2014).

4.2.1. Purpose of Diversion

Section 6(i) of the JJA 2014 explicitly provides that **“unless the interests of justice require otherwise, criminal proceedings are not to be instituted against a juvenile if there is an alternative means of dealing with the matter”**. Indeed, most of the children in conflict with the criminal law are arrested in relation to petty offences and will remain once-in-their-lifetime offenders. Proceeding them through the judicial process could contribute to more social stigma and exclusion.

Section 28 of the JJA 2014 provides that the **interests of justice** can be determined according to the following:

- a. the **nature** and **seriousness** of the offence; and
- b. the **background** and **circumstances** of the juvenile, including the juvenile’s **criminal history** and whether the offence is a repeat offence; and
- c. the **views of the victim**, although such views are **not binding**; a
- d. the need to ensure **public safety**; and
- e. the **general principles** set out in Section 6 of the JJA 2014.

Diversion presents several advantages and purposes detailed in Section 27 of the JJA 2014:

- Provide an **effective and timely response** to the offending behaviour of the juvenile;
- Hold the juvenile **accountable** for his or her actions;
- Encourage the juvenile to **acknowledge and repair the harm caused** to the victim and the community;
- Promote **reconciliation** between the juvenile and the person or community affected by the juvenile's offending behaviour;
- Allow **victims to participate** in decision-making;
- Encourage the juvenile's **parents** and other **family** members, and **community** members, to be **directly involved** in holding the juvenile accountable, **supporting the victim**, and providing opportunities for the juvenile to correct his or her offending behaviour;
- **Prevent stigmatising** the juvenile and prevent adverse consequences flowing from the juvenile being subject to the criminal justice system;
- Prevent the juvenile from having a **criminal record**.

4.2.2. Conditions to grant diversion

There are **five cumulative conditions** to enable the use of diversion by the Police or a Court³⁵:

- a. The juvenile needs to **voluntarily acknowledge responsibility** for the offence;
- b. The juvenile needs to **consent to diversion**;
- c. If the juvenile has at least one parent, one **parent needs to consent** to diversion;
- d. There should be enough evidence to proceed with the case, and the prosecution should **not be "barred at law"**;
- e. It is in the **interest of justice** that the matter is resolved informally, notably in relation to the seriousness of the offence, the precedents of the child, the views of the victim, and public safety.

4.2.3. Diversion options

Section 29 of the JJA 2014 defines the different diversion options, that can be cumulated:

- a. a **warning** to, or **caution** of, the juvenile;
- b. an **oral or written apology** by the juvenile to a specified person;
- c. the **compulsory school attendance** by the juvenile for a specified period of time;
- d. a requirement that the juvenile **comply with certain standards of behaviour** and spend a **specified number of hours with his or her family**;
- e. a requirement that the juvenile **report to a specified person or organisation** at specified times to supervise, monitor and guide the juvenile's behaviour;
- f. the **counselling** of the juvenile by a specified person or organisation;
- g. a referral of the juvenile to a **non-residential vocational training or rehabilitation program** approved by the Director;
- h. **restitution**, including the return of any item taken, or the repair of any damage done, by the juvenile;
- i. with the **consent of the victim**, the provision of a specified service by the juvenile to the victim;
- j. the **payment of compensation** of not more than K5,000.00;
- k. the performance by the juvenile of **community service work** in accordance with section 82;
- l. a **community-based conference**;
- m. any **other measure appropriate** to the juvenile and the local circumstances, which is consistent with the principles contained in this Act.

Note that Police will preferably use warning and community-based conferences as diversion options³⁶. Moreover, in case a member of the Police issues a warning to the juvenile at the police station, he or she must make reasonable attempt to ensure a JJO is present when the warning is given³⁷.

4.2.4. Minimum standards applicable to Diversion

In order to be valid, efficient and respectful of children rights and the JJA 2014, diversion measures should respect the following minimum standards³⁸:

- Diversion should be proportionate to the juvenile's **age and maturity**
- Diversion measures should be **proportionate to the offence committed**
- Diversion should **not be exploitative, harmful or hazardous** to the juvenile's physical or mental health
- Diversion should not involve punishment that is **more onerous** than the juvenile should have received through the formal legal system
- Diversion should **not involve corporal punishment, public humiliation**, or anything that would degrade or stigmatize the juvenile
- Diversion should **not involve any deprivation of liberty**
- Diversion should **not interfere with the juvenile's schooling**
- Diversion should **impart useful skills**
- Diversion should **address the underlying problems** that contributed to the juvenile's offending behaviour
- Diversion should include **restorative justice elements** aimed at restoring the relationship between the juvenile, the victim and the community
- Diversion should **involve the juvenile's parents, family** and community members in holding the juvenile accountable and addressing the juvenile's offending behaviour

Challenge 6 – How to work in the best interests of the child through restorative justice

“Once we had a case where students of a particular school were sent out of school for destroying school properties. The parents were concerned about their education as they had been out of school for more than a month. The school principal was not keen on having them back into that school, but we convened a meeting with the parents, the community leaders, the school teachers and the students. Some awareness was conducted on the rights of the child to education and to be given a chance to repair the damage they had done. The conference agreed to take them back to school and to give them some community service – namely to clean the school for a few months – to repair the harm they had done without interfering with their education”.

This story tells us that the principles of restorative justice can be used positively to make children more responsible and accountable for their actions while taking into consideration the interests of the community and the rights of the child. These processes can take time and the JJO must often convince various stakeholders to invest in the process, but the results can be very promising.

4.3. Community Based Conferences

4.3.1. Purpose of Community Based Conferences (CBC)

The purpose of Community Based Conferences is to offer an opportunity for the offender, the victim and members of the community to reach a diversion agreement. When realized within the rules of the JJA 2014, the CBC carries:

4.3.2. Participants the Community Based Conferences

The authorised facilitator (appointed by the Director) should provide timely notice to the participants of the CBC. Those should include minimally:

- The authorized facilitator
- The juvenile
- The juvenile parents or responsible person

- A support person or persons for the victim
- A member of the Police
- A Juvenile Justice Officer

The facilitator may also convene the following members of the community:

- A respected member of the community
- A representative from a civil society group
- A representative of the school
- A representative of the church
- Any other person requested by the juvenile

4.3.3. Organizing successful Community Based Conferences

Section 33 of the JJA gives power to the authorized facilitator to organize and set the process of the CBC. The facilitator sets the **date, time, location and participants** to the conference. The CBC should be held **within 14 days** after the facilitator received referral from the Police or the Court.

The process of the CBC, must minimally comply with the following **requirements**³⁹:

1. The juvenile and the victim have the **right to participate personally** to the discussion or any decision made;
2. The proceedings must be conducted in a way that will lead to an agreement that will be:
 - encouraging the juvenile to accept responsibility for his behaviour,
 - determining the support necessary and available to the juvenile's family and community,
 - identifying the means by which the juvenile can repair the harm caused to the victim and the community

Challenge 7 – Pressures from victims and complainants

"I sometimes receive pressures from the victims or the complainants who ask me to understand their situation and provide them with an advantage. In that case, I take courage and be patient. I try to remain as neutral as possible and let the matter proceed appropriately and according to the applicable legislation".

The challenge faced by this JJO tells about how difficult it may be for JJOs to remain impartial, but for the sake of justice, it is important for JJOs it is to remain neutral.

Additionally, JJOs should monitor that the following requirements are fulfilled:

- The CBC should be held **privately**;
- A CBC cannot be held if the perpetrator is **below 10 years of age**;
- The parties should agree on the **basic facts** of the case;
- Disparities leading to **power imbalances**, as well as **cultural differences** among the parties, should be taken into consideration in conducting a CBC.

At the end of the CBC, a Diversion Agreement may be agreed by the parties (see below paragraph 4.3.5). The facilitator should provide a copy of the Diversion Agreement to both parties as well as to the referring member of the Police or the Court, within 7 days after the conference ends. The Court may confirm, vary or reject the diversion agreement.

If the participants to the CBC cannot agree on a Diversion Agreement, the facilitator refers the matter back to the referring member of the Police or the Court for consideration of other diversion options or criminal proceedings.

4.3.4. A step-by-step process of the CBC

Though Section 34(4) of the JJA 2014 leaves to the parties the choice to organize the CBC as they wish, the following steps can be used as guidelines to conduct a CBC involving a juvenile:

1. **Pre-conference meetings** with all of the major parties;
2. Conference introductions should include reading the **Juvenile Justice Principles of Section 6 JJA 2014**;
3. Explanation of the roles of the participants;
4. Establishing **ground rules and guidelines** for the process, **especially the requirements of Section 34(4) JJA 2014**;
5. Participant **descriptions of the incident and its impacts**;
6. Collaboration on **how the harm can be repaired and future incidents prevented**;
7. If possible, the perpetrator should apologize to the victim, and the victim **accept the apologies**;
8. Formation of a **diversion agreement** by all parties (see below);
9. The **signing** of the diversion agreement; and
10. Adjournment of the conference;
11. After the conference, **monitoring of the agreement** needs to be conducted;
12. On completion or failure of the CBC, a Diversion Compliance Report should be completed.

After step 5, if an agreement cannot be reached immediately on the reparation, the conference can be adjourned to a later date (for instance a week later). In the meantime, the facilitator should meet the parties independently to try and make them agree on a balanced solution. If an agreement cannot be reached at all, then Section 35(7) of the JJA 2014 applies, and the matter should be referred back to the member of the Police or the Court that referred the case to the facilitator.

VJJOs and respected and neutral persons or civil society groups can support in monitoring the fulfilment of the diversion agreement on behalf of the facilitator.

4.3.5. Outcome of CBC: The Diversion Agreement

The outcome of a CBC is a Diversion Agreement (hereafter DA). In order to be valid, the DA should fulfil all the following **requirements**:

- a. Be agreed to and signed by the juvenile
- b. Specify **what the juvenile must do** to overcome his or her offending behaviour and make amends for the harm caused. For example, the diversion options described in Section 29 of the JJA 2014 (and detailed in paragraph 4.2.3 above);
- c. Contain **details of the services and assistance**, if any, to be provided to the juvenile;
- d. Specify the **persons or civil society groups to provide supervision** or other services to the juvenile;
- e. Comply with **the minimum standards for diversion** options set out in Section 30 of the JJA 2014 (detailed in paragraph 4.2.4 above);
- f. **Set out times**, not exceeding any limits imposed by this Act, for the implementation of the agreement;
- g. Identify a **suitable person to monitor** the juvenile's compliance with the agreement;
- h. Specify the **other conditions to which the diversion agreement** is subject.

The **Diversion Agreement template** should be used.

Once the DA has been signed, there are two options:

1. If the juvenile satisfactorily complies with the DA, then no further criminal proceedings may be taken against the juvenile for that offence.
2. If the juvenile fails to comply with the DA, then the facilitator gives written notice of failure to the

referring member of the Police or the Court. The Diversion Agreement Compliance Report (form 5 of the JJ Regulation) should be used. Court and Police may then decide to initiate criminal proceedings against the juvenile.

JJOs or the facilitator should fill Form 4 **Diversion Agreement template** of the JJ Regulation and Form 5 **Diversion Agreement Compliance Report** of the JJ Regulation, and send it to the authority requesting the CBC.

At the end of the implementation of the diversion agreement, the person responsible for monitoring a juvenile's compliance must report on the juvenile's compliance with the diversion agreement to the Court or the member of the Police not later than 2 weeks after the date set for completion of the agreement (Section 36(1) of the JJA 2014).

1. If the juvenile satisfactorily complies with the diversion agreement, no further criminal proceedings may be taken against the juvenile.
2. If the juvenile fails to satisfactorily comply with the diversion agreement, the authorised facilitator shall give written notice of the failure to the referring member of the Court or the Police. In case of failure, the referring member of the Police or the Court may decide of the appropriate action to undertake.

4.4. Initiation of criminal proceedings

There are two methods to initiate criminal proceedings summons and arrest.

4.4.1. Summons

The common way to initiate criminal proceedings is by means of summons. In that case, the Police Officer informs that juvenile about the charges against him or her, and the date, time and place where he or she will appear in front of the Court.

4.4.2. Formal arrest: criminal charge

If the child is formally arrested and charged, **the Police have the duty to contact a JJO** and let them know about the arrest and charge of the juvenile. A JJO can enter any police station, lock-up or any other place of detention, for the purpose of interviewing the child.

The juvenile should be permitted to communicate with his or her family, a friend or a legal representative. The juvenile should be brought before a court without delay, and no later than 24 hours after the juvenile was arrested or detained⁴⁰.

Upon arrest and charge, and if the member of the Police is in the opinion that it is not practicable to bring the juvenile before a Court within a reasonable time, the officer shall immediately after forming that opinion **consider and grant or refuse bail** to the juvenile (If serious indictable offence, bail can only be granted by National Court ⁴¹).

Once the juvenile has been formally arrested, and his or her case is transferred to the Juvenile Court (or to a Court of Summary Jurisdiction). The juvenile will be summoned to the court and either granted bail or placed in remand. The juvenile should be brought before a court without delay, and no later than 24 hours after the juvenile was arrested or detained⁴².

5.1. Bail

A juvenile arrested or detained for an offence is entitled to bail at all times from arrest or detention to acquittal or conviction unless the interests of justice otherwise require. Bail presents two main advantages. First, it fully respects the principle of presumption of innocence of the child. Second, by releasing the juvenile to his parents, it prevents him or her to face the drawbacks of pre-trial detention, enables the child to attend his school or professional training, and reduces the costs of his or her detention for the society. Several conditions apply to grant bail⁴³.

In case of summary offences, the bail can be granted by a member of the Police (either an officer in charge of a station or commissioned officer). In case of indictable offence, the Court is the bail authority.

When deciding whether the child should be released on bail, the bail authority may request some recommendations from a JJO. Therefore, it is important for JJOs to understand how the bail authority makes its decision to grant or deny bail. When assessing the opportunity to grant bail, the bail authority will assess different factors⁴⁴.

- a. the **best interests of the juvenile**; and
- b. the juvenile's **character, background** and **criminal history**; and
- c. the **availability of a parent** or other responsible person to **supervise** the juvenile; and
- d. the availability of appropriate **remand facilities** to ensure that the juvenile is detained separately from adults, and in conditions that will reduce the risk of harm to the juvenile; and
- e. the nature and **seriousness of the offence**; and
- f. the strength of the **evidence** against the juvenile relating to the offence; and
- g. the likelihood that, if the juvenile is convicted of the offence, a **sentence of imprisonment** will be imposed; and
- h. the risk that the juvenile might be a **danger to any other person**; and
- i. any **recommendation from a juvenile justice officer**; and
- j. the principle that a juvenile shall **not be detained as a substitute for appropriate child protection measures**; and
- k. the principle that a juvenile is to **be detained only as a measure of last resort**.

Once a decision to release the child on bail has been made, the bail authority may decide to either:

1. place the juvenile in the care of a parent capable of caring for the juvenile; or
2. place the juvenile under the supervision of a JJO or the Director of Lukautim Pikini.

Challenge 8 – Juvenile fails to appear in Court

“It happened to me a few times when I was a young JJO that the juvenile released into parental care fails to appear in Court despite the Court summons. I usually try to assess the attitude of the juvenile and the parents before release to see if they will cooperate with the justice system. I also try to get as much information on the juvenile, his or her place of residence, his or her school, the parents contact details and employment whereabouts, etc. And I always consider it appropriate for the magistrate imposing a bail with proportionate money deposit as security to lure them to Court”.

This JJO's story reminds that it is in the best interest of the child to be sent back to his community and parents, and that solutions exist to make sure that the juvenile will appear in front of the Court. It can be difficult for families facing difficulties to come to Court as they can live far away and it can be costly to travel, and it is important to understand all these dynamics.

In cases where the bail authority places the child under the supervision of a JJO, the bail authority may be requiring the JJO to report at such times as it considers necessary and may impose such other conditions as the bail authority considers to be necessary.

In case of forfeiture to comply with the bail obligations, the bail authority may issue an order to revoke the bail and authorize the payment of the deposit to a public fund⁴⁵. For more information on bail, please refer to the Bail Act 1977.

5.2.Remand

If the bail authority refuses to grant the bail to the juvenile or in case the juvenile is not complying with the conditions of the bail authority, the juvenile is remanded and placed in a remand centre, in custody or any other place approved by the Director.

During the visits to the remand facility, JJO should check the conditions of deprivation of liberty stated in Section 7.1.3 'Visits to juvenile institution and correctional facilities' of this handbook.

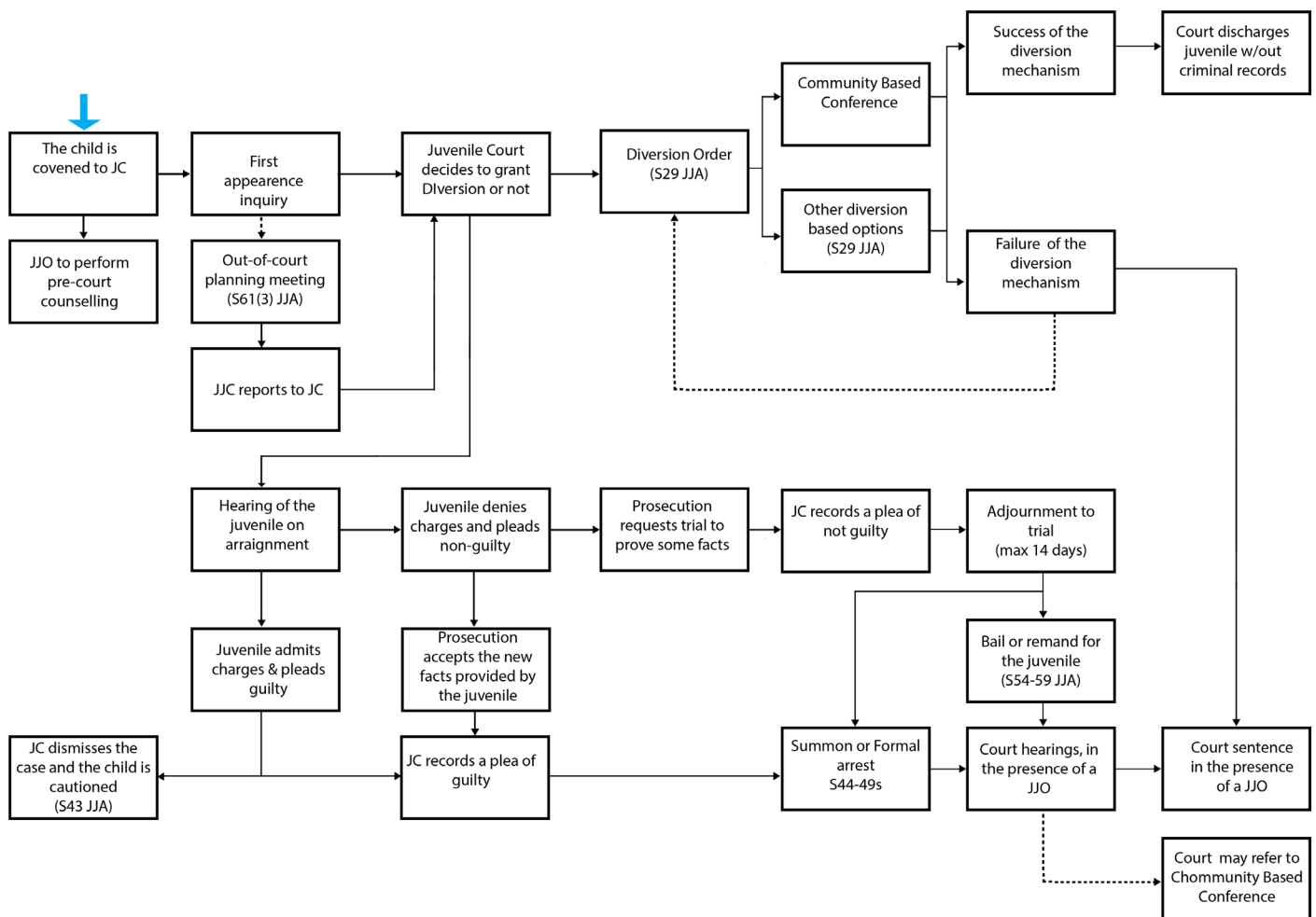
If a child between 10 and 14 years of age is placed in remand, JJOs should contact the Director of Lukautim Pikini or a Child Protection Officer to organize an 'Order for transfer' (Section 55 of the LPA) that enables Lukautim Pikinini to apply to the Juvenile Court to get an order to transfer a child from a Corrective institution or other places or persons appointed by the Director of Lukautim Pikinini.

SECTION 6: PROCEEDINGS IN THE JUVENILE COURT

A juvenile formally charged with a criminal offence may appear in front of a Juvenile Court (or Court of Summary Jurisdiction) whether he or she has spent the pre-trial period in remand or if he or she was granted bail. The purpose of the criminal proceedings is to determine whether the child has committed the alleged offence, and if so, to determine what sentence should be applicable.

The guiding principles of the Convention of the Rights of the Child and Section 6 of the JJA emphasise that a criminal sentence should be determined in the best interest of the child, be proportionate to the circumstances and the level of maturity of the child, and emphasise rehabilitation and reintegration in order to reinforce the child's respect for societal values.

The following section of the JJO Handbook describes the key stages of the proceedings in front of the Juvenile Court (hereafter JC) and the role of JJOs in supporting the Court to determine the most appropriate sentence applicable to the juveniles.



The court trial should be dealt ***as speedily as possible***.
Court adjournments should not exceed 14 days

6.1. Role of the JJO during the proceedings

JJOs should assist the juvenile and the Court during the criminal proceedings in front of the Court. The following paragraphs detail what is expected from JJOs at each step of the proceedings.

JJOs should fill **Form 3 - Court Work** from the JJ Regulation and send it to the Juvenile Justice Services Headquarters on a monthly basis.

6.1.1. Pre-Court counselling session

The purpose of the Pre-Court Counselling session is to provide the juvenile and his or her parents or guardian with the useful information that they need to know to face a criminal trial. These are the information that need to be shared with them:

- JJO should **introduce themselves** and their role during the court proceedings;
- Remind the juvenile of the **charges against them**, and their **maximum penalty**;
- Explain to the juvenile the **proceedings** they will face in accessible language;
- Remind the juvenile of **his or her rights** (See section 1.1 of this handbook on children's rights);
- Advise the juvenile on the **arraignment** and the opportunity to plead guilty or non-guilty (only in summary proceedings, and if the child has no defence lawyer);
- Inform the juvenile on the **way to behave** and to dress in front of the Court and when he or she will be able to **express himself or herself**;
- Explain the **roles of each person** in the Court room in accessible language: judge/magistrate, prosecution, defence lawyers, clerk.
- Inform the juvenile on **how to address the magistrate or the judge**;

6.1.2. Pre-Sentencing Reports (PSR)

i. Purpose of Pre-Sentencing Reports

The purpose of pre-sentencing reports (PSR) is to provide the Juvenile Court with enough information on the child and the circumstances of the offence to enable it to make the most appropriate decision in relation to the child and the offence. It should provide a **plan for the rehabilitation and reintegration** of the juvenile in the form of recommendations to the Juvenile Court. This plan should be drafted in line with the case management principles described in Section 3 of this Handbook and be prepared in consultation with the juvenile and his or her parents.

Section 79 of the JJA 2014 details all the provisions related to the PSR. They have to be filled when there is no doubt about the responsibility of the child in committing the offence. They are the keystones of the judicial proceedings and should be filled with a lot of attention.

It is the role of JJOs to fill the PSR, they should be completed by JJOs as soon as possible, but not later than 14 days after the date it was requested by the Court. The Court shall not sentence a juvenile to a period of custody or imprisonment unless a pre-sentencing report has been obtained. However, in some cases, the Court may request the JJO to report orally⁴⁶.

Once the report has been completed by JJOs, they should share it with the Juvenile Court. The JC will share it with the juvenile and his parents or guardians, the lawyers of both parties (the Court may also share it with any other person it deems relevant to share it with). Additionally, and depending on the circumstances, JJOs should also share the PSR with the following:

- The officer in charge of the correctional institution (if applicable)
- The superintendent of the juvenile institution (if applicable)
- The probation officer (if applicable)
- The Director

ii. Content of Pre-Sentencing Reports

The pre-sentencing reports should contain the following information:

- a. a report of any interview with the juvenile, including information with respect to the maturity, behaviour and attitude of the juvenile; and
- b. if practicable, a report of any interview with a parent of the juvenile or a responsible person with whom the juvenile is living; and
- c. if practicable, a report of any interview with the victim in the case; and
- d. any social background information about the juvenile which the person making the report may consider relevant; and
- e. any plans put forward by the juvenile or his or her parents to change the juvenile's conduct; and
- f. the availability and appropriateness of community services for the supervision, rehabilitation and reintegration of the juvenile and the willingness of the juvenile to avail himself or herself of those services; and
- g. a recommendation as to the most appropriate sentence to be imposed on the juvenile; and
- h. if the recommendation under Paragraph (g) is that the juvenile be sentenced to a juvenile institution, results of the juvenile justice officer's inquiries with respect to the availability of a place for the juvenile.

If during the interview it appears that the juvenile is a victim of substance abuse (drug or alcohol), the JJO should refer him or her to a rehabilitation service (e.g. Laloki institution).

Additionally, the report can provide information to the Court with regard to the wishes and interests of the alleged victim of the crime and the interests of the community in which a juvenile dwell in consideration to juvenile's charge dismissal⁴⁷.

iii. How to prepare successful Pre-Sentencing Reports

Pre-Sentencing Reports should be filled using the available guidelines. Additionally, and taking into account the guidance from Section 3 Principles of Case Management of this handbook, the recommendations of the PSR should propose a **plan for the rehabilitation and reintegration of the juvenile** prepared in consultation with the juvenile and his or her parents. This plan should identify:

- **Restorative justice opportunity:** is there a way for the juvenile to repair the harm done to the victim directly or indirectly to the community, for example through a community-based conference or some community work.
- The level of **maturity and motivation** of the juvenile: his or her interests in life, and self confidence in his or her capacity to achieve his or her realistic projects.
- **Prosocial relationships:** family, friends and acquaintance in the community who can support him or her towards a prosocial life.
- The juvenile **skills and opportunities:** elements of the life of the child that can play for him or her, including sport, educational and vocational opportunities.
- **Obstacles:** how to overcome the elements of life that hinder the full realization of his or her potential, including negative relationships, substance abuse (alcohol, drugs), or health issues.
- **Spiritual orientation:** can the juvenile find hope and belief in oneself through spirituality.
- **Stage of desistance:** is the child ready to move away from criminal behaviour and at which stage of the desistance process he or she is (see above section 3 on Case management).

With these in mind, JJOs should inform the Court and propose the most appropriate sentence to the judge.

6.2. Proceedings in the Juvenile Court (JC)

The Court can require or authorize the presence of the JJO at any stage of the Court procedure. Section 70 of the JJA 2014 makes it compulsory for the Court to “secure the presence of a juvenile justice officer” in order to pass a sentence. In other words, a Court cannot, in most instances, sentence a juvenile without the presence of a JJO.

The proceedings in front of a Court in respect to a juvenile are closed to the public. In general, the Court should reduce contact between the juvenile and members of the public as well as other offender appearing before any other court. Only a limited number of stakeholders may be present during the proceedings⁴⁸.

The hearings at the Juvenile Court (JC) are composed of three main steps detailed below.

6.2.1. First appearance inquiry

The proceedings start with the first appearance inquiry. This stage of the criminal proceedings enables the JC to:

- a. Explain to the juvenile the **nature of the allegations** against him or her;
- b. Make a **determination of the juvenile’s age**;
- c. Inquire as to the **treatment the juvenile has received**;
- d. Determine whether a **diversion is appropriate**;
- e. Inquire whether the juvenile has had contact with or received **assistance from a juvenile justice officer**;
- f. Ask questions or request **information from different parties**: the child, his or her parents, a JJO, or any other person.

6.2.2. Diversion by the Juvenile Court

During the first appearance, the Court may decide to divert the child here according to Section 29 of the JJA 2014 (See section 4.2 above for more details on diversion). JJOs should use the Court Approved Diversion Agreement (Form 6 of the JJ Regulation) to report to the Court. In that case, the outcome of the diversion will determine the following steps of the proceedings:

1. If the Diversion is successful, the child will be discharged without criminal records.
2. If the Diversion fails, the Court may decide either to modify the diversion order or to summons the juvenile to appear before the Court for formal charges and taking of plea.

During this first phase, the Court may also require an out-of-court planning meeting.

JJOs should fill Form 6 – Diversion Agreement from the JJ Regulation and address it to the referring authority (Court or Police).

6.2.3. Out-of-court planning meeting

The Court may request an out-of-court planning meeting in order to discuss and make recommendations

Challenge 9 – Children with mental health issues

“The biggest challenge I faced was when a juvenile was clearly mentally ill and was brought to the Juvenile Court for the first time in front of me. At times they can be violent, and their behaviour can be daunting. When this happen, I quickly informed the Magistrate. The Magistrate then makes an order to place the juvenile in a mental health institution, and then asks for review of the juvenile’s condition and evolution”.

This story tells us that sometimes the mental health condition of juveniles warrants that he or she is recognized criminal irresponsible and placed in a mental health institution. In case of doubts on the mental condition of a juvenile, JJOs should request a medical examination of the child, if necessary, referral to mental health care and inform public prosecution about the situation.

with respect to any decision that the Court may take in relation to the child⁴⁹. It is a key opportunity for JJOs to provide critical information to the Court in relation to the situation of the Child that will influence his or her sentence.

Out-of-court planning meeting – like Pre-Sentencing Reports – should be conducted with the objective to support the rehabilitation and reintegration of the juvenile (see Section 6.1.2 on Pre-Sentencing Reports).

At the conclusion of the meeting, the JJO shall report to the Court on the outcome of the meeting and the recommendations of the participants.

6.2.4. Charges and plea of juvenile (arraignment)

If the juvenile charged with an offence has not been diverted by the Court, he or she will appear in front of the Court for a hearing. During this phase of the proceedings the Court will explain in a simple language the allegations against the child, his or her rights as well as the procedures in front of the Court.

Once the child knows the allegations against him or her, the prosecutor will make a statement of the facts, and the Court will ask the child whether these allegations are true or not true. There are then two main courses of proceedings:

- a. **The child admits the allegations** or rephrases the allegations in a way that is acceptable to the prosecution, and the Court will record a plea of guilty, and either use one diversion option or prepare a Court sentence.
- b. **The child does not accept one or more of the allegations**, then the Court may proceed to trial in order to prove the fact and condemn the child. If the child is proven guilty, he or she will receive a Court sentence.

The trial may request several hearings before the Court has gathered enough evidence or testimonies to determine the guilt or non-guilt of the child. Between each hearings the child may be granted bail or remanded. In principles, the adjournments before the Juvenile Court should not exceed 14 days.

At any stage of the proceedings the child may decide to change his or her plea to guilty or not-guilty, which obliges the Court to adapt the proceedings accordingly.

The outcome of the proceedings in front of the Juvenile Court are either a discharge (acquittal) or a sentence of the child.

6.2.5. Acquittal

Section 591 of the Criminal Code 1974 provides that if the accused person is found not guilty or any other verdict is given that shows that he or she is not liable to punishment, he or she shall be discharged from the charge of which he or she is acquitted. If the child is found non-guilty, he or she will be discharged without criminal records.

6.3. Court sentencing of juveniles

6.3.1. Purpose and principles of sentencing

Juveniles who are recognised guilty of a criminal offence may be subject to a criminal sentence as prescribed by the JJA 2014. Section 76 of the JJA 2014 describes the purposes of sentencing a juvenile in conflict with the law are to:

- a. Encourage the juvenile to **understand the consequences of and be accountable for the harm caused by his or her actions**; and
- b. Promote an **individual response which is appropriate to the juvenile’s circumstances** and proportionate to the circumstances surrounding the offence; and
- c. **Promote the rehabilitation and reintegration** of the juvenile into the family and community; and
- d. **Ensure protection** of the public.

Challenge 10 – Cultural barriers against juveniles

“I sometimes face other justice stakeholders who have strong cultural barriers. They stigmatize juveniles. They address them in an undermining or disqualifying way, blaming them or pointing their weaknesses rather than their strengths and potential. I used to say: Throw a stone into a lake it will have ripple effect”.

This JJO’s story recalls that JJOs also have a role to conduct awareness on the principles of juvenile justice among JJ stakeholders, families and communities. The issue should also be referred to PJJC for discussion and finding a sustainable solution.

Additionally, when deciding about the sentence for the juvenile, the Court should be guided by sentencing principles that are specific to juveniles and seek the sentence that⁵⁰:

- a. Is **proportionate to the seriousness** of the offence and the **degree of responsibility** of the juvenile for that offence;
- b. Is the **least restrictive** to achieve the purposes of sentencing stated above;
- c. Be the one that is the most likely to **rehabilitate** the juvenile and **reintegrate** him or her into society;
- d. Promotes a **sense of responsibility** in the juvenile, and an **acknowledgement of the harm done** to the victim and the community;
- e. Takes into consideration the **juvenile’s age and limited capacity** to appreciate the consequences of his or her actions;
- f. Does not result in a **punishment that is greater than the punishment that would be appropriate for an adult**;
- g. Endeavours to allow the child to **remain in the community**;
- h. Deprives the child of his liberty only as a **measure of last resort** and for **the shortest period necessary**.

When making its decision, the Juvenile Court also takes into consideration several other factors that are detailed in Section 77 of the JJA 2014⁵¹ and Section 28 JJ of the Regulation.

At this stage, the Court may decide either to sentence the juvenile or to refer the case to Community-Based Conference for sentencing recommendations.

6.3.2. Pre-sentence Community-Based Conference

If the Court is satisfied that the offence has been proven or if the child admits the facts constituting the offence, the Court may refer him or her to an authorized facilitator to convene and facilitate a Community-Based Conference (CBC) for the purpose of making recommendations to the Court on an appropriate sentence. The procedure is the one of Section 33 of the JJA 2014 (described in Section 4.3 of this handbook), with a slight variation in relation to the outcome of the CBC.

Indeed, in the case of a CBC ordered by the Court, the outcome will not be a diversion agreement but rather recommendations to the Court. The Court may therefore either accept the recommendations and make them an Order of Court, or may substitute or amend the recommendations to make an appropriate order.

6.3.3. Sentences applicable to a juvenile

If the Court finds a juvenile guilty of an offence, the Court may, in accordance with Section 80 of the JJA 2014, make one or more of the following orders:

Order	Prescriptions
Discharge	No further action is needed against the juvenile, who is released.
Reprimand	The Court explains to the child that his or her behaviour is not acceptable and suggests not to do it again.
Good behaviour order	An agreement of no more than 12 months is made between the juvenile and his or her parents to comply with certain standards of behaviour.
Counselling order	The juvenile is required to report to a specified person, agency or organisation for counselling, on the terms decided by the Court.
Supervision and guidance order	The juvenile is placed under the supervision and guidance of a specified adult or peer mentor for guidance and monitoring for a period not exceeding 12 months.
Vocational training or rehabilitation programme	The juvenile is required to attend a non-residential vocational training or rehabilitation program approved by the Director, on the terms decided by the Court.
Restitution order	The juvenile is requested to make a restitution to any other person, including the return of any item taken or repair of any damage done.
Compensation order	Subject to the consent of the beneficiary, the juvenile is requested to compensate the person for any loss, damage or injury suffered as the result of the offence by a way of personal service, at the time and on the terms decided by the Court.
Restitution in kind	With regard to the ability of the juvenile to pay. He or she is requested to pay a fine not exceeding K500.00.
Probation	The juvenile is placed on probation for a specified period not exceeding 3 years.
Custody	The juvenile is committed to custody in a juvenile institution selected by the Director for a period not exceeding 5 years.
Imprisonment	The juvenile is ordered to serve a term of imprisonment in the juvenile section of a correctional institution.

The Court has to ensure that the juvenile understands the purpose and effects of the order, and the consequences that may follow if he or she fails to comply to the order.

6.3.4. Special conditions applicable to some sentences

Sections 81 to 85 of the JJA 2014 provide guidance and restrictions on the use of the sentences.

i. Imprisonment

Note that custodial or imprisonment sentences should be used as a measure of last resort and for the minimum period of time. The JC can only order custodial sentences if the child is over 14 years of age and has committed a serious indictable offence (see list in annexes p60). Sentencing a child should never include hard labour⁵².

ii. Community service

Community service work should be approved by the Director. It should:

- Take into account the age and capacity of the juvenile
- Not interfere with the juvenile's normal hours of employment or education
- Not be hazardous to the juvenile's health or physical development
- Not expose the juvenile to public ridicule or humiliation
- Not exceed 4 hours in one day and 5 days in one week

iii. Probation

A probation order made under the JJA 2014 shall:

- require the juvenile to notify the probation officer of any changes in address, employment circumstances or place of education; and
- direct the juvenile to remain under the care of a parent or responsible person during the period of probation; and
- direct the juvenile to reside with the responsible person if -
 - a responsible person volunteers to care for the juvenile; and
 - the parents or guardians agree; and
 - the Court orders it.

Additionally, the Court may impose all or any of the following conditions:

- Attend a specific school** or place of learning during a specified period of time;
- Take up an employment** approved by his or her probation officer for a specified period of time;
- Being **restrained from being in the vicinity of certain places, or in the company of certain persons, at all or certain times;**
- Prohibited from owning or using a motor vehicle**, if the offence was related to it;

The probation order should define the returnable day which is the date at which the order must be reviewed. In the case of juveniles, this review should be planned every three months.

iv. Prohibition of certain forms of punishment

The Court is not supposed to impose the following sentences on a juvenile:

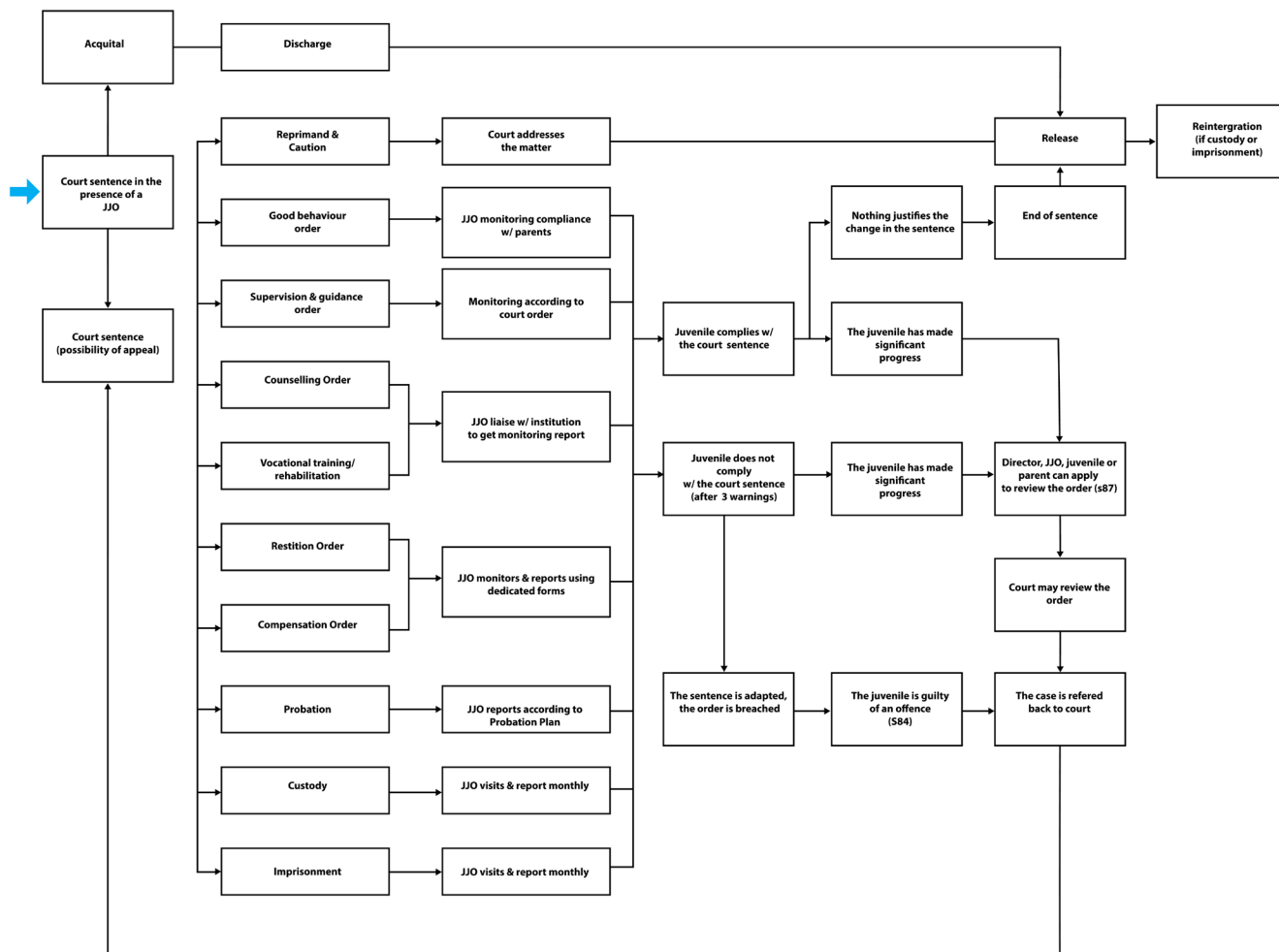
- corporal punishment; or
- life imprisonment; or
- capital punishment.

6.4. Appeals

Sections 91 to 94 of the JJA 2014 provide the conditions and requirements to appeal a decision from a Court in a juvenile case. Appeals have to be lodged within 60 days after the Court made its decision, by a notice of appeal to the clerk of that Court.

Appeal made against a decision of a Juvenile Court constituted by a Principal Magistrate are made to the National Court. Appeals of decisions made by a National Court are made to the Supreme Court of Papua New Guinea.

Once the Court has made its decision about the Child, the sentence becomes enforceable. This table below shoes the options available to the court and this section sets out guidance for when JJOs become involved.



7.7. Supervision of Juvenile sentences

7.1.1. Non-probation orders

Non-probation orders which must be supervised by JJOs include the following:

- Good behaviour order

JJOs should monitor the compliance of the order with the parents or guardians and report to the Court according to the prescriptions of the order.

- Supervision and guidance order

JJOs should monitor the compliance of the juvenile with the prescriptions of the order.

- Counselling order

JJOs should liaise with the person or the institution in charge of the counselling to get a report on the execution of the order.

- Vocational training or rehabilitation order

JJOs should liaise with the person or the institution in charge of the vocational training or rehabilitation programme to get a report on the execution of the order.

- Restitution order

JJOs should monitor the fulfilment of the restitution order with the person in charge of receiving the restitution and report it to the Juvenile Justice Services Headquarters.

- Compensation order

JJOs should monitor the fulfilment of the compensation order with the person in charge of receiving the compensation and forward the Monthly Compensation Payment Report to the Court and to the Juvenile Justice Services Headquarters.

JJOs should fill the **‘Monthly Compensation Payment Report’** and send it to the Court and to the Juvenile Justice Service Headquarters.

7.1.2. Probation orders

Probation is a legal scheme that enables a Court to defer the sentencing or to suspend the execution of an imprisonment sentence for a period of six months to five years⁵³. When acting as probation officers, JJOs should follow the recommendations of the Probation Act 1979, and especially the duty “to supervise, advise, assist and where possible to befriend, a probationer under him for the purposes of social rehabilitation of that probationer⁵⁴”.

It is the role of the probation officer to monitor the fulfilment of the probation order, and report to the Court on its execution. The JJO reports to the Court should include some recommendations on the most effective ways to pursue the order.

The probationer and the probation officer can both apply to a variation or discharge of the probation order under certain conditions set in Section 19 and Section 23 of the Probation Act 1979.

In case the juvenile does not comply with a probation order, JJOs should first try and understand the reasons why the juvenile is not complying and ensure that the probation order is suitably designed for the child. If the probation order is not suitable (i.e. the conditions are far too stringent for the child), then JJOs should apply to the Court for a variation of the probation order.

If the probation order is suitable but the juvenile does not comply with the order, a good practice is to give the juvenile a first then a second oral warning in order to give him or her the opportunity to become responsible and comply with the probation order. If the juvenile does not comply with the order a third time, then a written warning can be issued to him or her, where he or she commits to abide by the order. If the juvenile does not comply with the probation order after three warnings, the breach is confirmed, by the probation officer applying to the Court, and the Court confirming the breach.

If the breach of the probation order by the probationer is confirmed, the Court may extend the period of probation, vary the conditions of the order, impose additional conditions, commit the probationer to imprisonment, sentence the probationer or impose the penalty of a fine not exceeding K200 or imprisonment for a term not exceeding four months⁵⁵.

JJOs are mandated to monitor closely the probationer should fill the ‘**Monthly Probation Supervision Report**’ or the ‘**Community Work Supervision Report**’ and send it to the Court and to the Juvenile Justice Service Headquarters.

7.1.3. Visits to juvenile institutions and correctional facilities

When visiting juveniles who are in custody, the JJO should check the conditions of facility, and especially to ensure that the rights of the juveniles are respected⁵⁶:

- a. Separation of juveniles from adult detainees,
- b. Facilities meet minimum standards of health, hygiene, human dignity and climatic conditions,
- c. Food is adequate to ensure a well-balance diet and sufficient quantities to maintain health and well-being,
- d. Sanitary arrangements are adequate to enable a juvenile to comply with the needs of nature when necessary and in clean and decent manner,
- e. Bathing installations and supplies are adequate to enable the juveniles to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to the season, but at least once a week,
- f. Juveniles are issued with clothing suitable to the climate,
- g. Juveniles have daily free time for leisure activities, including daily free exercise in the open air whenever weather permits,
- h. Juveniles can access medical treatment as required,
- i. Juveniles can practice his or her own religion,
- j. Juveniles can receive visits from family or friends at least once per week,
- k. Juveniles can receive telephone calls from a parent or responsible person,
- l. Juveniles have unrestricted, private visits from a lawyer or other legal representative,
- m. Juveniles can to continue his or her education,
- n. Juveniles can benefit from rehabilitation and vocational training programs,
- o. Juveniles can leave the institution for a specified period for all or any of the following -
 - i. to visit his or her family; or
 - ii. to attend any place for educational or training purposes; or
 - iii. to participate in paid or unpaid employment;
 - iv. to attend a funeral; or
 - v. to attend any place for a medical examination or treatment; or
 - vi. to take part in sport, recreation or entertainment in the community; or
 - vii. any other purpose that the person in charge of the institution considers will assist in the juvenile’s reintegration into the community.

Challenge 11 – Using a child friendly approach

“A juvenile was remanded in a juvenile centre for destruction of his father’s property while waiting for the Court hearings. He had some drug addictions and asked me for drugs. I called him up and comforted him by counselling. Since he was from my province, I spoke to him in our common language and befriended him. I contacted his parents, checked with the mental health worker and juvenile officer for assistance. I used my own mobile to communicate to have the problem solved”.

This story from a correctional facility officer tells us how important it is to use child friendly language and support the needs of juveniles rather than blaming them or make them feel guilty when they do not behave well.

Pregnant inmates pregnant or female inmates with children have specific rights that are detailed in Annex to this Handbook ‘Specific treatment of female juveniles in detention’.

In case of concern regarding any of the above, the JJO should report the matter to the head of the facility

and the Director of JJ services. Additionally, the JJO should contact the Director of Lukautim Pikini or a Child Protection Officer to organize an 'Order for transfer' (Section 55 of the LPA) that enables Lukautim Pikinini to apply to the Juvenile Court to get an order to transfer a child from a Corrective institution or other places or persons appointed by the Director of Lukautim Pikinini.

JJOs should fill 'Form 2A – CS Visits for Juveniles Convicted' and 'Form 2B – CS Visits for Juveniles on Remand' and return them to the Juvenile Justice Services.

7.2. Review orders

Review orders are described in Sections 87 to 90 of the JJA 2014. They enable the Court to review its sentence in order to adapt it to evolving circumstances in the situation of the juvenile.

7.2.1. When can a review order be introduced?

More specifically, review orders can be introduced in the following cases:

- a. there has been a change in the circumstances of the juvenile or those in whose care and custody he or she has been placed; or
- b. the juvenile is unable to comply with or is experiencing serious difficulty in complying with the terms of an order; or
- c. the juvenile has made sufficient progress to justify a change in the juvenile sentence; or
- d. it would be otherwise in the best interests of the juvenile.

It cannot be introduced within a period of 6 months from the date of the original order. If the order has been as already varied, six months from the date of the last variation of the order.

Additionally, if the sentence of the Court was a custody or imprisonment for a period exceeding 12 months, the Director may apply for review of the order, every 12 months from the date of the original order, or if the order has been varied, 12 months from the date of the last variation of the order, or at such lesser intervals if the Court decides so in its orders.

Finally, if a juvenile is in a juvenile institution by order or variation of an order of a Court; and in the opinion of the Director, the behaviour of the juvenile is unsatisfactory, the Director may, at any time, apply to the Court to vary the order of custody to one of imprisonment.

7.2.2. Who can introduce a review order?

The following persons can introduce a review order:

- a. the Director, a JJO or a probation officer; or
- b. the juvenile; or
- c. a parent of the juvenile or a responsible person.

7.2.3. How can an order be reviewed?

A review order has to be made in writing to the clerk of the Court by which the order was made. If a review relates to a sentence imposed by the Court, the application for review shall be made to the National Court. There is no legal form for review orders, but JJOs should fill the form "Application to review an Order". Form 11 'Review Order' of the JJ Regulation and submit it to the Court.

7.2.4. Review Report by JJO

Once the application for review has been submitted, a JJO shall prepare a review report on the juvenile. This review report should contain:

- a. views and comments from the juvenile and a parent of the juvenile or a responsible person; and
- b. views and comments of all persons who have been concerned with the custody and welfare of the juvenile since the imposition of sentence on the juvenile; and
- c. the recommendations of the juvenile justice officer.

A Court cannot proceed to conduct a review until the review report is produced to it.

7.2.5. Powers of the Court on review

On the hearing of an application for review, the Court may:

- a. confirm the order; or
- b. suspend or vary any conditions of the order; or
- c. impose any additional conditions; or
- d. vary an order of imprisonment to one of custody or probation; or
- e. vary an order of custody to one of imprisonment or probation; or
- f. discharge the order.

The Court may vary the order of custody to one of imprisonment on very limited conditions⁵⁷.

7.3. Post-sentence reintegration

Section 103 of the JJA 2014 provides the details for the discharge and return to the community of a juvenile after he or she has spent a period in a juvenile institution or juvenile correctional service institution. Less than 2 weeks before the discharge of a juvenile from a justice institution (other than a remand), the person in charge of the institution must notify the Director and a JJO so that the arrangements are made for the juvenile's return and reintegration in the community.

A report from the institution where the juvenile was detained (Notification of Discharge and Return to Community, Form 14 JJ Regulation) will be completed by the Institution which contains the following information⁵⁸:

- a. the juvenile's personal details, including contact information for his or her parents or a responsible person; and
- b. the juvenile's attitude and behaviour whilst in the institution; and
- c. details of any education or rehabilitation programs undertaken by the juvenile whilst in the institution; and
- d. details, including certificates, of any educational programs that the juvenile participated in; and
- e. details of any vocational skills or work experience acquired by the juvenile whilst in the institution.

To the extent possible, a JJO, in consultation with the Director, shall ensure that a juvenile who is released from detention receives all necessary assistance to return to his or her place of residence and to reintegrate into the community, if necessary, with the support of local civil society groups.

Form 14 'Notification of discharge' of the JJ Regulation should be sent to JJOs 2 weeks before the release of the juvenile.

JJOs support the JJS by mapping the different services available in their areas of coverage. This duty should be carried out in cooperation with the other members of the Provincial Juvenile Justice Committee.

8.8.1. Diversion, community-based sentencing options and civil society programmes

JJOs should identify state services, civil society groups or individuals providing programs, supervision and mentoring for diversion and community-based sentencing options⁵⁹. These service providers are authorised in writing by the Director. The list of service providers is updated on a regular basis and includes services listed in the DJAG Service Providers Directory.

When identifying diversion, community-based sentencing options, it is advisable that JJOs ensure that they meet the PNG Minimum Standards for Juvenile Institutions.

8.2. Authorised Community-based Conferences facilitators

It is the responsibility of JJOs to maintain a list of authorized Community-based conferences facilitators⁶⁰. Facilitators are authorised in writing by the Director using form 7 of the JJ Regulation.

Like JJOs and other official agents, facilitators benefit from a protection of their function for any action, claim or proceedings for any act done, or omission made, in good faith in the exercise of powers, or the performance of functions, duties or responsibilities, under the JJA.

When identifying facilitators, JJOs should make sure that they meet the following requirements:

- Training or previous experience in facilitation of mediations or similar conferences,
- A good knowledge of juvenile justice and child protection,
- Ability to listen, remain impartial and support victim and perpetrator to reach a balanced and equitable solution,
- Good reputation and no history of violence against children or women,
- Clear police record,
- Ability to discuss in the languages of the parties in the area.

Form 7 'Appointment of authorized facilitator' of the JJ Regulation should be filled and signed by the JJS Director upon recommendation from the JJO.

SECTION 9: RECORDS AND REPORTING

9.1. Confidential records

The Juvenile Justice Administrative & Operational Records guidelines define the structure and references to be used to archive the different files, forms and procedure documents. JJOs should make sure that they respect their requirements (see Annex JJ Filing system for more details).

9.2. Data collection and reporting

The following documents must be filled by JJOs on a regular basis and sent to Juvenile Justice Services Headquarters and to the Court if related to a juvenile sentence. The Monthly Summary Report is a compilation of all the data collected during the month.

Form	Where to find the information	How often to fill them
Form 1- Police station visits	Police station	Monthly, based on individual juvenile information sheets
Form 2A- Correctional Services Visits - convicted juveniles	Correctional facilities	Monthly
Form 2B- Correctional Services Visits – Juveniles on remand	Correctional facilities	Monthly
Form 3- Court work	Juvenile Court or National Court	At every Court hearing
Form 4- Police Diversion	Police station	Monthly
Form 5 - Court Diversion	Juvenile Court or National Court	Monthly
Monthly Compensation Payment report	According to Court order or diversion agreement	Monthly
Monthly Community Work Supervision Report	According to Court order or diversion agreement	Monthly
Monthly probation supervision report	According to Court order	Monthly
Monthly summary	Various forms	Monthly

Schedule of serious indictable offences

Criminal code section	Description of offence
210	Unnatural offences
229A	Sexual penetration of a child
229B	Sexual touching of a child
229D	Persistent sexual abuse of a child
229L	Offering or engaging in child for prostitution
299	Wilful murder
300	Murder
302	Manslaughter
304	Attempted murder
305	Accessory after the fact to murder
307	Conspiring to kill
319	Grievous bodily harm
347	Rape
349	Sexual Assault
386	Robbery
387	Attempted robbery accompanied by wounding
395	House-breaking; burglary
397	Entering dwelling-house with intent to commit crime
398	Breaking into Buildings and Committing Crime
400	Breaking into place of worship and committing crime
436	Arson
437	Attempts to commit arson

Interview and counselling guidance for case management

- Important to keep in mind while interviewing the juvenile
- A proper interview should be well planned. It should happen in a place where the confidentiality of the case can be guaranteed.
- Introduce yourself, your role as JJO and who is who.
- Remind their rights to the juvenile. If necessary, provide explanations on the technical words.
- Mind your body language. Stay beside the person but give them enough space. If necessary, ask consent before sitting next to the person and interviewing him or her.
- Active listening is important, rephrase the story that the juvenile is telling you.
- Be caring yet formal and ensure that the juvenile has received food and drink.

Helping the juvenile out of delinquency

- Distinguish between the action, i.e. the offence, that is blameable and the person, i.e. the juvenile, who needs to be supported.
- Juveniles are children who need to be treated as such yet helping them to become mature adults.
- Help juveniles building a prosocial identity and self-confidence in a positive future.
- To help juveniles balancing the positive aspects of being reintegrated and negative aspects of crime, focus on positive aspects of pursuing a prosocial life and on negative consequences of delinquent behaviours – for them and for the victim.
- Remind the child that they full control over their life, and that they have the capacity to change it positively.
- With young children and children showing remorse, be reinsuring and desacralize the criminal offence and the criminal justice system. They are not the first ones, and not the last ones, and most

of the individuals can recover and become good people.

- Help them find who is their “hero” and encourage them to use them as positive role models.

Avoid

- Avoid being judgemental or moralistic. No one likes to be reminded what is wrong or what is right.
- Some juveniles are in a vulnerable situation, avoid creating expectations or make promises you cannot fulfil.
- Female juveniles should preferably be interviewed and supported by females JJOs. If a female JJO is not available, male offenders should pay attention to avoid creating an ambiguous atmosphere.
- JJOs interview the juvenile as opposed to investigate the case. It is the responsibility of the police and prosecution to find evidence in a criminal matter.

Definition of Child in need of protection

According to Section 2 of the Lukautim Pikinini Act 2015 a “child in need of protection” means a child:

- a. whose parents are dead or incapacitated and adequate provision has not been made for the child’s care; or
- b. who has been abandoned by his parents and adequate provision has not been made for the child’s care; or
- c. who has been, or is likely to be physically harmed, sexually or emotionally abused or sexually exploited by some person other than the child’s parent, and the parent is unwilling or unable to protect the child; or
- d. who has been, or is likely to be physically harmed because of violence or neglect by the child’s parents or guardian, or who is sexually or emotionally abused by the child’s parents or guardian; or
- e. whose development is likely to be seriously impaired by treatable condition and the child’s parents refuse to provide or consent to treatment; or
- f. who is living in a household where there have been incidents of domestic violence and, as a consequence, the child is at risk of serious physical or psychological harm; or
- g. who has been consistently subjected to exposure or exhibition that is harmful to the child’s physical or psychological well-being; or
- h. who is consistently engaged in child labour by some person other than the child’s parent, and the parent is unwilling or unable to protect the child; or
- i. who is or has been absent from home in circumstances that endanger the child’s safety or well-being; or
- j. who has serious differences with his parents to such an extent that the physical, mental or emotional wellbeing of the child is being seriously impaired (or threatened) or the care and control of the child is likely to be seriously disrupted; or
- k. who is involved in child trafficking.

Specific treatment of female juveniles in detention

Cf. Sections 56 to 62 of the Lukautim Pikinini Act 2014

Accommodation of mothers with children

A mother and her child under three years living with her in prison shall be accommodated in a separate facility within the prison

Notification of pregnant woman or child

The commissioner of Corrective Institutions or his delegate shall, as soon as practicable, notify the Office for Child and Family Services of the reception of a pregnant woman or mother inmate with a child under the age of three years.

Care of child

A child shall be entitled to the care necessary to promote healthy early childhood development during the time he remains with the mother in prison.

Child with parent in prison

1. Where a mother is breast-feeding a child and that child resides outside of the prison, arrangements shall be made to allow the child access to the mother for the purpose of breast-feeding.
2. A child with a parent in prison shall be allowed access to the parent unless a Court orders otherwise.

Pregnant woman inmate

1. A pregnant inmate shall be entitled to proper medical attention, rest, nutrition and shall not be subject to any form of labour that will, or is likely to, endanger the unborn child or the continuation of normal pregnancy.
2. A person who endangers the health of the pregnant inmate, the unborn child or the continuation of normal pregnancy, is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding two years, or both.

Review of circumstances

1. The Director of Lukautim Pikinini shall, in consultation with the Commissioner of Corrective Institutions enter a prison to:
 - a. Review the circumstances of the child continuing to live in the prison; or
 - b. Review the compliance of the prison with child-friendly practices in accordance with this Part; and
 - c. Have access at all reasonable times to all parts of the child-friendly place.
2. The review shall take place at least annually but may be done more than once should the need arise.

Pregnant and breastfeeding remandees

1. A mother of a child under the age three years being held in lawful custody is entitled to continue to feed and provide care at a place conducive to the child's health and safety.
2. A pregnant remandee shall be treated in manner as would not endanger the welfare or wellbeing of the unborn child.

Juvenile Justice filing system (extract)

JJ 2-2=Juvenile Cases

File references	Description of the files
JJ 2-2-1	Police Stations
JJ 2-2-2	Courts
JJ 2-2-3	Cs Institution
JJ 2-2-4	Juveniles Diverted - Police
JJ2-2-5	Juveniles Diverted - Courts
JJ 2-2-6	Juveniles on Non - Custodial Sentences
JJ 2-2-7	Juvenile Repatriation
JJ2-2-8	Foreign Juvenile Convicted in PNG

JJ 2-3 = Data & Statistic

File references	Description of the files
JJ 2-3-1	Monthly Data Summary
JJ 2-3-2	Form 1 – Police Station Visit
JJ 2-3-3	Form 2A – CS Visits (Juveniles Convicted)
JJ 2-3-4	Form 2B – CS Visits (Juveniles on Remand)
JJ 2-3-5	Form 3 – Court Work
JJ 2-3-6	Form 4 – Police Diversion
JJ 2-3-7	Form 5 – Court Diversion
JJ 2-3-8	Written Pre-Sentence Reports
JJ 2-3-9	Oral Pre-Sentence Reports
JJ 2-3-10	Monthly Probation Supervision Reports
JJ 2-3-11	Monthly Community Work Reports
JJ 2-3-12	Monthly Compensation Reports
JJ 2-3-13	Probation Orders
JJ 2-3-14	Court Orders
JJ 2-3-15	Discharge of Probation Reports
JJ 2-3-16	Review Reports
JJ 2-3-17	Review Applications
JJ 2-3-18	History Sheets
JJ 2-3-19	JJ Form 1 – Personal Information Board
JJ 2-3-20	JJ Form 2 – Rehabilitation Plan
JJ 2-3-21	JJ Form 3 – Monthly Rehabilitation Progressive Report
JJ 2-3-22	JJ Form 4 – Incident Report
JJ 2-3-23	JJ Form 5 – Admission Form
JJ 2-3-24	JJ Form 6 – Notice of Discharge
JJ2-3-25	Provincial Juvenile Justice Committee (PJJC)
JJ2-3-26	Institutional Coordinator Reports
JJ2-3-27	Rapid Pro Reporting Forms
JJ2-3-28	General Correspondences (Statistics)

¹Section 1 of the JJA 2014

²Section 9 of the JJA 2014.

³For more information, please refer to Section 7 of the JJ Regulation.

⁴The members of the National Juvenile Justice Committee are the Chief Justice, the Chief Magistrate, the head of the departments of national justice administration, of community development, of health and of education, the Director, the Commissioner of Police, the Commissioner of the Correctional Services, the Public Solicitor, and representatives nominated by the National Youth Commission (1), churches (1), women's group (1), civil society groups (1), a head of the national agency responsible for Village Courts or his nominee. See Section 23 JJA 2014 and Sections 11, 12 and 13 of the JJ Regulation.

⁵Provincial Administrator or his or her equivalent in an autonomous region; a Senior Provincial Magistrate; a Juvenile Court Magistrate; a Provincial Police Commander; a Provincial Juvenile Justice Officer; a Police Prosecutor; a Provincial Commanding Officer of the Correctional Institution; a Provincial Health Advisor; a Provincial Education Advisor; a Provincial Community Development Advisor; a representative of the churches nominated by the Provincial churches; the President of the Provincial Council of Women; a representative of the Provincial Youth Groups; a Provincial Village Court Liaison Officer; a Solicitor in charge of the Public Solicitor's Office; and a person in charge of any Institution in the province.

⁶Section 12 of the JJA 2014.

⁷Section 10(2) of the JJA 2014.

⁸For more information on the Good Lives Model, see among others Fortune, C. A., Ward, T. & Willis, G. M. (2012). The rehabilitation of offenders: Reducing risk and promoting better lives. *Psychiatry, Psychology and Law*, 19(5), 646-661; Maruna, S., & King, A. (2008). Selling the public on probation: Beyond the bib. *Probation Journal*, 55(4), 337-351; Barry, M. (2010). Youth transitions: from offending to desistance. *Journal of Youth Studies*, 13(1), 121-136; Ward, T. & Maruna, S. (2007). *Rehabilitation*. Routledge; Purvis, M., Ward, T., & Willis, G. (2011).

The Good Lives Model in practice: Offence pathways and case management. *European Journal of Probation*, 3(2), 4-28.

⁹The following developments are based on a literature review by Stoll, Aurélie, and Manon Jendly. "(Re) connaître les mécanismes de la désistance: un état des savoirs". *Jusletter* (2018): 1-23.

¹⁰Shadd Maruna, *Making good: how ex-convicts reform and rebuild their lives*, American Psychological Association Books, Washington DC 2001. Raymond Paternoster et al., *Desistance from crime and identity: an empirical test with survival time*, *Criminal Justice and Behavior*, 43(9), 2016, pp. 1204–1224, p. 1219

¹²Robert J. Sampson/John H. Laub, *Crime and deviance over the life course: the salience of adult social bonds*, *American Sociological Review*, 55(5), 1990, pp. 609–627, p. 611

¹³See for example, Shadd Maruna, *Desistance from crime and explanatory style: a new direction in the psychology of reform*, *Journal of contemporary criminal justice*, 20(2), 2004, pp. 184–200.

¹⁴Stoll, Aurélie, and Manon Jendly. "(Re) connaître les mécanismes de la désistance: un état des savoirs". *Jusletter* (2018): 1-23.

¹⁵Roger K. Allen, *Raising Responsible, Emotionally Mature Children*, Leadership Press, 2015.

¹⁶Ros Burnett/Fergus McNeill, *The place of the officer-offender relationship in assisting offenders to desist from crime*, *Probation Journal*, 52(3), 2005, pp. 221–242.

¹⁷Section 6(p) of the JJA 2014

¹⁸See *Lukautim Pikinini Act 2015 – Operational Manual*, National Office for Child and Family Services, Papua New Guinea, p2.

¹⁹See *Lukautim Pikinini Act 2015 – Operational Manual*, National Office for Child and Family Services, Papua New Guinea, p2.

²⁰Section 48 of the JJA 2014.

²¹Section 50 of the JJA 2014.

²²Section 4 of the JJA 2014.

²³Section 8(3) of the JJ Regulation.

²⁴Section 50(3) and S50-4 JJA 2014.

²⁵Section 25 of the JJ Regulation.

²⁶Section 108 of the JJA 2014.

²⁷Section 4 of the JJA 2014

²⁸Section 46 of the JJA 2014

²⁹Section 46 of the JJA 2014

³⁰Section 45 of the JJA 2014

³¹Section 52 of the JJA 2014

³²Section 229 of the Criminal Code 1974

³³Section 52(3)(a) of the JJA 2014

³⁴Section 52(3)(d) of the JJA 2014

³⁵Section 28 of the JJA 2014.

³⁶Section 40 of the JJA 2014.

³⁷Section 22 of the JJ Regulation.

³⁸Section 30 of the JJA 2014.

³⁹Section 34(3) of the JJA 2014.

⁴⁰Section 52(3)(e) of the JJA 2014

⁴¹Section 52(1)(b) of the JJA 2014

⁴²Section 52(3)(e) of the JJA 2014

⁴³They are described in sections 55, 56 and 57 of the JJA 2014.

⁴⁴Section 56(2) of the JJA 2014

⁴⁵Section 22 of the Bail Act 1977.

⁴⁶It is the case, when the Court believes that completing a written report would unjustifiably delay the

process or would be against the interest of justice or the juvenile.

⁴⁷Section 23 of the JJ Regulation.

⁴⁸Section 69 of the JJA 2014 list these persons: The Director, juvenile justice officers, probation officers, officers or members of the Court, persons immediately concerned with the proceedings, legal representatives of the parties to the proceedings, parents or responsible persons in relation to any party to the proceedings, members of the Police, any person who has supplied a pre-sentencing report, witnesses, any other person by leave of the Court.

⁴⁹Section 61 of the JJA 2014

⁵⁰Section 76(2) of the JJA 2014

⁵¹These include, among others: seriousness of the offence and circumstances, degree of participation of the juvenile in the commission of the offence, the harm done to the victim, the age, maturity, education, health, character and attitude of the child, his or her previous crime history, etc.

⁵²Section 81(3) of the JJA 2014.

⁵³Section 16 of the Probation Act 1979.

⁵⁴Section 10 of the Probation Act 1979.

⁵⁵Section 20 of the Probation Act 1979.

⁵⁶Section 100 of the JJA 2014.

⁵⁷See Section 90 of the JJA 2014 for more details.

⁵⁸See form 14 of the JJ Regulation.

⁵⁹Section 10(d) of the JJA 2014.

⁶⁰Section 10 of the JJA 2014.

