



# Where to from here?

A report into the institutional status of  
juvenile justice in Vanuatu

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This document reports the outcomes of a review undertaken in September and October 2016, of the institutional status of the juvenile justice system in Vanuatu. The report highlights planned and future institutional initiatives designed to improve the juvenile justice system and bring it into greater alignment with the Government of Vanuatu’s existing legal framework and international human rights instruments.

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# 1. Executive Summary

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Consistent with Vanuatu's national development agenda, in 2014 the Justice and Community Services sector under the leadership of the Heads of Agency Group Task Force designed the Justice and Community Services Cross Sector Strategy 2014-2017 (JCSSS), to reflect the collective development priorities of the sector. One of eight priority development areas concerns juvenile justice, which aims to: *Develop an integrated Juvenile Justice System inside the Sector.*

This report offers an analysis of planned and actual progress across the sector in the implementation of the juvenile justice strategy. The report frames this work according to a holistic conceptualisation of juvenile justice based on three key domains:

1. Juvenile justice as part of a **national and international human rights based agenda**, where development effort draws on international human rights instruments to define national effort to *protect, respect and fulfill human rights*;
2. Juvenile justice as part of a **social justice and community development agenda**, where development concerns the *prevention of criminality and recidivism* in children, primarily through social and community development mechanisms;
3. Juvenile justice as an **institutional process** which is nested within the human rights, and social justice and community development agendas, and targets the institutions that are responsible for delivering a *system* of juvenile justice. Development in this domain focuses on *strengthening institutional capacity to meet legal and human rights obligations*, in terms of the facilities, practical systems, procedures and behaviours.

The third domain represents the primary focus of this report. It is evident that there is a genuine and shared interest across the sector to progress the development of an effective juvenile justice system. Progress is noted in several initiatives:

- The establishment of the Pacific Judicial Development Program Memorandum of Understanding - Youth Justice in Vanuatu (2013);
- Improved court practices in Supreme Court (e.g. 'wig off' informal approach to dealing with juveniles, clearing the court room etc) and in Magistrates Court (e.g. round table configuration);
- Progress in the construction of a juvenile correctional facility in Luganville by Department of Correctional Services (DCS) and initiation of an amendment to the Correctional Services Act (2006); and
- Completion in 2016 of the National Child Protection Policy 2016-2020 by the Child Desk team of the Ministry of Justice and Community Services.

The inquiry also raised concerns indicative of systemic barriers to improvement such as the downstream issues presented through lack of critical data (e.g. age) resulting in many juveniles cases being progressed as adult cases; Lack of clear legal imperative resulting in varying institutional and individual practices in dealing with juvenile cases; Variation in the awareness and compliance of staff to special provisions where they exist; Lack of a mechanism to oversee and drive improvement across the sector; Lack of specialized facilities and spaces for dealing with juveniles; and shortage of specialized skills and access to appropriate training and development.

A total of 12 recommendations are made:

1. **Procedural Improvements** concerned with changes in management practice.

- Recommendation 1: Strengthening monitoring and evidence-based practice in juvenile justice through use of targeted indicators
  - Recommendation 2: Establish regular review of progress on juvenile justice
  - Recommendation 3: Establish access to a PSO lawyer to attend juvenile interviews and provide appropriate legal representation
  - Recommendation 4: Improve access to critical information to facilitate juvenile justice processes
  - Recommendation 5: Strengthen diversion practices for juveniles
2. **Behavioural Improvements** concerned with changes in behavior, requiring some training and development investment.
- Recommendation 6: Provide specialized skills training for investigators, legal and judicial officers
  - Recommendation 7: Implement training for General Duty and Investigations officers in the Police Guidelines
  - Recommendation 8: Implement training to apply diversionary practices
3. **Structural Improvements** concerned with initiatives that will require some significant reorganization, such as structural change, changes to infrastructure or investment in new systems of work.
- Recommendation 9: Support the establishment of the juvenile justice unit in VPF
  - Recommendation 10: Design an operational model for the new juvenile correctional facility
4. **Legal & Policy Improvements** concerned with amendments or changes to the legal framework related to juveniles in contact with the law.
- Recommendation 11: Amend relevant legislation to standardize the definition of 'juvenile' or 'child' as being under 18 years of age
  - Recommendation 12: Amend criminal and civil procedures to include special conditions for dealing with juvenile offenders

## 2. Background

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### 2.1 Context

As a country with a young and growing population<sup>1</sup>, the capacity to provide for the needs of children is a central priority in Vanuatu's social development agenda as defined in the National Sustainable Development Plan 2016-2030. A key part of this national agenda concerns strengthening access to justice and institutional responses to children who are victims, witnesses or perpetrators of crime. The National Child Protection Policy 2016-2016 has established a goal in relation to this priority: *To create an environment where children are safe and protected from all forms of abuse, exploitation, neglect and violence, and have equitable access to services to support their reintegration and recovery when needed.* This Policy positions protection of children as part of a broad social justice and human rights agenda, and specifically recognizes the critical role that formal institutions play in achieving improvement for the benefit of children and communities.

In 2014, the Justice and Community Services sector under the leadership of the Heads of Agency Group Task Force, developed a cross sector strategy to reflect the collective development priorities of the sector. The Justice and Community Services Cross Sector Strategy 2014-2017 (JCSSS), which was endorsed by the Government of Vanuatu, lays out eight priority development areas<sup>2</sup> one of which concerns juvenile justice. The Juvenile Justice Strategy aims to: *Develop an integrated Juvenile Justice System inside the Sector.* Since the inception of the JCSSS, work on this strategy has progressed across the sector, largely through effort at an agency level.

This report aims to contribute by offering an integrated analysis of planned and actual progress across the sector, specifically targeting 'institutional responses' to juvenile justice. The results and recommendations are intended to support the ongoing capacity development and institutional, policy and legal strengthening efforts. The report also offers a perspective on the complexity of the context of juvenile justice work, the limitations of this study, and areas of opportunity that could benefit from further investigation and deliberation.

### 2.2 Scope

The scope of this report is limited to institutional responses to juvenile justice in accordance with Vanuatu's legal framework, and the practices, procedures and development initiatives (current or planned) by relevant institutions. For this reason the analysis takes an *inside out* perspective, focusing on points of interaction or *touch points* between juveniles and institutions, and considering the capacity of institutions to fulfill their legal and human rights obligations, and the direction of future effort to strengthen this response. The idea of *touch points* is to target the transactional, experiential and procedural interactions between juveniles and public institutions.

The report also gives most focus to aspects of the system as relevant to juvenile offenders. This is not to exclude or ignore the critical needs of juvenile victims and witnesses as clearly any successful juvenile justice system must consider all points of contact with juveniles in their interactions with the legal institutions. However, the issue of victim support is covered comprehensively in a study – Victim Support, 6 October 2016 – prepared for the Heads of Agency Group by Stephen Barlow, Adviser to the Public Solicitors Office. A number of the

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<sup>1</sup> Median age is 20.5 years (source: 2009 Census, [www.vnso.gov.vu](http://www.vnso.gov.vu)); 44% of population is under the age of 18 years,

<sup>2</sup> 8 strategic priorities of the JCSSS: Customary dispute resolution; Victim support; Case progression; Juvenile justice; Human rights; Crime and the impacts of crime; Infrastructure; Access to justice.

recommendations made in this report are intended to be mutually reinforcing to those in the Victim Support study.

The aim of this work is to contribute to the establishment of a coherent and integrated approach to juvenile justice, and enable more effective responses to juveniles who come in contact with the state justice institutions. The institutions included in the analysis are the Judiciary and Courts, Vanuatu Police Force, including State Prosecutions Department, Ministry of Justice and Community Services, Department of Correctional Services, Public Solicitors Office, Office of the Public Prosecutor.

Other institutions are recognized as playing important roles in the system, but were not formally consulted: Malvatumauri<sup>3</sup>, Vanuatu Women's Centre and NGO's such as UNICEF, Youth justice forum.

## 2.3 Acknowledgements

It was clear from the background work undertaken to inform this report, that concern for the rights and protection of children is widespread, and this has translated into significant prioritisation and action. There exists a deep commitment to the idea of strengthening systems and practices that address the specific needs of juveniles, and goodwill is evident in the range of initiatives that are being progressed throughout the sector.

It is with great appreciation that the author acknowledges the time given by key representatives from across the sector (refer 5.1) to participate in many in depth and candid conversations that helped to inform this report. In addition, the considerable support offered by Advisers in Policing and Justice Support Program and the Correctional Services Partnership with New Zealand Aid for the gathering of reports and documentation, and sharing of ideas is gratefully acknowledged.

## 2.4 Definition of 'juvenile'

For the purposes of this analysis, 'juvenile justice' is relevant to children under the age of 18 years. This definition is consistent with the United Nations Convention on the Rights of the Child (UNCRC) ratified in Vanuatu in 1993, and the Family Protection Act (2008), and is consistent with advice on legislative reform for juvenile justice (Hamilton 2011). Juvenile justice also applies to children above the age of 10 years, which is defined as the minimum age of criminal responsibility (per *Penal Code [Cap 135], 17.1 Age of responsibility.*)

In addition, the Penal Code notes that a child between the age of 10 and 14 years, "*shall be presumed to be incapable of committing a criminal offence unless it is proved by evidence that he was able to distinguish between right and wrong and that he did so with respect to the offence with which he is charged.*"<sup>4</sup>

## 1.5 A holistic perspective of 'Juvenile Justice'

It is acknowledged at the start that juvenile justice is far from being a simple matter in the context of Vanuatu. Development and protection of children is a priority of Government, and sits at the nexus of *kastom* and formal systems of governance and community.

It is evident from the range of documents reviewed that juvenile justice is a complex issue that can be examined from many perspectives. A conceptualisation of juvenile justice is proposed that distinguishes between **three inter-related domains** as key to understanding and developing an integrated and coherent juvenile justice system. The concept is illustrated in

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<sup>3</sup> National Council of Chiefs

<sup>4</sup> This provision requires assessment of culpability, followed by appropriate action and is a noted area of risk for Police who are largely responsible for making initial assessments.

Figure 1, and is also helpful in positioning this report in terms of the scope and the limitations of the work.

The broadest strategic domain positions juvenile justice within a **national and international human rights agenda**. This is an overarching perspective that defines principles and standards associated with the treatment and management of juveniles in contact with the law as understood using a *rights-based* approach. This perspective draws on international standards to inform Government policy and responses to uphold the rights of children and juveniles such as the United Nations Rules (see Box 1) and the Convention on the Rights of the Child (UNCRC) that was ratified in Vanuatu on 7 July 1993. These offer Vanuatu a high level, principles-based standard as a benchmark for evaluating, creating and developing juvenile justice policy and systems.

Therefore development action undertaken in this domain is primarily concerned with a national agenda to **protect, respect and fulfill human rights**, and to organize in a way that makes this possible. When it comes to juvenile justice, the work starts at the highest level of Government with political will, the establishment of a legal framework that addresses the specific rights and needs of children and juveniles in contact with the law, and the capacity to organize and resource the institutions responsible. Notably development in this domain also needs to address the question of underlying philosophy, and particularly beliefs about the role and contextual value of punitive and restorative forms of justice.

Sitting within the overarching human rights domain, is a perspective of juvenile justice that positions it within a **social justice and community development agenda**. This broadly concerns understanding and practically addressing the specific and contextual needs of children and juveniles as members of society. In relation to juvenile justice, development in this domain concerns the *prevention of criminality and recidivism* in children, primarily through social and community development mechanisms. This perspective acknowledges that an understanding of the social context of juvenile crime must be fully taken into account in the design of juvenile programs (O'Connor 1997), and that crime prevention is largely a 'grass roots' activity.

In relation to Australia's experience of juvenile justice system development in the 1980's and 90's, O'Connor reflects:

*"The juvenile justice system originated in efforts to prevent the development of criminality in children and young people....while the motivations for this outcome were mixed, and many of the interventions were misguided and damaging, it did explicitly express a belief that the state had a responsibility to prevent the development of criminality, and that simple incapacitation or punishment would not deliver this desired outcome." (p.7)*

Conditions in the social context of children are understood to influence the development of criminality: access to education; exposure to abuse and exploitation; opportunity to transition from the educational to the work environment; capacity of the parents, family and community to provide a safe, nurturing environment protected from the criminal behavior of others; and access to appropriate developmental and social support when needed. An effective and integrated juvenile justice system must be based on a sound contextual understanding of the nature of crime, the mechanisms that best serve prevention of crime, and the development of criminality and recidivism. This requires the adoption of a data driven, evidence-based approach to design of juvenile crime prevention programs (Howell, Lipsey et al. 2014) that looks beyond 'flagship' or 'pilot' programs. Such programs usually benefit from intensive and consistent attention and resourcing (Smith 2005) and can lead to an over estimation of the effectiveness of programs under normal operating constraints.

The critical importance and complexity of development in this domain in Vanuatu should not be understated. Recent research conducted into conflict management at community level in Vanuatu<sup>5</sup> highlighted issues at the nexus of *kastom* and state justice, including the important

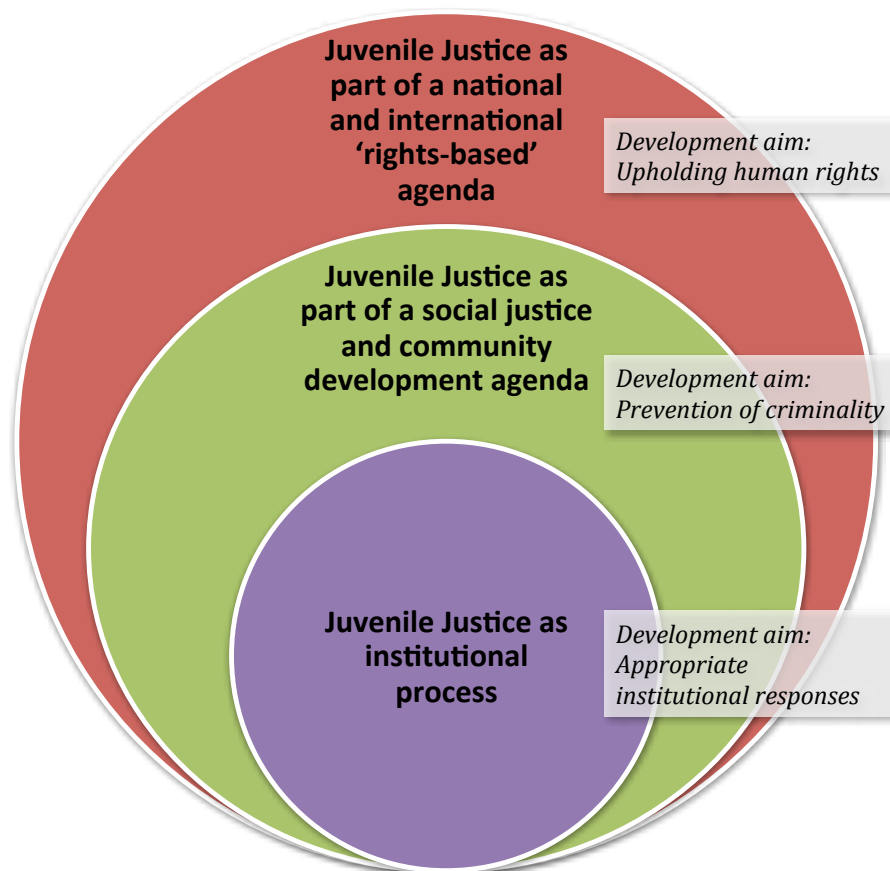
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<sup>5</sup> Conflict Management and Access to Justice in Rural Vanuatu, SRBJ, July 2016

role that chiefs and community leaders play in the delivery of justice at the community level. This is done with very little if any formal support or training, and is subject to risk of bias, favoritism, self interest, inconsistency in penalties applied and variation in compliance with the law. The research also highlighted that referral between chiefs and police varies in practice and this contributes to uncertainty about how juveniles will be dealt with: *kastom* or state justice? The research also notes that this is overlaid with the changing experience of juveniles in Vanuatu, and conflict emerging from generational differences and perceptions of youth:

*“Talking about the ‘problems with young people today’ is also something that happens in Vanuatu society, and talk about strongheded (stubborn, difficult, rebellious) youth is quite common. Youth are also increasingly marginalised in urban and rural communities, with limited opportunities for education and even more limited prospects for paid work or meaningful ways of occupying themselves.”<sup>6</sup>*

**Figure 1: Three inter-related domains of juvenile justice**



The implications of this in relation to juvenile justice and juvenile criminality, is complex and inherently difficult to research due in part to lack of reliable data reflecting the experience of justice institutions.<sup>7</sup> Some investigations into children’s (and women’s) access to justice (UNWomen 2016) and juvenile justice in Vanuatu have been reported (Morgan 2001), highlighting a lack of institutional capacity; dependency on aid funding; lack of financial resources as a barrier to accessing justice services; lack of legal literacy in youth; the need for stronger policy frameworks; and the inconsistent findings in relation to preferences of youth. In particular, backed up by other Pacific research, Morgan questions the capacity of *kastom* to

<sup>6</sup> *ibid*, pg. 78

<sup>7</sup> An exception is the data available through the annual Detainee Census conducted by Department of Correctional Services that offers a ‘downstream’ perspective on crime and criminality. Improved systems and data collection across the sector, including the recently launched PIMS in Police will offer more comprehensive and reliable data.



arbitrate and protect juvenile women as victims of sexual crime, an issue of particular relevance to Vanuatu given that the 2015 Detainee Census confirms that most juvenile crime resulting in detention is sexual crime (59%).

The third domain, which is of most relevance to this report, is the perspective of **juvenile justice as an institutional process**. This domain is nested within the human rights, and social justice and community development agendas, and focuses on the institutions that hold responsibility for delivering a *system* of juvenile justice. This domain considers both the whole-of-system capacity (cross sector) as well as the capacity of individual institutions to deliver appropriate and effective services and responses to juveniles under their purview. Hence the primary orientation of this domain in terms of development, focuses on how well these institutions meet their legal obligations, in terms of the practical systems, procedures and behaviours that define their institutional response to juveniles.

This nested and integrated view of juvenile justice opens the possibility of working at multiple levels, making small but integrated improvements in order to achieve broad scale change. The Vanuatu Child Protection Policy 2016-2030 is an example of this, as a policy instrument that sits across all three domains, and identifies strategic areas and objectives that are coherent and mutually reinforcing.

This holistic model differs somewhat from a definition of ‘juvenile justice system’ that focuses primarily on the institutional domain:

*“A juvenile justice system encompasses legislation, norms, standards, guidelines, policies, procedures, mechanisms, provisions, institutions and bodies specifically applicable to children in conflict with the law who are over the age of criminal responsibility.” (Hamilton 2011)*

Hamilton notes the importance of a holistic approach to juvenile crime prevention in communities through ‘primary’ and ‘secondary’ prevention programs<sup>8</sup> that aim to intervene early and prevent criminality, as being an essential part of a country’s comprehensive justice policy. However the ‘system’ itself should only be responsible for ‘tertiary’ prevention initiatives that aim to avoid reoffending once a juvenile enters the juvenile justice system (i.e. from arrest onward).

It is the last domain – juvenile justice as an institutional process – that best defines the focus of this inquiry and report, whilst acknowledging that development at institutional level is not the whole story. Ongoing development and achievement of “...an integrated Juvenile Justice System inside the Sector” must draw on the lessons already discussed, informed by a comprehensive understanding of the broader human rights, social justice and community development context, needs and opportunities. Wherever possible institutional development initiatives should be integrated, consistent with and mutually reinforcing of development in the broader domains.

#### **Box 1: United Nations Rules relevant to Juvenile Justice**

The UN refers to 3 rules as being relevant to juvenile justice:

1. UN Standard Minimum Rules for the Administration of Juvenile Justice 1985 (the Beijing Rules);
2. UN Guidelines for the Administration of Juvenile Delinquency 1990 (the Riyadh Guidelines);
3. UN Rules for the Protection of Juveniles Deprived of their Liberty 1990.

The UN summarises the principles associated with these three rules as follows:

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<sup>8</sup> ‘Primary’ prevention refers to initiatives that are universally applied, and ‘secondary’ initiatives are designed to target specific prevention issues.

- “1. Depriving a child of his/her liberty should be a last resort and there should be a minimum period of deprivation set out by the state.*
- 2. Deprivation of children's right to liberty should follow the provisions and norms as laid out in international law*
- 3. The state should set up small open facilities where children can be tended to on an individual basis and hence avoid additional negative effects of deprivations of liberty*
- 4. The institutions should have adequate facilities and meaningful activities for children to promote their health, safety and responsibilities. It should also provide them with all necessary skill trainings to become responsible members of society*
- 5. Institutions should be decentralized to allow for children to continue having access to their families and community.*
- 6. Juveniles deprived of their liberty should be aided in understanding their rights and obligations.*
- 7. Personnel dealing with juveniles should have adequate training regarding child rights and welfare.*
- 8. Juvenile Justice Systems should be aimed at helping and benefiting the child so that he/she can return to society with a better understanding of rights and responsibilities.”*

## **2.6 Limitations of this approach**

This study is focused on the domain of juvenile justice as an institutional process. As outlined in the previous section this focus is limiting given the understanding that juvenile justice is part of much broader and more complex development agenda. A narrow focus of inquiry can lead to identification of fixes that are superficial and lack integration, and mean that important voices are missing from process of diagnosis and design.

This limitation is acknowledged with an understanding that the work of establishing a juvenile justice system in Vanuatu is in its infancy. The recommendations made in this report are merely a launching platform for the next stage of development effort that will for practical reasons be driven largely by sector agencies, in collaboration with others and with possible development partner support. Opportunities for alignment and coordination with human rights, social justice and community development initiatives in support of juvenile justice should be sought out as key policies and initiatives progress toward implementation (e.g. National Child Protection Policy).

To help manage this risk, the report recommends the establishment of a high level mechanism for review of progress in the development of the juvenile justice system (refer section 3). If implemented and effective, this mechanism will open opportunity for future consideration of more complex issues, and the design of initiatives that extend beyond institutional responsibility.

### 3. Situation analysis

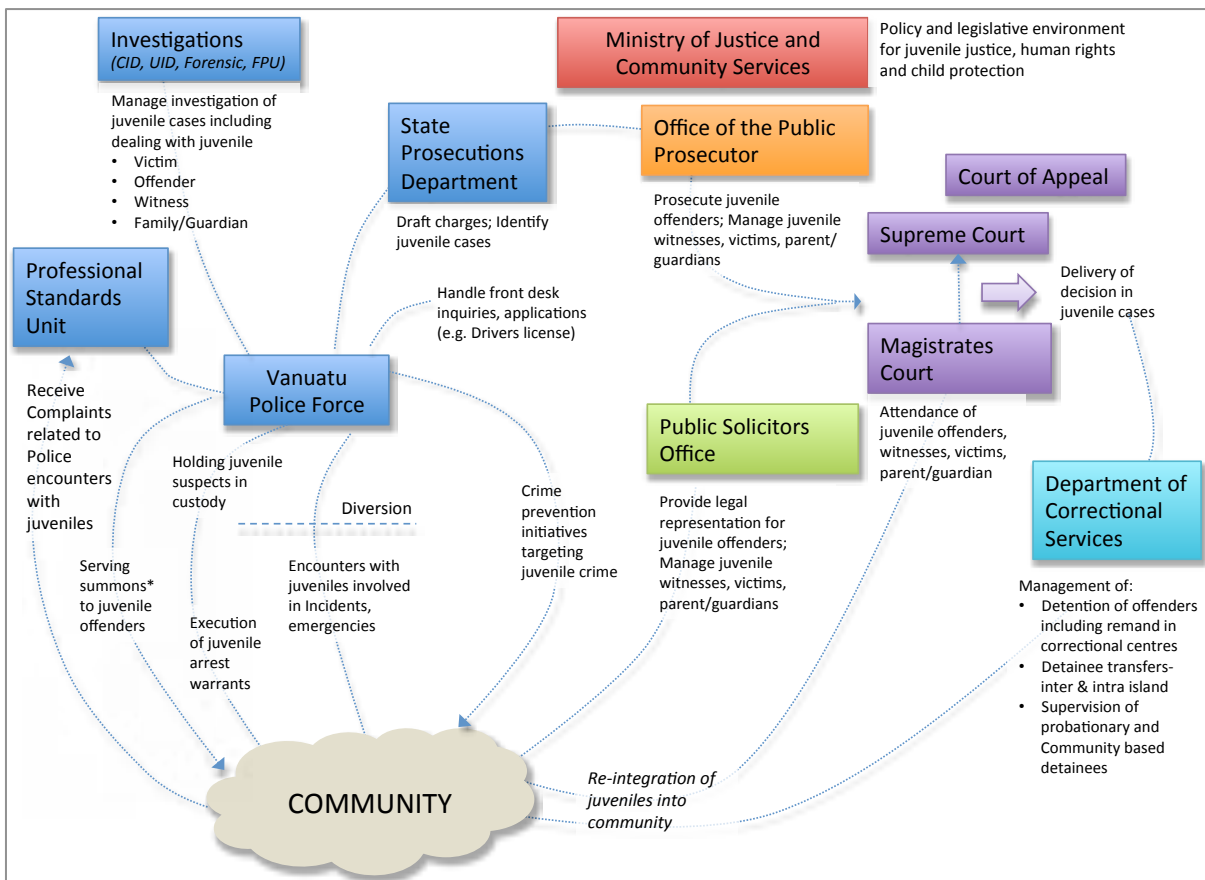
In Vanuatu, many institutions hold legislated responsibility for different parts of the juvenile justice system, as it is currently defined given that there is no specific and overarching legislation. To understand the system it is useful to prepare a map that indicates the:

1. The **systems and institutions** responsible for dealing with juveniles in conflict with the law
2. The existing **legal framework**; and
3. The **connections and interdependencies** of different parts of the process.

Two maps have been prepared to illustrate how the juvenile justice system currently works. Map 1 (Figure 2) illustrates the institutions involved and the nature of their responsibility as part of the juvenile justice system. Map 2 (Figure 3) illustrates the process from first encounter through all key stages of the justice process, and provides data to help contextualize juvenile justice in Vanuatu.

These Maps highlight the interdependent nature of the juvenile justice system, and the need for responsible institutions to not only be consistent and well coordinated in their delivery of services, but to share a philosophy about what effective juvenile justice *actually is* in Vanuatu.

**Figure 2: Map indicating institutions with legal responsibility for juvenile justice, and the nature of interactions with juveniles**



Map 2 (Figure 3) illustrates the process that juveniles (primarily offenders) are subject to as they move through the state system. The data mapped to the different parts of the system are useful as baselines, but except for proportional comparisons the data is of little value and in

some cases, is clearly unreliable. For example, the low representation of juvenile cases in the Magistrates Court is considered to reflect the lack of identifying information on cases that would enable them to be classified as 'juvenile'. In other words, the simple lack of confirmed age in case records means that juvenile cases are not treated as such and are therefore not accessing the few benefits that the system offers (e.g. juvenile hearing days).

*"Sometimes it is just a mistake so children need to be dealt with [by Police] quickly and appropriately." – Interview comment*

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The Map illustrates that 'diversion' is applied at a number of stages in the process:

- Diversion by Police before or after arrest;
- Diversion by Courts, pre trial or during trial, where a decision is made to not convict, or to discharge, with or without a record or warning.

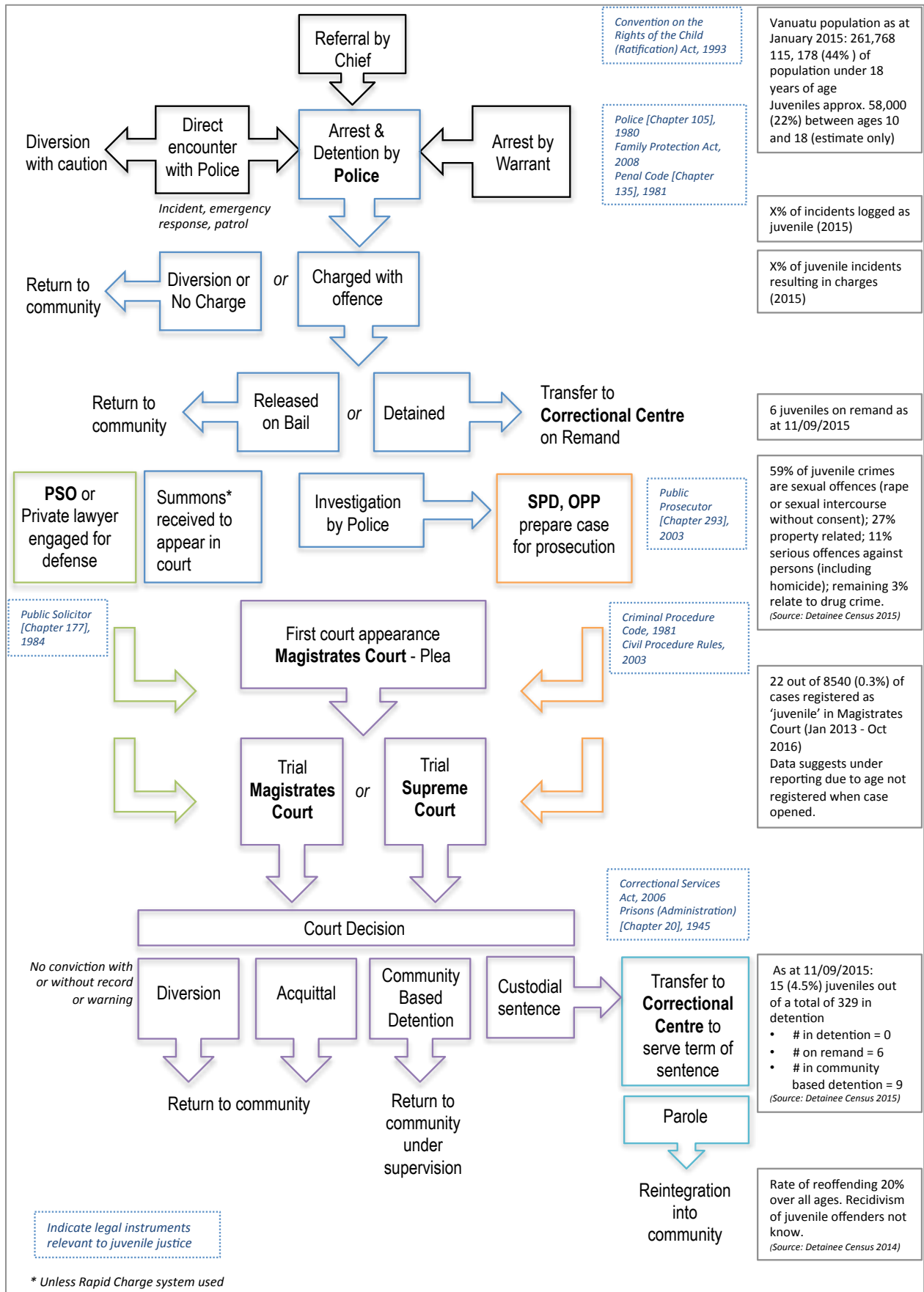
The practice of diversion is highlighted in literature as being of relevance to juvenile justice because it aims to keep children out of the system. It also offers first time juvenile offenders opportunity to 'grow out' of the behavior instead of being exposed to processes and people that have the potential to negatively influence young and impressionable individuals. Clearly 'diversion' strategies are an essential part of an effective juvenile justice system:

*"States should consider introducing a system of "stepped" responses for children who commit criminal offences, which include taking no further action, giving warning to children, pre-trial diversion and, as a last resort, trial." (Hamilton 2011)*

In Vanuatu, diversion across the sector can reasonably be described as lacking procedural guidance and is inconsistently applied. Diversion practice relies a great deal on the individual discretion of the responsible officer, and this carries with it risk associated with when and how effectively diversion is used. Recommendations in relation to this are made in section 4. Further comment is made on this issue in the National Child Protection Policy 2016-2030:

*"In relation to the administration of juvenile justice, the government has formally recognized the important role of Kastom via Police procedures that call for the diversion to the community of all child offenders, (with some exceptions) for rehabilitation and reintegration under the supervision of the Community Justice Supervisor (CJS). CJSs are normally a chief or designated community leader. There are however no guidelines around the protection of the child who is in a diversion programme."(p.25)*

Figure 3: Map 2 illustrating the juvenile justice process



### 3.1 Where improvement is happening

It is clear that there exists a genuine and shared interest in the development of an effective juvenile justice system, and that some agencies have initiatives in place that contribute to achieving this goal.

One multi-agency agreement that has helped to shape improvement in the juvenile justice system is the Pacific Judicial Development Program Memorandum of Understanding (2013). This MOU was designed to suit the needs and capacity of system in 2013, and identified a number of realistic and achievable actions. A number of these have been progressed. For example the Magistrates Court provide for special plea and hearing dates for juvenile cases; and the adoption of less formal, round-table settings for the court process. Further work is needed, and recommendations to help facilitate this are made in section 4.

In the Supreme Court, improvements have been made to create an environment that (when applied) is conducive to the needs of juveniles and helps improve their access to justice, whether victims, witnesses or offenders. For the most part the changes are procedural, although it is recognized that lack of physical resources does limit what is currently possible (e.g. lack of video conferencing). For example, practices include taking a 'wig off', informal approach and coming down from the bench to deal with juveniles at the same level; clearing the court room; allowing a parent to sit with them; talking to young offenders optimistically; and for juvenile victims, the courts can use a physical screen to block eye contact with defendant, or evidence may be taken in separate room.

The Department of Correctional Services (DCS) are progressing the establishment of a correctional facility in Luganville (due for construction in 2017) designed specifically for juveniles. The design was developed in consultation with the Office of the United Nations High Commissioner for Human Rights Regional Office for the Pacific Region and New Zealand Corrections, with the intention of complying with international conventions and standards, and addressing the needs of juveniles including their specific support, recreational and education needs. The DCS have also initiated an amendment to the Correctional Services Act (2006) to make small but significant changes relating to the legal age of juveniles in the correctional system (see also Recommendations).

The development in 2016 of the National Child Protection Policy 2016-2020 by the Child Desk team of the Ministry of Justice and Community Services also marks an important milestone for Vanuatu. The policy raises the profile of juvenile justice issues alongside social, educational and other provisions, and positions juvenile justice as part of a national human rights and community development agenda. In particular, the Policy includes Strategic Areas that are directly relevant to strengthening juvenile justice:

- Strategic Area 5: *Development / strengthening of government standards and guidelines for child protection actors working with children that reflect best practice and meet Vanuatu's international and national legal obligations.*
- Strategic Area 6: *Strengthening the Legal Framework for Child Protection*
- Strategic Area 7: *Strengthening capacity of government stakeholders and service providers involved in the protection of children*

Within each of these strategic areas are several objectives designed to address the specific needs of juveniles as victims, witnesses and offenders in line with international conventions. Many of the recommendations made in this report align with objectives and activities in the Policy.

## 3.2 Systemic barriers to improvement

The inquiry raised a number of concerns that are indicative of deeper and systemic barriers to improvement in juvenile justice across the sector. The following summarises many of the current challenges in the system that need attention. Actions to address these issues are included in the Recommendations section 4.

### Lack of data derails the process early

Access to data is essential for an effective juvenile justice system. Arguably under the current systems in Vanuatu, the most critical piece of data required early in the process is confirmation of age. This is critical because age is the trigger for a range of special provisions that are designed to suit the needs of juveniles in their interactions with Police (e.g. parent or guardian must be present during interviews), in terms of how a case is subsequently managed and prioritized (e.g. SPD stamp juvenile files), through to plea dates and the arrangements for court hearings (e.g. Magistrates Court in Port Vila schedule plea dates twice monthly just for juvenile cases; Use of a 'round table' configuration for juvenile cases). If age is not confirmed or recorded, then affected juveniles are progressed through the system as if they are not a juvenile case.

### Lack of clear legal imperative

Vanuatu does not have legislation that targets and responds to the specific needs of a juvenile justice system. Rather requirements for the management and treatment of juveniles in contact with the law is scattered throughout many laws, and guided by international human rights instruments (e.g. UNCRC). Examples in the region of legislation that addresses the specific needs of juveniles are the Juvenile Justice Act (1980) in American Samoa, the Juvenile Courts Act (1991) in Papua New Guinea and the Juveniles Act in Fiji.

In the absence of clear legal imperative, it is left to institutions (e.g. through development of procedural guidelines) and individual officers to exercise discretion in their dealings with juveniles. This leaves the way open for variations in individual practice and approach when dealing with juveniles and juvenile cases. For example, the Supreme Court may adopt a 'wig off', more informal approach to dealing with juveniles in court, but this is a practice that may or may not be used by individual judges. Or in dealing with child victims, it may be common and expected practice to close the court, but this is still subject discretion as there is no legislative requirement to do so.

This is one area where development of internal procedural guidelines can help fill the void by targeting practical and principles-based interpretations of the existing legal framework. For example, the Lawyers Handbook in the Public Solicitors Office offers lawyers a principles and legal precedent-based point of reference to guide their dealings with juveniles, and in their defense of juvenile offenders.

However, for the most part, the absence of clear legal imperative in Vanuatu in relation to juvenile justice means that agencies must piece together and standardize what they can from the available legal framework, and accept the risks that come with individual discretion.

### Variation in awareness and compliance to special provisions

Even when an organization has a policy, guideline or procedure in place to define how juveniles will be managed, the potential advantages of this are eroded when there is a lack of awareness and compliance amongst those who come into contact with juveniles, or are responsible for processing juvenile cases. For example, the *Police Guidelines for handling young people in conflict with the Law* were developed in 2011 but are yet to be comprehensively applied. There is no Unit specializing in juvenile justice, nor officers that are comprehensively trained to deal with juveniles, and who can train and instruct other officers. This leaves the VPF open to risk of

inappropriate practice in dealing with juveniles<sup>9</sup>. Ensuring awareness and procedural compliance is an issue for agencies that extends beyond the needs of a juvenile justice system, however this highlights a lack of capacity more generally in the area of quality and human resource management.

### **Lack of oversight to drive sector wide improvement**

The development and multi-agency endorsement of the Pacific Judicial Development Program Memorandum of Understanding – Youth Justice in Vanuatu – in 2013 signaled a new intention to progress the next stage of development of a juvenile justice system. The MOU was structured to acknowledge the part played by many agencies in the delivery of juvenile justice services, and named practical and achievable improvements in process.

However, progress to implement the MOU has been slow in many areas, due in large part to the absence of an implementing and coordinating mechanism. Uptake of responsibilities for action have relied upon the initiative of individual agencies, which has likely contributed to items requiring the action of more than one agency being left behind. For example, one of the pre-court items involves coordination between PSO and VPF to ensure that juveniles have access to legal representation during interview and pre-charge processes. This item was raised in the background discussions for this report as one that is yet to be progressed and still very much needed. Arguably, the establishment of a mechanism to provide oversight, management and a space for advocacy, could speed up implementation of the MOU recommendations.

### **Lack of specialized juvenile facilities**

Not surprisingly, a barrier to improvement is reflected in the lack of physical spaces that are suitable and designed to meet the specific needs of juveniles.

- A juvenile correctional facility is scheduled to commence construction in 2017. However in the meantime, apart from allocating juveniles to cells where they can be together, correctional centres have no provision – procedural or otherwise – to separate juvenile and adult detainees.
- Police have no capacity to separate juveniles from adults in custody. Juveniles detained in police cells for extended periods are vulnerable to trauma, and can be exposed to criminal behaviour.
- In courts unless protective steps are taken, juvenile victims, often females, can be required to face their male perpetrator in court, adding to existing trauma.

### **Lack of specialist skills**

The lack of specialist skills for dealing with juveniles is a barrier that applies across the sector. VPF has few officers who are specifically trained and equipped to carry out questioning, interviews and investigations in cases involving juveniles. Interviewing officers need to be able to secure sworn statements, and to test the understanding of ‘right and wrong’ of a child who is between the ages of 10 and 14, to establish criminal responsibility (refer Penal Code, 17.1). In addition, given the broad exposure of general duty police who respond to incidents and emergencies, VPF lacks capacity to provide suitable interpersonal skills training and procedural training for dealing with, and where appropriate, diverting juveniles from the system.

In the Courts, highly developed skills are needed for judicial officers to effectively interact with, question, and use language and practices that are suitable for dealing with juveniles (offenders, victims, witnesses). Given the shortage of specialist skills amongst magistrates, this kind of development is important for all.

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<sup>9</sup> This can potentially be tracked through complaints related to treatment of juveniles received at Professional Standards Unit and Office of the Ombudsman



## 4. Recommendations

Improving institutional responses to juvenile justice is a complex issue, however it is clear that there is a great deal of interest and shared good will across the Sector to find ways to facilitate progressive change. The recommendations proposed aim to contribute to systemic improvements, and are intended to be realistic and achievable given the available resourcing and range of institutional constraints.

The recommendations are categorized according to the following:

1. **Procedural Improvements:** This category includes recommendations that are primarily concerned with changes in management practice.
2. **Behavioural Improvements:** This category includes recommendations that are primarily concerned with changes in behavior, requiring some training and development investment.
3. **Structural Improvements:** This category includes initiatives that will require some significant reorganization, such as structural change, changes to infrastructure or investment in new systems of work.
4. **Legal & Policy Improvements:** This category includes amendments or changes to the legal framework related to juveniles in contact with the law.

### 4.1 Procedural Improvements

#### Recommendation 1: Strengthening monitoring and evidence-based practice in juvenile justice through use of targeted indicators

*Proposed lead: Ministry of Justice and Community Services*

This recommendation responds to the need for improved access to data that can be usefully used to monitor performance and assess progress in relation to juvenile justice, and to support the development of evidence-based practice. At a minimum this means establishing specialized indicators that will enable a national perspective of juvenile justice outcomes and processes to be tracked over time. This is noted as essential in the JCSSS, which also proposes some measures (e.g. percentage of juveniles sentenced receiving a custodial sentence), and should not be seen to replace agency level indicators, but to add another layer of data from a cross sectoral perspective.

The Manual for Measurement of Juvenile Justice Indicators developed by UNICEF (2006) suggests that a national perspective of juvenile justice is served by the adoption of several core indicators, plus other indicators that may be applied as required. The following Table 1 summarises the recommended **core indicators** and offers a calculation or comment in relation to baseline, and describes how the indicators may be established as part of national performance monitoring.

**Table 1: Proposed national indicators to monitor juvenile justice outcomes**

Indicator <sup>10</sup>	Definition in brief	Baseline Estimate	Comments
Indicator 2: Children in detention	Number of children in detention per	Estimated children under 18 years in 2015 = 115,178 <sup>11</sup> 15 juveniles in detention as at	Calculated based on: Population as at January 2015: 261,768

<sup>10</sup> UNICEF (2006). Manual for the measurement of juvenile justice indicators. New York, United Nations Office on Drugs and Crime and United Nations Children's Fund (UNICEF).

<sup>11</sup> Source: National Child Protection Policy 2016-2026

	100,000 child population.	11 September 2015 <b>Rate = 13 per 100,000 (2015)</b>	( <a href="http://countrymeters.info/en/Vanuatu">http://countrymeters.info/en/Vanuatu</a> ) % Population under 18 years of age = 44% ( <a href="http://www.unicef.org/infobycountry/vanuatu_statistics.html">www.unicef.org/infobycountry/vanuatu_statistics.html</a> ) Detention data sourced from the 2015 Detainee Census
Indicator 3: Children in pre-sentence detention	Number of children in pre-sentence detention per 100,000 child population.	Estimated children under 18 years in 2016 = 115,178 <sup>12</sup> 6 juveniles on remand as at 11 September 2015 <b>Rate = 5.2 per 100,000 (2015)</b>	Data sourced from the 2015 Detainee Census
Indicator 9: Custodial sentencing	Percentage of sentenced children receiving a custodial sentence.	Juveniles in detention = 0 Juveniles in community based detention = 9 <b>Indicator = 0% (2015)</b>	Data sourced from the 2015 Detainee Census; Due to the lack of correctional facilities that separate juveniles from adult offenders, judicial practice has tended toward diversion and community detention.
Indicator 10: Pre-sentence diversion	Percentage of children diverted or sentenced who enter a pre-sentence diversion scheme.		Data not currently available. New CRIMS may offer opportunity to capture this data.
Indicator 14: Specialised juvenile justice system	Existence of a specialised juvenile justice system.	<ol style="list-style-type: none"> <li>1. Minimum age of criminal responsibility specified in the Penal Code.</li> <li>2. Diversion practices are utilized, although not in a standardized and consistent fashion;</li> <li>3. The Courts and Department of Correctional Services utilize Community Based Detention for convicted juvenile offenders.</li> </ol>	<p>UNCRC, Article 40(3) and (4) provides a <u>minimum standard</u>:</p> <ol style="list-style-type: none"> <li>1. Establishment of a minimum age of criminal responsibility;</li> <li>2. Provision of measures, where appropriate, for children in conflict with the law without resorting to judicial proceedings;</li> <li>3. Provision of a variety of alternatives to institutional care</li> </ol>

### Recommendation 2: Establish regular review of progress on juvenile justice

*Proposed lead: Chair of the Justice Sector Leadership Forum*

This recommendation aims to improve oversight of the development of the juvenile justice system over time, and ensure alignment with other related initiatives (e.g. implementation of National Child Protection Policy activities). It is recommended that establishing 'juvenile justice' be added as a regular item (3-6 monthly) in the agenda of the Justice Sector Leadership Forum (formerly Heads of Agency Group). The re-invigoration of the Courts Users Group (from late 2016) also offers a forum where review and oversight can be facilitated.

<sup>12</sup> *ibid.*

**Recommendation 3: Establish access to a PSO lawyer to attend juvenile interviews and provide appropriate legal representation**

*Proposed lead: Public Solicitor*

The Pacific Judicial Development Program Memorandum of Understanding on Youth Justice in Vanuatu suggests the need for improved access by Police to PSO lawyers who can be contacted to attend the Police station and provide legal advice and representation to juveniles during Police processing. (Also refer p.74, PSO Lawyer Handbook, 2015). This initiative is still highly relevant and needs to be progressed.

**Recommendation 4: Improve access to critical information to facilitate juvenile justice processes**

*Proposed lead: Vanuatu Police Force/ VAPP*

(i) This recommendation seeks to address a fundamental but important need for critical information to be recorded so that juvenile cases are correctly and clearly identified, recorded by Police, and transferred to case files and data systems (e.g. CRIMS and CMS). This improvement will help ensure that juvenile cases are managed to take best advantage of special provisions that exist in the judicial system as it currently stands.

*Proposed lead: Department of Correctional Services*

(ii) To assist the Magistrates Court in relation to juvenile cases, Department of Correctional Services are requested to provide pre-sentencing reports, as these offer important history for juveniles. During Court circuits this need is met by the accompanying Correctional Services officer, however, reports are not routinely provided in Port Vila.

**Recommendation 5: Strengthen diversion practices for juveniles**

*Proposed leads: Vanuatu Police Force; Chief Justice*

Diversory practices that help to direct juveniles away from the formal legal system is consistent with the UN rules (refer Box 1) and international conventions (e.g. UNCRC). In Vanuatu practices vary, and there is value in defining and proceduralising the use of diversion practices in Police and the Courts.

## **4.2 Behavioural Improvements**

**Recommendation 6: Provide specialized skills training for investigators, legal and judicial officers**

*Proposed lead/s: Vanuatu Police Force; Judiciary; Office of the Public Prosecutor; Public Solicitor's Office*

There is a broad need for additional skills development that targets the interpersonal and professional skills needed to deal with juveniles as part of the justice system. This recommendation needs further work to scope the activities, and find appropriate avenues for training and development. For example, this may be adopted as a key area of professional instruction by Victorian Bar Barristers in the next stage of legal advocacy development planning for 2017, and may be a priority in the program of training for judicial officers.

**Recommendation 7: Implement training for General Duty and Investigations officers in the Police Guidelines**

*Proposed lead: Vanuatu Police Force*

This recommendation aims to support 'front line' Police to understand and apply the *Police Guidelines for Handling Young People in Contact with the Law* and *Police Guidelines for Handling Young Victims and Witnesses*, and to provide additional guidance to Police Officers in their capacity to assess criminal responsibility in juveniles between the ages of 10 and 14.

### **Recommendation 8: Implement training to apply diversionary practices**

*Proposed lead: Vanuatu Police Force; Judiciary*

This recommendation aims to ensure that diversion (as defined and standardized in recommendation 5) is applied in Vanuatu as an intentional and consistently applied practice. Work is required to define and customize a range of approaches to diversion, followed by conduct of training and professional support of officers who are responsible for applying diversion.

## **4.3 Structural Improvements**

### **Recommendation 9: Support the establishment of the juvenile justice unit in VPF**

*Proposed lead: Vanuatu Police Force*

The VPF have identified the need for a Juvenile Unit (included in 2014 VPF structure), and strengthening juvenile justice is a priority in the VPF Strategic Plan 2016-2020 and Business Plan 2016. The importance of juvenile justice was also confirmed by initiatives developed by VPF participants in the Building Community Partnerships course, run in June to October 2016 that aimed to progress the establishment of the Juvenile Unit. The initiative includes development and application of specialized approaches to juveniles, and promotion of diversion practices consistent with the current VPF guidelines, which are in place but not broadly or consistently applied. The implementation of this initiative will draw on considerable resources to address infrastructure and facility development needs, as well as specialist training, but is likely to make an important contribution to improving the effectiveness and appropriateness of Police interactions with juveniles.

### **Recommendation 10: Design an operational model for the new juvenile correctional facility**

*Lead: Director, Department of Correctional Services*

Department of Correctional Services are aware of the need to design and establish an operational model in the new Luganville Juvenile Correctional Centre that considers the specific social, educational and recreational need of juveniles in detention. It is also recognized that this will require considerable training of staff, and a particular interest in first time offenders and how the Centre can foster rehabilitation and behavioural change to reduce risk of reoffending, and support reintegration into community once a sentence is served. This initiative is being progressed through the DCS through partnership with the New Zealand Government.

## **4.4 Legal & Policy Improvements**

### **Recommendation 11: Amend relevant legislation to standardize the definition of 'juvenile' or 'child' as being under 18 years of age**

Currently the defined age of juvenile (or 'child' or 'minor') varies amongst different legal instruments. It is proposed that amendments be progressed to standardize the defined age consistent with:

1. The UNCRC that defines a child as being under 18 years of age (Article 1... "*a child means every human being below the age of eighteen years*"); and
2. The Family Protection Act 2008 defines a child as being under 18 years of age (Section 2), as does the Civil Procedure Rules (2003),

Specifically, amendments are recommended for:

1. The **Correctional Services Act 2006** uses the term 'minor' to define a child under the age of 16 for the purpose of separation in detention. An amendment is currently being

progressed by Department of Correctional services with State Law Office to amend this age to 18 years. The proposed Amendment to Section 21(3) includes:

- a. Change 'minor' to be a person under 18 years of age, and 'adult' to be 18 years and over;
- b. Replace the term 'minor' with the term 'juvenile'.

*Lead: Department of Correctional Services*

2. The **Penal Code [Cap 135]** defines a 'child' as being under 18 years of age (Section 101A), however the Code also refers to children as being under 16 years of age in relation to specific offences (Sections 95; 147A) and in relation to imprisonment of 'minors' (Section 38). Amendments that clarify and standardize the use of terms and age will strengthen the legal framework.

*Proposed lead: TBC*

### **Recommendation 12: Amend criminal and civil procedures to include special conditions for dealing with juvenile offenders**

*Proposed lead: Judiciary*

This recommendation aims to strengthen the legal framework so that it offers specific guidance to judicial officers in the management of juvenile cases. Currently, there are no provisions made that address the specific needs and interests associated with juvenile cases, and this leads to the need for judicial officers to exercise discretion and lack of standard practice. It is proposed that specific amendments be progressed as to include special provisions for dealing with juveniles as follows:

1. Amend the **Civil Procedure Rules** of 2003 to include special provisions for dealing with juvenile cases, possibly by addition to Part 16: Particular Proceedings or other.
2. Amend the **Criminal Procedure Code** of 2003 to include special provisions for dealing with juvenile cases.

## 5. Attachments

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### 5.1 Stakeholders consulted

Vanuatu Police Force	Deputy Commissioner Police Operations, Willie Ben Kalo OIC General Duties Policing, Chief Inspector Clera Seth
State Prosecutions Department	A/Officer in Charge, Wycliff Tarilenga
Office of the Public Prosecutor	Public Prosecutor, Josaia Naigulevu
Public Solicitors Office	
Courts and Judiciary	Honourable Chief Justice, Vincent Lunabek Members of the Supreme Court bench Chief Magistrate, Stephen Felix
Ministry of Justice and Community Services	Director General, Mark Bebe
Department of Correctional Services	Director, Johnny Marango

### 5.2 Juvenile Justice Instruments

#### Legal instruments

The laws of Vanuatu specifically related to juveniles in conflict with the law:

1. Convention on the Rights of the Child (Ratification) Act, 1993
2. Police Act [Chapter 105], 1980
3. Family Protection Act, 2008
4. Penal Code [Chapter 135], 1981
5. Public Prosecutor's Act [Chapter 293], 2003
6. Public Solicitor Act [Chapter 171], 1984
7. Criminal Procedure Code, 1981
8. Civil Procedure Rules, 2003
9. Correctional Services Act, 2006
10. Prisons (Administration) [Chapter 20], 1945

#### Policy instruments

1. Pacific Judicial Development Program Memorandum of Understanding – Youth Justice in Vanuatu, developed with multi-agency engagement and endorsed February 2013;
2. National Child Protection Policy 2016-2026

## Procedural instruments

Organisation	Name of Document	Status
Vanuatu Police Force	Police Guidelines for handling Young People in Conflict with the Law, March 2011, UNICEF	Guidelines are in place but not widely or consistently applied.
	Police Guidelines for Handling Young Victims and Witnesses. March 2011, UNICEF	Guidelines are in place but not widely or consistently applied.
State Prosecutions Department	State Prosecutors Handbook	Translation to Bislama in process.
	Juvenile Justice Policy, 2013	Not adopted.
Public Solicitor's Office	Lawyer Handbook, 2015	Provides comprehensive and principles-based guidance to lawyers on dealing with juveniles from initial representations while in Police custody through to detention.
Office of the Public Prosecutor	To be confirmed	
Judiciary and Courts	Practice Direction for Juvenile's in contact with Court Process, by Sophie Shah USP, 2013; Funded by UNICEF.	Awaiting endorsement and approval by the Chief Justice.

## 5.3 References

Hamilton, C. (2011). Guidance for legislative reform on juvenile justice. New York, Children's Legal Centre and United Nations Children's Fund.

Howell, J. C., M. W. Lipsey, J. J. Wilson and M. Q. Howell (2014). "A practical approach to evidence-based juvenile justice systems." *Journal of Applied Juvenile Justice Services*.

Morgan, M. (2001). "Disentangling juvenile justice and kastom law in Vanuatu: issues arising from the Governing for the Future workshop " *Development Bulletin* **56**.

O'Connor, I. (1997). Models of juvenile justice. *Australian Institute of Criminology Conference*. Adelaide.

Smith, D. J. (2005). "The effectiveness of the juvenile justice system." *Criminal Justice* **5(2)**: 181-195.

UNICEF (2006). Manual for the measurement of juvenile justice indicators. New York, United Nations Office on Drugs and Crime and United Nations Children's Fund (UNICEF).

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