

# *FAMILY VIOLENCE AND YOUTH JUSTICE PROJECT WORKSHOP TOOLKIT - ADDITIONAL DOCUMENTATION*

Available at: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>





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## ANNEX 1: LIST OF PARTICIPANTS

### Family Violence & Youth Justice Workshop, Vanuatu

Participants	Department/ organisations
Chief Justice Vincent Lunabek	Supreme Court
Judge Robert Spear	Supreme Court
Judge Mary Sey	Supreme Court
Judge Dudley Aru	Supreme Court
Judge Daniel Fatiaki	Supreme Court
Chief Magistrate , Stephen Felix	Magistrates Court
Senior Magistrate Nesbeth Wilson	Magistrates Court
Senior Magistrate Rita Naviti	Magistrates Court
Magistrate Peter Moses	Magistrates Court
Magistrate Hannaline Ilo Nalau	Magistrates Court
Chief Registrar John Obed Alilee	Supreme Court
Merelyn George	Child Protection Unit, Police
Davis Saravanu	Child Protection Unit, Police
James Aru Toka	Police, Department
Leias Kaltovei	Child Desk Officer, Women's affair
Brenda Nabirye	Child Protection Officer, UNICEF
Daniel Tavo	Correctional Services
Shem Tema	Vanuatu Christian Council of Churches (VCC)
Hellen Corrigan	AusAID (Law & Justice sector)
Natalie David	Ministry of Justice
Goimel Soalo	Ministry of Justice
Beverley Kanas	Ministry of Justice/ Law Commission
Merelyn Tah	Vanuatu Women's Crisis Centre
Vola Matas	Vanuatu Women's Crisis Centre
Jacob Kausiama	Public Solicitor Office
Viran Trief	Solicitor General
Jane Gereva	State Law Office
Frederick Gilu	Attorney General's Office
Bill Bani	Law Society
Kayleen Tavo	Public Prosecution Office
Grey Vuke	State Prosecutor
Alikta Vuti	National Council of Chiefs
Kathy Southall	Save the Children Vanuatu

Family Violence & Youth Justice Workshop, Palau

Participants	Department/ organisations
Alan Marbou	Juvenile Justice
Alex Ngiraingas	Community Guidance Center
Carol Ngiraidis	Milad'l Dil
CID Officer	Bureau of Public Safety (Police)
Clara Rechebei	PO - Probation Officer
Cleory Cleophas	Chief PO - Probation Officer
Dave Tarimel	Court Marshals (Monitor Juvenile/Probationers)
Delanie Prescott-Tate	Olbiil era Kelulau (National Congress) / Legal Counsel
Ernestine Rengiil	Attorney General
Hedrick Kual	
Hesus Omisong	Division of Corrections
Honora E. R. Rudimch	Sr. Judge
J. Uduch S. Senior	Palau Bar Association (Attorney)
Jasmine Vergara	Behavioral Health / Ministry of Health
Jennifer Olgeriil	Bureau of Public Safety (Police)
Kathleen M. Salii	Justice
Kattery Faustino	Ministry of Health
Kazuki Topps Sungino	Palau National Olympic Committee
Kenny Reklai	Palau National Olympic Committee / Micronesia Youth Services Network
Lalii Chin Sakuma	Public Defender
Laura Mangham	Talent Search / Ministry of Education
Lorenza Pedro	Ekei - Elder Women Organization
Lue Cee Kotaro	School Health
Marhence Madrangchar	Delegate, Olbiil era Kelulau (National Congress)
Ngirakebou Roman Bedor	Member of Palau Council of Chiefs / Palau Bar Association (Attorney)
Ngiraked Yukiwo Dengokl	Member of Palau Council of Chiefs / Palau Bar Association (Attorney)
Noe Yalap	Ministry of Education
Patrol Officer	Bureau of Public Safety (Police)
Rachel Dimitruk	Palau Bar Association (Attorney)
Rebecca Koshiba	Victims of Crime Abuse
Roberta Louch	Ekei - Elder Women Organization
Romeo Reddin	Court Marshals (Monitor Juvenile/Probationers)
Shelley Ueki	Community Guidance Center -BH Worker
Siegfried Nakamura	Palau Bar Association (Attorney)
Victoria Roe	Attorney General

## ANNEX 2: WORKSHOP PROGRAMME

### Pacific Judicial Development Programme Family Violence and Youth Justice Workshop 24 - 27 July, 2012 - Koror, Palau

#### Family Violence Workshop - Daily Programme

**Workshop objective:** to discuss family violence issues in the Pacific context, and to train judicial officers in the approach to and handling of a family violence case given the Pacific context and given the outcomes which are available and which are appropriate. The intention of the workshop is to mix theory and research with interactive discussion and role plays of actual cases so that the dynamics of what is being discussed and taught can be experienced and the reality tested.

Day One: Tuesday 24 July - Definitions, Theory and Community Interaction				
Time	Topic	Aims/Outcomes	Activities	Resources
8.30 - 10.30am (120 mins)	Opening of workshop  <b>Session One</b> - The Definition of Family Violence and Police Practice  What is Police Philosophy and Charging Practice	Have a clear understanding of the aims and desired outcomes of the workshop  Develop a good understanding of what a Family Violence is Be informed about and understand Police practice	Lecture   Lecture and use of statistics and data	• Chief Judge Peter Boshier  • Inspector Samasoni Malaulau • Palau Police Director
10.30 - 10.45am	<i>Morning Tea</i>			
10.45 am - 12.15pm (90 mins)	<b>Session Two</b> - The Background and the Drivers	What attitudes and influences are important What is the role of religion and culture	Facilitated group discussion	• Inspector Samasoni Malaulau • Palau Police Director • Victims of Crime Abuse • Behavioral Health
12.15 - 1.30pm	<i>Lunch</i>			
1.30 - 2.45pm (75 mins)	<b>Session Three - Theory and Typology of Family Violence</b>	What are the types of Family Violence, and how should the different types be treated	Lecture and group discussion	• Victims of Crime Abuse • Community Guidance Center • Behavioral Health • NGO representatives
2.45 - 3.00pm	<i>Afternoon Tea</i>			

3.00 - 4.00pm (60 mins)	<b>Session Four</b> - Community Response and Interaction	What does the community expect of us and what are our points of interaction	Lecture and facilitated discussion	<ul style="list-style-type: none"> <li>• Inspector Samasoni Malaulau</li> <li>• Palau Police Director</li> <li>• Corrections Officers</li> <li>• Behavioral Health</li> <li>• NGO representatives</li> <li>• Ministry of Education</li> </ul>
4.00 - 5.00pm (60 mins)	<b>Session Five</b> - The Judicial Role	What we presently know and what we may need to know more of in order to handle cases in the best fashion	Facilitated group discussion	<ul style="list-style-type: none"> <li>• Chief Judge Peter Boshier</li> <li>• Justice Salii</li> </ul>
5.15 - 5.30pm (15 mins)	Evaluation			

Day Two: Wednesday 25 July - In the Courtroom				
Time	Topic	Aims/Outcomes	Activities	Resources
8.30 - 10.30am (120 mins)	<b>Session One</b> - The First Appearance	What safety factors should be borne in mind for the victim <i>bail and place of safety option</i> a request to withdraw the charge against the defendant	Lecture Group discussion	<ul style="list-style-type: none"> <li>• Chief Judge Peter Boshier</li> <li>• Inspector Samasoni Malaulau</li> <li>• Justice Salii</li> </ul>
10.30 - 10.45am	<i>Morning Tea</i>			
10.45am - 12.15pm (90 mins)	<b>Session Two</b> - Defended Hearings	Withdrawal of "complaint" and wish of the victim to recant i. The cultural and family pressures that will be at work and how this will be played out ii. Personal and family disgrace - how that will be recognised and addressed iii. Courtroom organisation iv. The components of evidence and how these components are best applied	Mock Court case	<ul style="list-style-type: none"> <li>• Chief Judge Peter Boshier</li> <li>• Inspector Samasoni Malaulau</li> <li>• Justice Salii</li> <li>• Senior Judge Rudimch</li> </ul>
12.15 - 1.30pm	<i>Lunch</i>			
1.30 - 2.45pm (75 mins)	Defended hearings continued			
2.45 - 3.00pm	<i>Afternoon Tea</i>			

3.00 - 4.15pm (75 mins)	<b>Session Three</b> - The Guilty Plea or Finding of Guilt After a Defended Hearing and Sentence	What are the sentencing options Hearing from the victim Custom and reconciliation	Lecture, facilitated discussion and role plays	<ul style="list-style-type: none"> <li>• Chief Judge Peter Boshier</li> <li>• Justice Salii</li> <li>• Senior Judge Rudimch</li> <li>• Department of Corrections</li> </ul>
4.15 - 4.45pm (30 mins)	<b>Session Four</b> - Conclusion and Setting Goals	What have we learnt What might we do differently, and how might we do that	Facilitated discussion	<ul style="list-style-type: none"> <li>• Chief Judge Peter Boshier</li> <li>• Justice Salii</li> <li>• Jelga Emiwo</li> </ul>
4.45 - 5.00pm (15 mins)	Evaluation			

## Youth Justice Workshop - Daily Programme

**Workshop objective:** to discuss youth justice issues in the Pacific context, and to train judicial officers in the approach to and handling of youth justice cases given the Pacific context and given the outcomes which are available and which are appropriate. The intention of the workshop is to mix theory and research with interactive discussion and role plays of actual cases so that the dynamics of what is being discussed and taught can be experienced and the reality tested.

Day Three: Thursday 26 July				
Time	Topic	Aims/Outcomes	Activities	Resources
8.30 - 10.30am (120 mins)	Introduction & Overview  <b>Session One</b> - Palau's Experience	To understand the present Youth Justice (YJ) process in Palau including its limitations.	Panel discussion, notes on whiteboard to record main points. Comments from the Panel	<ul style="list-style-type: none"> <li>• Judge Harding</li> </ul>
10.30 - 10.45am	<i>Morning Tea</i>			
10.45am - 12.15pm (90 mins)	<b>Session Two</b> - Brain Development  <b>Session Three</b> - Types of youth offenders	1. To understand why young people deserve to be treated differently. 2. To identify the 2 main types of youth offenders.	Lecture	<ul style="list-style-type: none"> <li>• Judge Harding</li> </ul>
12.15 - 1.30pm	<i>Lunch</i>			
1.30 - 2.45pm (75 mins)	<b>Session Four</b> - UNCROC - 10 characteristics of a good Youth Justice System & New Zealand overview. Possible simple legislation	To identify characteristics Palau can strive for in a youth justice system, and possibly consider a simple YJ statute.	Lecture/s	<ul style="list-style-type: none"> <li>• Judge Harding</li> </ul>



2.45 - 3.00pm	<i>Afternoon Tea</i>			
3.00 - 4.45pm (125 mins)	<b>Session Four cont.</b> - Non-legislative change possibilities  <b>Session Five</b> - Takeaways: steps available to different segments outside courts and legislative change	To identify possible actions to improve the position of YJ in Palau without statutory interventions.	Mixed group discussion and report back.  Sectors identifying what they can do to contribute to better outcomes.	• Judge Harding
4.45 - 5.00pm (15 mins)	Evaluation			

Day Four: Friday 27 July				
Time	Topic	Aims/Outcomes	Activities	Resources
8.30 - 10.30am (120 mins)	<b>Session Six</b> - New Zealand practice details	Courtroom, protocols, decisions to charge, community involvement, how much practically can be used or adapted	Lecture and discussion as to what could be adopted from New Zealand	• Judge Harding and local Judiciary
10.30 - 10.45am	<i>Morning Tea</i>			
10.45am - 12.15pm (90 mins)	<b>Session Seven</b> - Court simulation	Practising skills and conducting child and youth court in terms of setting, language, judicial conduct, demeanour, procedure, orders and the like.	Role play /lecture /practice as to in Court setting, language, layout.	• Judge Harding and all participants
12.15 - 1.30pm	<i>Lunch</i>			
1.30 - 2.45pm (75 mins)	<b>Session Eight</b> - sentencing issues within present system	Remarks, language, options, adjournments, community involvement, discharges.	Lecture and discussion	• Judge Harding
2.45 - 3.00pm	<i>Afternoon Tea</i>			
3.00 - 4.45pm (125 mins)	<b>Session Nine</b> - Strategising progress for 12 months	Preparation of action plan, what might be achieved in the absence of legislative change?	Produce written plan for future improvement of Youth Court outcomes.	• Judge Harding, group session, reporting back
4.30 - 5.00pm (30 mins)	Workshop Wrap up; Evaluation; Certificates			

### ANNEX 3: FAMILY VIOLENCE PRE-WORKSHOP ASSESSMENT

## PJDP - FAMILY VIOLENCE AND YOUTH JUSTICE WORKSHOP

PORT VILA, VANUATU: 12-15 FEBRUARY, 2013

### Family Violence Pre-workshop Questionnaire

Please answer the following questions. This questionnaire will help the faculty to understand your particular training needs and focus training during this orientation course. It will also help us to assess what you have learned from the training at the end of the course.

**Question 1:** *The Definition of Family Violence:* please define when discipline becomes abuse:

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**Question 2:** What cultural / societal influences need to be understood and applied in family violence cases?

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**Question 3:** Please List two cases where the police *should intervene* in family violence cases:

1.

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2.

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**Question 4:** Please List two cases where the police *should not intervene* in family violence cases:

1.

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2.

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**Question 5:** Please list three factors should be borne in mind when hearing a family violence case?

1.

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2.

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3.

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**Question 6:** Please list two *advantages* of restorative justice:

1.

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2.

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**Question 7:** Please list two *disadvantages* of restorative justice:

1.

2.

**Question 8:** In family violence cases, when will imprisonment be inevitable or appropriate

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**Question 9:** What part does a judicial officer play in the community and what leadership role should be taken both in the court and outside the court?

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**PACIFIC JUDICIAL DEVELOPMENT PROGRAMME  
FAMILY VIOLENCE AND YOUTH JUSTICE PROJECT PRE/POST-WORKSHOP ASSESSMENT  
TONGA WORKSHOP 18-20 SEPTEMBER, 2013**

This brief survey has been developed to assess the knowledge and your particular training needs in the area of family violence and youth justice. We greatly value your feedback.

Q1. Which organisation you are from?

1. <u>Judiciary</u>	<input type="checkbox"/>
2. <u>Court Administration</u>	<input type="checkbox"/>
3. <u>Police</u>	<input type="checkbox"/>
4. <u>Other Government Department</u>	<input type="checkbox"/>
5. <u>Other (such as NGO)</u>	<input type="checkbox"/>

Q2. How much do you know about the recently passed Tonga 'Family Protection Bill 2013'?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
←			→
Nothing	Not much	Some knowledge	Excellent knowledge

Q3. Should family violence cases be treated in the same way as other cases involving violence?

1. <u>Yes</u>	<input type="checkbox"/>
2. <u>No</u>	<input type="checkbox"/>
3. <u>Not sure</u>	<input type="checkbox"/>

Can you please explain your reasons for answer given above.

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Q4. Should victims of family violence be treated in the same way as victims of any other offences?

1. <u>Never</u>	<input type="checkbox"/>
2. <u>Sometimes</u>	<input type="checkbox"/>
3. <u>No</u>	<input type="checkbox"/>

Can you please explain your reasons for the answer given above.

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Q5. Is family violence in Tonga a significant concern?

1. <u>Yes</u>	<input type="checkbox"/>
2. <u>Perhaps</u>	<input type="checkbox"/>
3. <u>No</u>	<input type="checkbox"/>
4. <u>Don't know</u>	<input type="checkbox"/>

Q6. Do the Police respond adequately to family violence in Tonga?

- |               |  |
|---------------|--|
| 1. Always     |  |
| 2. Sometimes  |  |
| 3. No         |  |
| 4. Don't know |  |

Q7. Should community groups have a greater part to play in court outcomes dealing with family violence?

- |               |  |
|---------------|--|
| 1. Yes always |  |
| 2. It depends |  |
| 3. No         |  |
| 4. Don't know |  |

Can you please explain your reasons for the answer given above.

Q8. By law, what is the age of a juvenile or young offender in Tonga? (please state age or if you do not know, please state do not know).

Q9. Should young offenders be treated any differently to adult offenders?

- |               |  |
|---------------|--|
| 1. Yes always |  |
| 2. It depends |  |
| 3. No never   |  |
| 4. Not sure   |  |

Can you please explain your reasons for the answer given above.

Q10. Should juvenile offenders always be charged and brought before the court?

- |               |  |
|---------------|--|
| 1. Yes always |  |
| 2. Sometimes  |  |

Can you please explain your reasons for the answer given above.

Q11. Is there a special procedure in Tonga for dealing with juvenile or young offenders?

- |               |  |
|---------------|--|
| 1. Yes        |  |
| 2. No         |  |
| 3. Don't know |  |

If you answered yes, can you explain what that process is.

*Thank you again for your time, and also for your assistance with completing this assessment!*

## ANNEX 4: FAMILY VIOLENCE WORKSHOP MATERIALS

### Family Violence

#### i) What are the Drivers

- What is the role of cultural and familial influences on family violence in Pacific communities in New Zealand?
- What is the role of other **factors** ie social, educational or economic factors associated with ethnicity? In relation to Pacific communities poverty, colonisation, cultural alienation and experiences of racism.
- Are there real **biases** in the criminal justice system which impact the judicial outcomes for Pacific people? A recent study suggests that there is more of a likelihood for Maori and Pacific people under the Domestic Violence Act 1995.

#### ii) Cultural Context

- Gender relations in Pacific communities.
- Cultural norms which support or endorse violence as a solution.
- Beliefs that support parental rights and authority over children's rights.
- Collectivist cultural norms.  
<http://www.justice.govt.nz/publications/global-publications/s/safer-communities-action-plan-to-reduce-community-violence-sexual-violence/reducing-violence>

#### iii) Treatment of Victims

- Women who are culturally, linguistically or religiously distinct face additional barriers to those faced by other women. There are two separate types of barriers - those relating to **accessing** the justice system and those barriers experienced when women go **through** the justice system
- *In Touch Team (2010), I lived in fear because I knew nothing: Barriers to the Justice System Faced by CALD Women Experiencing Family Violence. Victoria Law Foundation.*
- Barriers in Courtroom include language difficulties and inadequate interpreting services. Cultural concepts relating to gender roles, modesty, and upholding respect for community and family may all also play a significant role.

#### iv) Gathering Information: Who to Consult?

- Effective community consultation may involve using both formal organisations and structures as well as consulting with relevant individuals and interest groups. A multifaceted approach to consultation is more likely to ensure that all voices are heard.
- As part of the Family Violence Taskforce work a number of Pacific fono were held.
- <http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/initiatives/action-family-violence/taskforce-work.html>

#### v) Restorative Justice and Sentencing

- Alternative Dispute Resolution (ADR) is not the panacea for all problems but it is frequently viewed as a face saving way of dealing with disputes and may be more aligned with judicial processes in the home countries of ethnic minority communities.
  - Most Pacific societies are familiar with the ideas of “alternative dispute resolution” without necessarily being familiar with the term. As Vanuatu Chief Justice Lunabek informed a conference on conflict resolution held in Vila in 2000: “ADR is not a new concept to Pacific Island jurisdictions and, in particular, to Vanuatu. It is, in fact, consistent with traditional methods of dispute resolution that predated the introduction of the formalised system of justice”.
- <http://www.paclii.org/journals/fJSPL/vol09no2/4.shtml>
- Community panels sentencing - **Cultural levers** can be used to create effective sentencing options. Cultural levers are socio-cultural based norms which can act as effective motivators of change.
  - In all cultures there are practices and traditions that facilitate male dominance and oppression of women as well as values that are protective and support men's recognition of women's self-determination. Effective practice for batterer intervention programmes involves understanding and using these cultural elements to help men to change.
  - **Community loss of face is a key lever** for Pacific and ethnic communities. Effective sentencing could involve getting the community leaders to condemn violence and withdraw social privileges from perpetrator when family violence occurs. Use hierarchy and collectivism to create pressure as a deterrent factor.

### Additional Notes:

1. **CEDAW** - All Pacific countries are parties to CEDAW except for Nauru, Palau and Tonga.

- States which are parties to CEDAW have clear obligations under international law to act in accordance with its principles.
- All PICs are parties to the CRC.

2. **Problem when International Convention not “domesticated”**

For example, whilst Kiribati is a party to the *Convention on the Elimination of all Forms of Discrimination against Women* and the *Convention on the Rights of the Child*, these international conventions and standards do not automatically become part of the laws of Kiribati. In the case of the *Republic of Kiribati v. Iaokiri (25/2004)*, the High Court held that the CRC did not form part of the law of Kiribati, unless it was given the force of law there.

- What approach should the Judiciary take? There are case examples in some Pacific countries e.g. where the Court takes note of the Convention although not “domesticated” and acts in accordance with its provisions.

For example, the Chief Justice of Samoa applied an international convention to which Samoa was not a party in the child abduction case of *Wagner v. Radke [1997] WSSC 2*. The Chief Justice said:

“Even though Samoa is not a signatory or party to the Hague Convention of Civil Aspects of International Child Abduction of 1980, the court must have regard to the principle and philosophy of the Convention in applying common law principles to the case ...and...as a tool to guide and aid the court, it could use the Conventions.”

3. **Sexual and Gender-based crime**

- **The limitation** in gender based crime is that the sexual offences law is only limited to vaginal - penile penetration. The various ways sexual violence is committed is now being addressed and changes to this section of the criminal offences law is taking place in a number of Pacific jurisdictions. E.g. Marshall Islands, PNG, Fiji.
- **Practical problems** - women's low status in society, reconciliation, compensation. Reconciliation and compensation is part of the law in some Pacific countries and taken into account at sentencing e.g. Kiribati, Tuvalu, Solomon Is., and Vanuatu. Generally the families are involved rather than the victim. For Violence against Women, the Court needs to take safety, the protection, maintenance and accommodation of victims into account.
- **Cross-cutting issues** - human rights and equality. Also look at disabilities and HIV/AIDS as cross-cutting issues.



#### 4. Trafficking in women and children

This is a problem in the Pacific. Some provisions in the Penal Code such as abduction, kidnapping can deal with this issue but comprehensive legislation is necessary. Particular issues with respect to foreign fishing vessels and logging in some places such as Solomon Islands - issues of young girls prostituting, sale??, underage marriages.

- Need to look at such issues through the lens of the Convention on the Rights of the Child and CEDAW.

#### 5. Laws relating to Children

- Countries which are parties to the CRC would also need to look at the 2 Protocols (children's involvement in armed conflict and the other, the sale, prostitution and child pornography) and apply the CRC principles.

#### 6. Legal pluralism

Legal pluralism poses many challenges. E.g.

- Courts in the Pacific have made inroads in correcting discrimination against women in situations where customary law only benefits those of patrilineal descent to land ownership;
- In Kiribati and Tuvalu, the law provides for a 2 year old child to be transferred to the father in order to inherit land. Child transference happens generally without assessment as to whether the father can care for the child? Does he have other problems? Alcohol, violence etc? Courts have in cases, ordered the child remain with the mother and for the father to maintain the child. Mother fear that the child may be disinherited by the father and let the child go.
- The application of the CRC and best interest standards and CEDAW.

#### 7. Race, Culture and Language - in my view would be better taught through Culture, Gender and the Law. It's possible the persons who drafted the Orientation programme may be referring to Art. 27 of the ICCPR which provides:

"In those states in which ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of the group, to insulate their own culture, to profess and practice their own religion or to use their own language."

Conversely, CEDAW requires state parties to "undertake all appropriate measures, including legislation, to modify or abolish laws, regulations come up, customs and practices" that discriminate against women.

- Need to unpack the notion of culture. What is it? See Art. 15 of the ICESCR and Art. 27 of ICCPR.

How is culture defined? The practices that are defended in the name of culture and tradition are quite broad and there are many practices which have been defined or redefined as part of cultural life. There are certain practices that appear frequently:

- Marriage practices.
- Traditional practices harmful to women's health, such as ritual cleansing of widows, sorcerers.
- Property right where women cannot inherit ownership of land.
- Violence to discipline women, the principle of equality and non-discrimination must be given precedence in cases where the rights to culture and gender equality conflict.

Rather than finding that traditional practices and gender equality come into conflict, the Court can explore the ways in which traditional practices are understood and practiced. They can interpret tradition and culture that best addresses human rights in their judgments. One of the challenges for the courts is the ability to integrate the preservation of customary law notions such as those involved in marriage and inheritance rights and the human rights of women.

PowerPoint Presentation: Cultural Considerations - Vanuatu Women's Crisis Centre

# VANUATU FAMILY VIOLENCE AND YOUTH JUSTICE WORKSHOP

## SESSION 2: THE BACKGROUND AND THE DRIVERS TO FAMILY VIOLENCE IN VANUATU CULTURAL CONTEXT

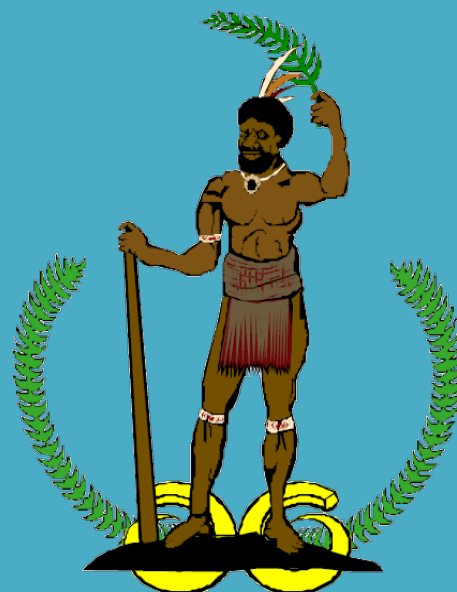
PowerPoint Presentation: The Drivers and Customary Considerations - Vanuatu National Council of Chiefs

## Family Violence and Youth Justice Workshop

“The Background and the Drivers to Family Violence in Vanuatu  
Cultural considerations”

Perspective

Malvatumauri  
National Council of Chiefs



NASDONAL KAONSEL BLONG OL JIF

PowerPoint Presentation: Typologies in Family Violence - prepared by Vanuatu National  
Council of Chiefs

MALVATUMAU  
NATIONAL  
COUNCIL OF CHIEFS,  
PORT VILA

LEFTEMAP  
KASTOM  
GAVANANS  
LONG  
VANUATU



## Statistics presented by Vanuatu Police

These are charges registered in Port Vila in 2011:

OFFENCE	CHARGES REGISTERED	CONVICTIONS	STILL BEFORE THE COURT	OTHER
Domestic Violence	26	4	19	2 withdrawn 1 defendant died
Breach of Protection Order	1		1	
Unlawful sexual intercourse	7	1	5	1 acquitted
Sexual intercourse without consent	29	5	14	6 withdrawn 4 acquitted
Sexual intercourse with girl under care	4		3	1 withdrawn

The following are the charges registered in Port Vila SPD for 2012:

OFFENCE	CHARGES REGISTERED	CONVICTIONS	STILL BEFORE COURT	OTHER
Domestic Violence	34		33	1 withdrawn by complainant
Unlawful sexual intercourse	11		11	
Sexual intercourse without consent	29	1	28	
Sexual intercourse with girl under care	3		3	

The following are charges registered in Port Vila SPD from 01/01/2013 to 11/02/2013:

OFFENCE	CHARGES REGISTERED	CONVICTIONS	STILL BEFORE COURT	OTHER
Domestic Violence	0			
Unlawful sexual intercourse	2		2	
Sexual intercourse without consent	4		4	
Sexual intercourse with girl under care	3		2	1 withdrawn by complainant

## CAPTION SUMMARY

POLICE	V	Ioane IOANE EITA - BUOTA KIRIBATI	DOB: 14.03.60 AGE: 43 OCC: Fisherman
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**CHARGES** Male Assaults Female  
Crimes Act 1961  
Section 194(b)  
  
Penalty: 2 years imprisonment  
  
Threatens To Kill  
Crimes Act 1961  
Section 306(a)  
  
Penalty: 7 years imprisonment

**HEARING** : Thursday the 11 September 2008 at 10 a.m.  
at the Kiribati District Court

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## SUMMARY OF FACTS

The defendant is employed as a fisherman; he receives his pay on a regular basis on the Thursday of each week. At about 4.30pm on Thursday 5 March 2008, the defendant IOANE finished work and walked home.

The defendant lives at their home address in EITA, BOUTA with his wife who is the victim in this matter, they have 2 children aged 4 and 6 respectively.

At about 6pm that evening the defendant went to the local bar with some friends.

The defendant had consumed approximately 10 pints of beer and was drunk.

At about 10.30pm after the bar closed, the defendant decided to walk home arriving home a short time later.

While at home the defendant proceeded to smash items inside the house.

The victim had been asleep and was awoken by the noise; she then got out of bed to see what was happening.

On noticing the victim the defendant has then accused the victim of having an affair with one of their neighbours. He told her 'If I catch you two together, I will kill you'.

The defendant has then walked up to the victim and punched her twice to the right side of her head with his right fist, he has then slapped her with an open hand to the left side of her face using his left hand.

The victim has fallen to the floor and has tried to protect herself by curling into the foetal position where upon he has then proceeded to kick her repeatedly on the left side of her body, causing severe bruising. During this time the victim had her arms over her head covering her head and face areas.

The defendant has then left the house saying that he was going to get more beer. Later the victim has then gone to bed.

On Friday 6th March 2008, at approximately 8am in the morning while inside the house the defendant has again confronted the victim, accusing her of having an affair.

Before the victim could speak and without warning the defendant has then grabbed the victims head taking hold of her hair with both hands and dragged her by the hair outside onto the driveway across the sand and gravel for approximately 10 meters.

The defendant has then left the victim on the ground outside while he has gone to the toilet.

During this time the victim has attempted to hide from the defendant.

She has then used a mobile phone to call Police.

While the victim has been talking to Police the defendant has returned outside and located the victim crouching down hiding by the side of the house.

The defendant has then grabbed the cell phone from the victim and thrown it onto the gravel driveway.

He has then punched her with a closed fist twice to the left side of her face.

The defendant has then produced a knife and held it towards her face saying "I will cut you up".

A short time later police arrived and spoke with the defendant, at this time the defendant was still in possession of the knife.

After being spoken to by Police the defendant surrendered the knife.

The defendant admitted to giving the victim 'a few slaps' and stated: "she's such a liar. I didn't do anything - just gave her a few slaps, that's all. But she wouldn't shut up, the bitch - she just went on and on with her lies, so I had to stop her".

When asked if she then stopped, the defendant stated " she sure did - as soon as she saw the knife, she just shut up.

Later while being interviewed at the Police station the defendant stated that he had earlier gone out with some friends and had about 10-11 pints of alcohol.

He stated that he returned home and had an argument with his wife. When asked if the argument was over his belief that his wife was having an affair, the defendant stated "Something like that

The defendant stated that he recalled punching his wife a couple of times and to slapping her, a couple of times.

When asked to explain how the victim got a number of bruises on the left side of her body and if he had kicked her while she was on the ground. The defendant stated

That she may have sustained the bruises after he had slapped her and she fell to the floor and that he could not recall kicking the victim.

The defendant stated that he then left the house to get some more beers and ended up sleeping on the driveway.

The defendant further stated that in the morning the next day he saw the victim and again became angry and again hit her. He then said to her that he was going to get a knife and stab her.

He further stated that he obtained a knife and confronted the victim and dragged her out of the house. He stated that "I did not want her cheating on me and being in my house".

He further stated that he then left the victim on the ground and went to the toilet and when he returned he found the victim talking on the cell phone and thought she was talking to her lover. He then took the phone off her and threw it on the ground.

The defendant then refused to answer any further questions.



In explanation for his actions the defendant said that he thought that the victim was having an affair and he just got angry.

The defendant was then formally arrested and charged with male assaults Female and Threatening to Kill.

The defendant has previously appeared before the court.

PRN: 100023

02/05/08

Conviction List for:

Ioane IOANE

DOB: 14.03.60

Occupation: Fisherman.

PRN: 100023

CHARGES BY TYPE			
TYPE	Date First	Date Last	Total
DISORDER (3500)	18/11/2007	17/09/2009	3
COMMON ASSAULT	04/11/2008	09/10/2009	4
OTHER THEFTS (4310, 4320, 4350, 4360, 4370, 4380, 4390)	12/11/2006	06/12/2009	4
PROPERTY DAMAGE AND ABUSE (5100, 5200, 6100, 6200, 6300, 6500)	08/11/2006	19/05/2009	4
ALCOHOL RELATED - DISORDER(A)	24/08/2007	02/01/2009	2
MALE ASSUALTS FEMALE	22/09/2009	22/09/2009	2
DRIVING WHILE DISQUALIFIED (L112, L201, L204, L230, L231)	23/02/2007	24/08/2007	2
ASSAULTS (1400, 1500, 1600, 1700)	19/05/2009	19/05/2009	1
DISORDERLY BEHAVIOUR	02/01/2009	02/01/2009	1

Kiribati Police

**PARTICULARS OF WITNESSES**

WITNESSES

<b>Name</b>	<b>Address and Telephone</b>	<b>Occupation</b>
1. Miriam IOANE	Eita. BOUTA, Tarawa	Housewife
2. Eribwebwe TAKIRUA	C/- Betio Police. Tarawa	Sergeant
3. Robert Ellis HOSKING'S	C/- Betio Police. Tarawa	Constable
4. John LORRY	C/- Betio Police. Tarawa	Constable
5. Erin LOSE	C/- Betio Police. Tarawa	Constable
6. Haley Ryany SMITH	C/- Bouta Medical Centre, Tarawa	Doctor

EXHIBITS

<b>Exhibit</b>	<b>Produced by</b>	<b>Exhibit number</b>
1X Photo of knife	Ellis HOSKING'S	01
Photo booklet - victim's injuries	Ellis HOSKING'S	02
Photo booklet - Defendant's injuries	Eribwebwe TAKIRUA	03
Photo - cell phone	Ellis HOSKING'S	04
Diagram scene	Ellis HOSKING'S	05
Medical report - Victim's	Haley Ryan SMITH	06
Transcript of call	Erin LOSE	07

## INFORMATION

### SECTION 13 CRIMINAL PROCEDURE ACT 1980 - 81

- |     |                           |   |
|-----|---------------------------|---|
| (1) | Full Names                | (1) I, Joe Bloggs   |
| (2) | Address and<br>Occupation | (2) of Avarua, Police Officer<br>say on oath that I have reasonable cause to suspect and do<br>suspect that *(within the space of 12 months last past,<br>namely) |

On the 10<sup>th</sup> day of December 2010 at Arorangi

- |     |                                      |   |
|-----|--------------------------------------|---|
|     |                                      | (1) Paul Jones  |
|     |                                      | (2) Self-employed, Inave, Arorangi                                      |
| (3) | Here set out<br>substance of offence | (3) Being a male, did assault a female namely Mary Jones<br>of Arorangi |

Crimes Act 1969, Section 214[b]  
(Here add Section and Statute applicable)

\_\_\_\_\_  
Signature of Informant

### SWORN

before me at Avarua this 20<sup>th</sup> day of December 2010

\_\_\_\_\_  
JUDGE  
\*(or Justice of the Peace) (or  
Registrar)  
(or Deputy Registrar) (not  
being a Constable)  
\*Delete if inapplicable

**COOK ISLANDS POLICE**  
**CAPTION SHEET**

<b>POLICE:</b>	<b>Vs</b>	Paul Jones Inave/Arorangi	<b>DOB</b> - 28/10/76 <b>AGE</b> - 35 years <b>OCC</b> - Self-employed
<b>CHARGE:</b>		Assault on a Female	
<b>ACT/SECTION:</b>		Crimes Act 1969, Section 214(b)	
<b>PENALTY:</b>		Not exceeding 2 years imprisonment	

.....  
**SUMMARY OF FACTS**

Sometime between 5.00 pm and 5.30 pm on Thursday evening, the 10<sup>th</sup> of December 2010, the defendant Paul Jones together with his wife (the victim), were at the victim's family home at Inave in Arorangi.

The defendant and the victim's uncle were working re-roofing their family house when he was approached by the victim.

The victim went to ask the defendant if she could be allowed to attend their Christmas party at her bosses place at Akaoa that Thursday evening.

But the defendant turned down the victim's request.

After being approached several times, the defendant became angry and lost his temper. The defendant then approached his wife (victim) and punched her several times on the victim's facial area and nose.

As a result, the victim received a bleeding nose and pain around her facial area. The defendant had been consuming alcohol prior to the incident.

When spoken to by the Police, the defendant frankly admitted to the facts as outlined. He stated, he turned down his wife's request because he didn't want her to leave as he and his wife's uncles were re-roofing his wife's family house that was gutted by fire sometime last week. He gave no further explanations.

On Friday morning the 11<sup>th</sup> of December 2010, the victim was referred to the Rarotonga Hospital for medical examination.

The defendant is a married man, 35 years of age and self-employed.

He resides at Inave in Arorangi.

He has previously appeared before this Court.

Joe Bloggs, **Unit 3**  
Date: 12/12/10

### Video Clip of Once Were Warriors



If you would like to obtain a copy of this video clip, please write to the Office of the Principal Youth Court Judge in New Zealand ([Steven.Bishop@justice.govt.nz](mailto:Steven.Bishop@justice.govt.nz)) and a CD of the clip will be mailed to you.

## ANNEX 5: MEMORANDUM OF UNDERSTANDING, PALAU

# Family / Domestic Violence in Palau

## Memorandum of Understanding

### Introduction

On 24 and 25 July 2012, the Pacific Judicial Development Programme hosted a two day Family Violence workshop.

The workshop was facilitated by the Chief Judge of the New Zealand Family Court, and was widely attended by organizations, agencies both Government and non-Government, and the Judiciary.

Specifically those attending included, Supreme Court and Court of Common Pleas of the Judiciary, The Office of the Attorney General, Bureau of Public Safety (Police), Pacific Prevention of Domestic Violence Programme (PPDVP), Palau Bar Association, Behavioural Health, Community Guidance Centre, Palau Council of Chiefs, EKEI Women Organization, Milad 'I Dil Women's Organization, House of Delegates Legal Counsel, Public Defender, Palau National Olympic Committee, Probation Office, Palau Community College Adult high School / Talent Search, Victims of Crime Assistance (VOCA), Coordinator - United Nations Joint Presence, Palau Evangelical Church.

**Noting** that there remains still under consideration in the Olbiil Era Kelulau (OEK), a bill to address family / domestic violence, but noting that it is unclear when this proposed legislation will be prioritized and passed.

**And noting** that family / domestic violence in Palau is a significant issue which requires a cohesive and concerted response.

**The group resolved** to enter into a Memorandum of Understanding to set out a clear pathway for the response to this violence, and to acknowledge the intention of those entering into the memorandum, to work according to an agreed protocol.

### Mission Statement

The signatories accept that family / domestic violence is a significant issue in Palau, and adopt the declaration entered into by the Pacific Islands Chiefs of Police of twenty Pacific nations including Palau on 11 October, 2007.

### In particular

It is accepted that family / domestic violence must be seen more broadly than existing Palau law recognizes, and that family / domestic violence should be seen as a specific form of crime which covers a broad range of violence and controlling behaviours, commonly of a physical, sexual, and/or psychological nature which typically involve fear, intimidation and emotional deprivation.

### Definition of terms

The group wishes family / domestic violence to be seen in terms of agreed definitions, and these are:

**A person commits an act of family / domestic violence** if he or she intentionally does any of the following acts against a family or household member or intimate partner:

- a) Assaults one or more of the above (whether or not there is evidence of a physical injury);
- b) Psychologically abuses, harasses or intimidates the one or more of the above;
- c) Sexually abuses one or more of the above;

- d) Stalks one or more of the above so as to cause him or her apprehension or fear;
- e) Behaves in an indecent or offensive manner to one or more of the above;
- f) Damages or causes damage to one or more of the above's property;
- g) Threatens to do any of the acts in paragraphs (a) to (f).

#### To avoid doubt

- a) A single act may amount to an act of family / domestic violence; and
- b) A number of acts that form part of a pattern of behaviour may amount to a family / domestic violence event, though some or all of those acts when viewed in isolation may appear to be minor or trivial.

#### In Response

The group has agreed on the establishment of two groups to manage and implement strategies to assist victims and to hold perpetrators to greater account.

The Judiciary agrees to participate in a broad agency management group. This group recognizes the Judiciary's independence, and that the Court's fundamental purpose is to decide all case that come into before it fairly, impartially, and uninfluenced by any particular viewpoint.

#### Accordingly it is agreed

There shall be established the ***Family / Domestic Violence Forum***.

The Forum will be convened by the Bureau of Public Safety and the Attorney General's Office and its members may include:

- The Office of the Attorney General,
- Bureau of Public Safety,
- Behavioural Health,
- Community Guidance Centre,
- Palau Council of Chiefs,
- Ministry of Education,
- Clinical and Ancillary Services (Ministry of Health), Probation Office,
- Victims of Crime Assistance,
- Palau Community College,
- Public Defender's Office,
- Palau Bar Association, and
- The Judiciary.

The Forum shall meet on the first Wednesday of each month.

#### The purpose of the Forum is to:

- 1) Define and agree on what level of response should occur on categories of all forms of family / domestic violence.
- 2) Set out what agencies shall be informed on the reporting or detection of an act of family / domestic violence.
- 3) Decide how best assessment and screening should occur, by whom, and who will be given resulting information.
- 4) Agree on the use to which volunteers including the church shall be engaged and for what purpose.

- 5) Discuss and consider whether victims of abuse advocates have a place, and if so how they are best deployed.
- 6) Consider monthly statistical reports from the Police and Attorney General's Office and VOCA as to reported incidents.
- 7) Discuss and agree on what information is provided to a Judge upon plea and sentence, and at what time, in order to ensure that a plea is received and acted upon on the best information.
- 8) Engage with the Judiciary to advise Judges on availability of resources promote creative sentencing options and advise on trends and success of programs and options.
- 9) Recognizing that checklists can be useful tools for assisting professionals working with family / domestic violence, identifying what checklists should be devised, who is responsible for devising and completing them, and whose responsibility it is to ensure that they are acted upon.
- 10) Publicize the options available to victims to report abuse in a way which is safe and empowering, including use of media, posters and electronic means.
- 11) Advocate for the establishment of a safe house(s) for victims of abuse including children, and take such action as is reasonable to secure funding for such a safe house.
- 12) Launch and maintain public awareness campaigns such as promotion of White Ribbon Day, use of t-shirts, advertising and meeting with public officials including elected officials.
- 13) Evaluate the operation of this protocol and make such changes as are deemed necessary.

There will also be established the **Family Violence / Youth Services Team**. This group is a combined team, convened by the Attorney General's Office, which addresses management of family / domestic violence and youth services cases.

The objective of case management meetings in relation to family / domestic violence is to ensure that upon assessment, victims of abuse including children, and perpetrators, receive the most efficient and most optimum intervention that Palau resources permit.

### **The purpose of this group is to:**

- 1) Consider and assess all family / domestic violence incidents reported to the police, and to consider on a case by case basis, on the sharing of information, the level of response.
- 2) Be informed as to what defendants have been sentenced on family / domestic violence type offenses since the last meeting, and to receive in writing terms and conditions of probation, and whether there is any known non-compliance with such conditions.

The group may include:

- The Office of the Attorney General,
- Bureau of Public Safety,
- Behavioural Health,
- Community Guidance Centre,
- Division of Corrections,
- Ministry of Education,
- Public Defender's Office,
- Probation Office,
- VOCA, and
- Milad 'l Dil Women's Organization.



## In conclusion

The group commits to working together to develop a coordinated and effective response to family / domestic violence issues in Palau. The group stresses that this memorandum should not be seen as the answer, but rather a means by which family / domestic violence can be better addressed in the future.

Signed at Koror, Palau:

Name	Title	Agency	Signature

## ANNEX 6: MEMORANDUM OF UNDERSTANDING, VANUATU

# Family / Domestic Violence in Vanuatu

## Memorandum of Understandings and Recommendations

### Introduction

On 12 and 13 February 2013 the Pacific Judicial Development Programme (PJDP) hosted a two day family violence workshop.

The workshop was requested by the Judiciary of Vanuatu and was widely attended by organisations, agencies both government and non-government and the judiciary.

Specifically those attending included; Supreme Court and Magistrates Courts, Child Protection Unit, Vanuatu Police, UNICEF, Law Commission, Vanuatu Women's Crisis Centre, State Law Office, Public Solicitor, Vanuatu Law Society, Office of the Public Prosecutor, Department of Correctional Services and National Council of Chiefs.

The workshop was convened to consider the operation of the Family Protection Act 2008 (the Act) and the objectives of the workshop were to achieve the best outcomes for victims of family violence including children.

### Context

It is acknowledged that Family / Domestic Violence remains a serious issue within Vanuatu. For instance, in a recent survey commissioned by the Women's Crisis Centre sixty per cent (60%) of women said they have experienced a form of physical or sexual violence. Sixty eight per cent (68%) of women said they had suffered emotional abuse. In fifty seven per cent (57%) of incidents children were present during violence.<sup>1</sup>

### Operation of the Act

The Act was passed in 2008 and commenced on 2 March 2009. It has accordingly been in operation for very nearly four years.

Section 52 states:

- (1) The Minister must cause an independent review of the operation of this Act to be undertaken within 3 years after the commencement of this Act.
- (2) The people who undertake the review must give the Minister a written report of the review.
- (3) The Minister must cause a copy of the report to be tabled in the Parliament within 5 sitting days of the ordinary session after its receipt by the Minister.

<sup>1</sup> Vanuatu National Survey on Women's Lives and Family Relationships, May 2011

(4) In this section:

**independent review** means a review undertaken by a team consisting of an equal number of women and men who possess appropriate qualifications and/or experience in domestic violence matters.

No independent review has as yet been commenced but the government has set up a taskforce to enquire into how well the Act has been implemented. Our understanding is that the taskforce has not yet commenced the review of the Act.

The workshop agreed that some aspects of the operation of the Act required attention. The issues discussed fall into two categories:

- 1) where by better agency and interagency action outcomes under the Act could be improved.
- 2) where further legislative intervention may be appropriate and

It was agreed that the agencies themselves including the judiciary can improve on processes without requiring ministerial or parliamentary intervention and the workshop regarded this as a priority.

#### **Agency and interagency action outcomes under the act that could be improved**

- 1) Offences for which offenders have been charged and brought to court do not define whether the offence is family / domestic violence or not. By means of the charge sheet or by other classification charges should be defined in this way. Family violence offences will be distinguished from other criminal offences by means such as use of a specific colour file.
- 2) Magistrates wish to provide both family violence offenders and also victims with counselling but in the absence of registered counsellors undertake this themselves. It is recognised that this is wrong and unacceptable, and is inconsistent with judicial function. The judiciary wishes to be able to refer people to counselling and / or mediation as provided for in Section 16. Appointment of counsellors is a court operational matter not a ministerial function and the judiciary will now ensure that qualified and appropriate counsellors / mediators are appointed.
- 3) Until the appointment process in Section 8 is changed, the judiciary will compile a list of suitably qualified counsellors for the purpose of Section 16(2). The judiciary acknowledges that the payment for the counsellors / mediators is an issue for further discussion.
- 4) When police attend a family violence incident, consultation with the victim including the victim's safety and available options, will occur with the assistance of a trained family violence worker such as a member of the Women's Crisis Centre.
- 5) Magistrates would be assisted if offenders are charged under Section 4, with the nature of the alleged violence clearly stated and with the reference to Section 10 being included merely as the punishment section.
- 6) It is accepted that a priority for use of counsellors is appropriate training in a specialised area of family violence.
- 7) When a protection order is made, it is an operational matter for the court to effect service on the defendant. For the most part the police are asked to undertake service. Existing service arrangements are unsatisfactory. We therefore recommend:
  - a. the court decides in each case bearing in mind issues of safety who is best placed to effect service,

- b. if police are asked to effect service, they will give it utmost priority. Police will immediately communicate with the court as to whether service has occurred or whether there is a problem and if so what it is,
  - c. the court will then direct who should serve and by what means considering the options available in Section 36(3),
  - d. at the regular court users group meetings the operational aspects of service of protection orders will form part of the agenda,
  - e. we acknowledge that in order to achieve a proper process for service there will be resource implications.
- 8) It is important for victims of violence that their immediate safety is given priority. If victims are forced by circumstances to return to a violent setting the objects of the Act are not being achieved. The workshop accordingly regards it as important that safety houses or safe accommodation for victims of violence are available.

### **Issues for legislative action or ministerial attention**

- 1) Section 8 provides for the appointment of registered counsellors by the Minister responsible for women's affairs. Appointment of such counsellors is considered an operational concern not requiring ministerial decision. The workshop recommends the repeal of Sections 8 and 9 and the provision of a new process where in the appointment of counsellors is undertaken by the court.
- 2) Section 7 sets out the process for the appointment of "authorised persons". No appointments have been made to date. We also consider this an operational matter and recognising that 'authorised persons' are quasi-judicial officers we recommend that their appointments be made by the Judicial Services Commission.

### **Conclusions**

The workshop identifies a number of issues in which the operational aspects of the Act could be improved, and recognises the importance of addressing such operational issues in a multidisciplinary manner. Where it has the power to do so, members of the workshop will achieve change in the fashion set out above.

The workshop also looks forward to the independent review of the operation of the Act noting that this now seems overdue in terms of Section 52(1).

The review comes at a very opportune time because of some of the issues that the workshop has highlighted.

The Minister may wish to consult the Chief Justice and others present at the workshop when deciding upon the members of the "independent review" as provided for in Section 52(4) so as to obtain the best advice on how the Act is operating from a police, judiciary and other agency perspective.

Dated this 13<sup>th</sup> day of February 2013 at Port Vila.

Signed at Port Vila, Vanuatu.

Name	Title	Agency	Signature
Vincent Lunabek	Chief Justice	Judiciary	
Stephen Felix	Chief Magistrate	Judiciary	
Laurent Lulu	Manager	Wan Smol Bag	
Davis Saravanu	Senior Sergeant	Family Protection Unit	
George Twomey	Chief Superintendent	Vanuatu Police	
Brenda Nabirye	Child Protection Officer	UNICEF	
Trevor Rarua	Senior Probation Officer	Correctional Services	
Beverleigh Kanas	Senior Legal Researcher	Law Commission	
Vola Matas	Legal Officer	Women's Crisis Centre	
Jacob Kausiama	Public Solicitor	Public Solicitors Office	
Jane Gereva	Principal Drafting Section	State Law Office	
Bill Bani	President	Law Society	
Kayleen Tavoia	Public Prosecutor	State Prosecutions Office	
Gray Vuke	Inspector	State Prosecutor Office	
Roselyn. Q. Tor	Research Coordinator	Malvatumauri Council of Chiefs	

## ANNEX 7: FAMILY VIOLENCE POST-WORKSHOP QUESTIONNAIRE

### PJDP - FAMILY VIOLENCE AND YOUTH JUSTICE WORKSHOP

PORT VILA, VANUATU: 12-15 FEBRUARY, 2013

#### Family Violence Post-workshop Questionnaire

Please re-answer these substantive questions asked at the start of this course. This will help us to assess your acquisition of knowledge during the course, and enable us to refine our ongoing training approach.

**Question 1:** *The Definition of Family Violence:* please define when discipline becomes abuse:

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**Question 2:** What cultural / societal influences need to be understood and applied in family violence cases?

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**Question 3:** Please List two cases where the police *should intervene* in family violence cases:

3.

4.

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**Question 4:** Please List two cases where the police *should not intervene* in family violence cases:

3.

4.

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**Question 5:** Please list three factors should be borne in mind when hearing a family violence case?

4.

5.

6.

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**Question 6:** Please list two *advantages* of restorative justice:

3.

4.

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**Question 7:** Please list two *disadvantages* of restorative justice:

3.

4.

**Question 8:** In family violence cases, when will imprisonment be inevitable or appropriate:

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**Question 9:** What part does a judicial officer play in the community and what leadership role should be taken both in the court and outside the court?

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*Thank you for your time and assistance with completing this form!*

## ANNEX 8: YOUTH JUSTICE WORKSHOP MATERIALS

### Suggestions for a youth specific justice process for young people apprehended by the police (in the absence of youth justice legislation)

#### PART 1: Out of court processes - Pre court

- 1) **Police** to consider developing and using a risk assessment tool for young people they apprehend (e.g. - a variant of the recently adopted New Zealand YORST - Youth Offending Risk Screening Tool available at the seminar - there are many in existence around the world which could be modified to suit the needs of Vanuatu).
- 2) Commitment by **police** to not charge and to divert as many young offenders as possible. What is a principle basis to establish a percentage to aim for? (Is 70% realistic?) Only charge when the public interest demands it and there is no alternative way of dealing with the offenders.
- 3) **Police** diversion programmes to address both accountability for offending and causes of offending (e.g. community work, meaningful apology, reparation / restitution; and counselling and working with young offender and his/her family).
- 4) **Police** to develop links with key **community based youth programmes** to which young people can be referred. These programmes directed to meet offending needs.

#### PART 2: In court processes

- 1) **Police** and **prosecutors** use a charge sheet which specifies if the alleged offender is a young person / e.g. date of birth included, heading showing the person charged is a young person; different colour charge sheet
- 2) **Court** sets a separate day for young people to appear and to plead
- 3) **Court** schedules appointments for young people charged / e.g. 15 or 30 minute appointments
- 4) Different layout for **court room** furniture e.g. U-shape or horse shoe configuration to allow for participation by young person and his/her family
- 5) Where possible **specialist Magistrate(s)** appointed to preside over separate sittings of **Magistrates Court** to deal with young offenders
- 6) Lawyer appointed by **Public Solicitors Office** for every young person whether or not the young person chooses to have a lawyer
- 7) **Court** sittings for young offenders in private / with media allowed but with option to suppress young offender's name?
- 8) Strong emphasis by **Magistrates** on young person's participation in the court process and commitment to find out young person's views and as far as practicable to give effect to them
- 9) Timely processes adopted by the **Magistrates Court** - consistent with the young persons sense of time
- 10) **Magistrates Court** considers referring key decision making issues to (the yet to be developed) family group conference (see Part 3 below). A form of partial delegated decision making involving young offender and family, victim, police, lawyer, conference convener and any other interested and relevant party.
- 11) **Probation / Correctional Services** and reports available for every young person appearing in court (or at the least where family group conference recommends it)



### PART 3: Out of court processes - After appearance in court

- 1) For young people who are charged and who admit offending, the **court** agrees to refer the case to a family group conference which will produce a plan for the court to consider
- 2) If the plan is satisfactorily completed the **court** will consider granting and absolute discharge so that it is as if the charge was never laid
- 3) Family group conference coordinators to be trained and available. Who is chosen and how are they to be trained are big questions.
- 4) Young people sentenced by the **court** to prison (last resort) kept apart from adults
- 5) A good quality community based alternative to custodial sentences to be developed - by who?
- 6) Collection of statistics by **police** and **courts** to show;
  - a. Exact age - 10, 11.... 17
  - b. Gender
  - c. Ethnicity
  - d. Whether diverted or charged
  - e. Type of charge
  - f. Outcome

## Group Discussion Notes

### Characteristics of a good Youth Justice system

#### GROUP 1

##### Pre-court

Review of Police SOPs:

- Currently no policy for youth
- Training for police
- Caution for minor offenses
- Diversion (legislative change)?
- Juvenile police unit - police officers who have experience with kids and handling them in different way

##### In court

- Youth specific court day - not in the presence of adult offenders, not mixing with adult offenders
- Magistrate deals with some offenders - nominated magistrate to deal with youth on ongoing basis, keeping track of them, youth dealing with a same magistrate who knows their history, problems, background - relationship development
- Duty lawyers on kid's court day - meet with them on the first occasion, give legal advice from the onset
- Identification of youth briefs at SPD, practice direction from CJ to prioritise youth matters - identifying juvenile briefs when they first arrive = prioritisation = dealing with youth cases quicker / differently (given a court date that is suitable for the youth case, priority to give them a court date)
- Reduce formality within the court (already done in Supreme Court) - judge to sit at the same table height as a juvenile; perhaps no uniform of police present

##### Out of court

- Possibility of correctional services to monitor youth after sentencing - monitor their family/community participation, how well they are doing and if they are recommitting offences
- Counselling
- Try to reduce contamination at prison - separated within the prison system from adult offenders (resource driven)

#### GROUP 2

##### Pre-court

In Vanuatu Justice system begins before police - family and village to take a responsibility as well

Police available for some that are more serious

- Family meetings
- Referred to the Chief
- Pastor of the local church
- Police (Family Protection Unit)
  - Standard operation procedures
  - Review the previous occurrences before coming to Police
  - Attempt to mediate
  - If that does not work, it gets referred to court

#### **In court**

No family court but ideally would be best.

- Age
- Nature of offence
- Consider case as priority

#### **Out of court**

Rehabilitation

### **GROUP 3**

#### **Pre-court**

Standard Operating Procedures (August 2011 document - standard throughout Vanuatu) for investigations involving children and youth (to be reviewed and extended to community leaders; specific instructions for dealing with / diversion for young people should exist - attempt to formalise & standardise it...)

- Internal training of police officers
- Child interviews
- Discuss options

#### **In court**

Separate court for young offenders:

- Different setup (more friendly to the offender)
- Language should be different (comfortable, effective); Interpretation / translation (poor education levels often in young offenders; language should be such that would allow effective communication)
- Dress code for the judge/officers, presence not to create fear and intimidation
- Issues of punishment:
  - Imprisonment? If no other option is appropriate or available
  - Supervision (sent back to the community)
  - Community service / work
  - Defended sentence

#### **Out of court**

Promotion of reconciliation - cares for the victim's interests

Supervision - Probation Services / Community Justice Supervisor (who directly monitor and report back to the service of how the offender is doing)

Counselling - Chiefs, Women Counselling Services

- Currently done through pastors/community members/Chiefs
- No qualified psychologists / counsellors (limited resources)
  - Communities resources / abilities overloaded in urban areas

### **GROUP 4**

#### **Pre-court**

- Proper identification: age (as early as possible, i.e. at the police station) - efforts made to identify the age through the family members if the offender is not able to specify the exact age
  - Charge sheet does not have AGE on it! Could it be?
- Police Standard Procedures: guidelines for young offenders that supports & formalises the juvenile process
  - Consult parents, give warnings,
  - Arrest
  - Interview

- Separate / special room for remanding young offenders (separate cell, separate court proceedings, etc.)
- Inform of rights

#### In court

- Identify: birth certificates?
- Special / separate court for young offenders & special court arrangements
- Pre-sentence report in the Magistrates court to look into the background of juveniles
- Legal representation - police to inform solicitor

#### Out of court

Proper facilities:

- Kept separately but solitary confinement is not the solution (downsides of being kept separately as opposed to being kept with members of their community)
- Dealing with small number of juveniles in the Vanuatu context so if juveniles are to be kept separately, this would often mean that they would need to be kept alone? -> alternative??

### Group activity #2: Features of a Youth Justice System / Process

#### GROUP 1

- Case heard separately from adults
- Family / community involvement
- Separate training and knowledge for all officials dealing with youth offenders
- Special facilities (cells, courts)
- Restriction on publishing names / use of closed courts
- Custody as last resort

#### GROUP 3

- Separate legislation for dealing with youth offenders
- Direction to charge youth only when in public interest -diversion to deal with the rest!
- Recognition of age in the charge sheet
- Definition of child clarified (in accordance with UNCROC)
- Sentencing different to adult offender (focus should be on rehabilitation)
- Separation from adult offenders (in court, in prison)
- No publication of children offenders' names

#### GROUP 2

- First time offending - parents to deal with it, subsequent to pastors and Chiefs > police subsequent to the family/community interventions
- Police - diversion, revisit the family/community option > if that fails young offenders should be referred to a specialist (counsellors, psychologist)
- If this does not work, proceed with prosecution

#### GROUP 4

- Separate court system ('Youth Court')
- A specific court hearing date for youth
- Strengthen current SOP to add youth focus
- Clearly specify youth sentences and options (counselling, correctional services, conditions of release...)
- Separate police officers to deal with youth offenders
- Appointment of specific judiciary officers to deal with youth offenders (lawyers, public solicitor, magistrate)

## PowerPoint: 10 Characteristics of a Good Youth Justice System





## **South Pacific Council of Youth and Children's Courts**

### **Fifteen Point Assessment of a Youth Justice System**

#### **A. Introduction**

This document emerged following the 18<sup>th</sup> meeting of the South Pacific Council of Youth and Children's Courts (SPCYCC) in Auckland, New Zealand. The meeting identified a need for an assessment tool which could assist the Council to determine the needs and current status of the youth justice systems of countries/states in the South Pacific.

The fifteen points in this assessment result from consultation with SPCYCC members and are based on Principal Youth Court Judge of New Zealand Judge Andrew Becroft's paper "10 Characteristics of a Good Youth Justice System", created for the Pacific Judicial Development Programme, and Penal Reform International's "Ten Point Plan for Fair and Effective Criminal Justice for Children" ([www.penalreform.org/resource/tenpoint-plan-fair-effective-criminal-justice-children/](http://www.penalreform.org/resource/tenpoint-plan-fair-effective-criminal-justice-children/)). We would have liked to produce a "Ten Point" plan, if only for numerical simplicity. However, we believe that there are fifteen important criteria by which any youth justice system can be assessed.

## B. How Does This Work?

Please consider each question, then under “rating”, tick one of the colours in the box reproduced below which best applies to your state.



**Red** = no compliance

**Orange** = partial compliance **Green**=  
full compliance.

## C. Notes

1. Many countries/states will not have formal youth justice legislation (but yet operate in respect of children in a way that is nevertheless consistent with what would be best practice legislative principles). For the purposes of this assessment, this only constitutes partial compliance. Full compliance will be achieved when there is appropriate legislation in place.
2. There is a comments box under each question. It would be helpful to get any thoughts which you think appropriate, particularly if you have ticked the orange box (partial compliance).
3. This information will then be used to:
  - a) Identify which states may be a priority for receiving SPCYCC support; and b) Identify subject area priorities for the SPCYCC.
4. The term “child” is used at all times in the assessment (rather than “young person” or “youth”). Consistent with the United Nations Convention on the Rights of the Child, the word “child” here means anyone under the age of 18.
5. As SPCYCC is comprised of both countries and also states and territories within Australia, the assessment refers to “countries/states” to make clear the distinction.

## D. The Questions

### 1. Is There a Whole of Government “Crime Prevention Strategy for Children”?

Does the country/state have early intervention policies which target children at risk of coming into conflict with the law (e.g. marginalised children from lower income families and those in the care system) and which aim to prevent a child ever entering the justice system?

Rating:

A horizontal bar divided into three equal segments. The left segment is red, the middle segment is orange, and the right segment is green.

Comments:

A large, empty rectangular box with a black border, intended for handwritten or typed comments.

### 2. Minimum and Maximum Ages for Jurisdiction of Children

Does the country/state have an age of criminal responsibility of 12 or higher?

Does the country/state specify for the purpose of criminal proceedings that being treated as an adult begin at 18<sup>th</sup> birthday?

Rating:

A horizontal bar divided into three equal segments. The left segment is red, the middle segment is orange, and the right segment is green.

Comments:

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### 3. Is There A Separate Criminal Justice System for Children with Trained Personnel?

Does your country/state have a separate criminal justice system for children or are children dealt with in the adult system?

Are personnel who work with children (e.g. Police, Judges, lawyers and governmental and non-governmental social service providers) specially and specifically trained in working with children?

NB: if your state has a separate criminal justice system but it was not created by legislation (i.e. informal features such as separate court hearings and a specialist Judge/Judges have been developed for children), this would amount to partial compliance (orange box).

Rating:



Comments:

### 4. Limitation Upon Charging Children

Is there a legislative directive not to charge children unless there are no other alternatives available?

Are the majority of children who commit crime dealt with outside of the court system; is there a diversion system in place to deal with less serious crime outside of the court system?

Is there an option to discharge a child without a formal criminal record if he or she performs well in court?

Rating:



Comments:

**5. Provision for (partial) delegation of decision making to families, victims and communities**

Are families, victims and communities given the opportunity to participate in and make decisions at key steps in the youth justice process? (e.g. decision to charge, custody decisions and resolution of charges including punishment).

NB: this method of decision making, exemplified for instance in New Zealand, by the FGC, is still subject to the approval and supervision of the Court.

**Rating:**

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**Comments:**

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**6. Ensuring that children have the right to be heard and are encouraged to participate in proceedings**

Are children given the opportunity and the appropriate support both to express their views and to have them taken into account in all matters affecting them?

Is participation by children in proceedings not only supported and encouraged, but is there a duty on lawyers and Judges to ensure participation?

Is there mandatory provision of legal counsel for all young people (with or without means testing)?

NB: one means of ensuring child participation in the process outside of Court is set out in point 5 above.

**Rating:**

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**Comments:**

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## 7. Prohibition and prevention of all forms of violence against children in conflict with the law

Have punishments involving physical violence against children been abolished (e.g. whipping, lashing, flogging and corporal punishment); and

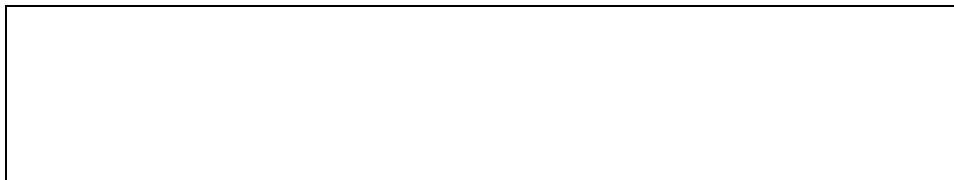
Is there zero tolerance of violence against children under arrest or detained?

Is there an independent complaints procedure for children held in custody?

Rating:

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Comments:

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## 8. Abolition of Status Offences

Has the country/state abolished status offences (i.e. the criminalisation of conduct based not upon prohibited action or inaction but on the fact that the offender is of a certain category of child or occupies a specified status)? NB: this often means acts which would not be criminal if committed by an adult but are offences if committed by a child based simply on age, e.g:

- Truancy
- Running away
- Violating curfew laws (nb: this means curfews that are placed on children universally in a state/country. It does not mean court imposed curfew orders)
- Possessing alcohol or tobacco

Rating:

A horizontal bar divided into three equal segments. The left segment is red, the middle segment is orange, and the right segment is green.

Comments:

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## 9. Timely decision making and resolution of charges

Are decisions affecting the child made and implemented within a timeframe appropriate to the child's sense of time?

If charges are not resolved within a reasonable timeframe for children, or have been unnecessarily or unduly protracted, is there provision for the Court to dismiss them?

Rating:

A horizontal bar divided into three equal segments. The left segment is red, the middle segment is orange, and the right segment is green.

Comments:

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## 10. "Evidence-based" approaches to offending?

Does the country help children to address the underlying issues relating to their offending by referring them to programmes that are "evidence-based"? (i.e. is there research to say that the programmes relied upon actually work?)

Rating:

A horizontal bar divided into three equal segments. The left segment is red, the middle segment is orange, and the right segment is green.

Comments:

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## 11. Keeping the child with their family or community

Where possible, is the child kept with, and treated within, the context of his or her family and in the community?

Rating:

A horizontal bar divided into three equal segments. The left segment is red, the middle segment is orange, and the right segment is green.

Comments:

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**12. Ability to refer case to care and protection/welfare system where child may be in need of care and protection**

If at any stage of the proceedings it appears that the child has care and protection needs, is there the ability to refer to care and protection services, and if necessary, to discharge the case from the youth justice process?

Rating:

A horizontal bar divided into three equal segments. The left segment is red, the middle segment is orange, and the right segment is green.

Comments:

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**13. Use of Incarceration/Custodial Sentences as a Last Resort**

Is there legislation in place that specifies detention as a last resort?

If there is no legislation, is there nevertheless a principle of detention as a last resort developed by appellate authority?

Is there in practice limited use of detention in juvenile facilities and in adult prisons?

Are there specialist prisons/residences for children?

Rating:

A horizontal bar divided into three equal segments. The left segment is red, the middle segment is orange, and the right segment is green.

Comments:

NB: we would be interested here to know whether the principle of detention as a last resort was developed by legislation or appellate authority.

#### 14. Development and Implementation of Reintegration and Rehabilitation Programmes for Children in Detention

Where it is appropriate to detain children, do institutions have rehabilitation and reintegration of the child as the main objective of all policies and processes from the moment the child arrives?

NB: rehabilitation will work most effectively in settings which are small enough for individual treatment to be provided, where children feel safe and secure, where adequate medical care is provided and where it is easy for children to be integrated into the social and cultural life of the community where the facility is located. Institutions should encourage contact with family and other social networks to support children; it should provide them with opportunities to obtain life skills through educational, vocational, cultural and recreational activities; and it should promote services to help with their transition back into society. The individual needs of children should be addressed such as mental health issues, substance abuse, job placement and family counselling.

Rating:

A horizontal bar divided into three equal segments. The left segment is red, the middle segment is orange, and the right segment is green.

Comments:

A large, empty rectangular box with a black border, intended for comments.

## 15. Accurate Evidence and Data on the Administration of Criminal Justice for Children

Does the country have a system for separating data on children and adults and collecting specific data on children which helps it to understand offending trends and what works to prevent children from offending and to ensure that they do not re-offend? At a minimum, does the country have?

Caseload data for children (number of incidents reported to police; number of children apprehended and charged;

Police data recording the number and nature of diversionary responses; Data recording Court outcomes and nature of resolution;

Number of children detained and in which category of facilities etc; Case characteristics data (types of offences; age of offenders; gender; magnitude of sentences given; education levels etc); and

Resource data (the costs of administering the system for children)

Rating:



Comments:

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## Session Two

### Types of Youth Offender

*Principal Youth Court Judge A J Becroft and Judge C J Harding*

#### Introduction

Significant research has been carried out into the reasons why young people offend to ensure that responses to offending are appropriate and effective for the well-being of children and young people. Being aware of the types of young person that you might see before the court is helpful with:

- v) Ensuring that young people are treated appropriately and effectively in the court
- vi) Planning preventive measures to stop young people appearing before the court.

The research has revealed that in broad, general terms, there are two distinct types of young offender, susceptible to different risks and having different needs, and consequently, an effective and principled approach requires different responses for these two groups.

This presentation will consider these two types of young offender: the “Desisters” (who make up the vast majority of young offenders) and the “Persisters” (who make up a much smaller group), but present the highest risk. Although some research has suggested that the two groups are not entirely clear cut,<sup>1</sup> there are clear trends in characteristics and risk factors that these two groups demonstrates.

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<sup>1</sup>K L McLaren, *Tough is Not Enough - Getting Smart about Youth Crime*, n 7, 18.



## Persisters and Desisters - Two Types of Youth Offender

### (1) Who are “Desisters”?

#### *Definition:*

About a quarter of all young men are **Desisters**. Also called “adolescent limited” offenders,<sup>2</sup> they commit at least one offence during their formative years but desist from crime and go on to settle into law-abiding lifestyles by their mid-twenties, having committed only a few trivial crimes.

#### *Characteristics of Desisters:*

“Desisters” usually start offending after 13 years of age and tend to stop or age out of offending by age 24 to 28.<sup>3</sup> Like Persisters, they can and do commit serious offences, but the Persisters tend to commit more of them.

### (2) Key Risk Factors for Desisters

The most rigorous research available shows that the following risk factors are the most powerful causes of offending and are consequently the key targets for programmes aimed at reducing offending.

Young people in the Desister group make few Court appearances and have fewer risk factors. They are particularly at risk from substance abuse and antisocial peers, and are considered by some to be the priority for intervention. The following list gives an order of priority for addressing risks with this group<sup>4</sup>:

- Mixing with antisocial peers;
- Substance abuse;
- Family problems - poor parental monitoring, negative parent-child relationships;
- Poor performance and attendance at school, negative feelings about school;
- Others as per the Persisters list below.

### (3) Who are Persisters?

#### *Definition:*

Both in New Zealand and internationally, around 15-20% of youth offenders are “**Persisters**”. Also known as “Early Onset” or “life course” offenders, they first offend at an early age and continue to offend into adulthood. “Persisters” are responsible for a large proportion of crime.<sup>5</sup>

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<sup>2</sup> Moffitt T E (1993) Adolescence-Limited and Life-Course Persistent Antisocial Behavior: A Developmental Taxonomy, *Psychological Review*, 100(4): 674-701, as cited in McLaren, above n 1, 17.

<sup>3</sup> Moffitt, above n 3, as cited in McLaren, above n 1, 16.

<sup>4</sup> McLaren, above n 1, 36.

<sup>5</sup> K L McLaren, *Tough is Not Enough - Getting Smart about Youth Crime*, available at <http://www.myd.govt.nz/Publications/Justice/toughisnotenough-gettingsmartabout.aspx>, (last accessed 21 June 2012), 16.

Persistent young offenders are a difficult and worrying group that requires identification and intervention as early as the preschool years. Terrie Moffitt is one researcher who has put forward the “Desister” versus “Persister” theory. She concludes that:<sup>6</sup>

“a substantial body of longitudinal research consistently points to a very small group of males who display high rates of antisocial behaviour across time and in diverse situations. The professional nomenclature may change, but the faces remain the same as they drift through successive systems aimed at curbing their deviance: schools, juvenile-justice program, psychiatric-treatment centres, and prisons.” (1996:15).

### *Characteristics of Persisters:*

In contrast to Desisters, “Persisters” start offending early, before age 14 and as early as 10 years of age,<sup>7</sup> offend at high rates - around 40% to 60% of youth offending in New Zealand - and continue offending into adulthood. The statistics in NZ make sobering reading:<sup>8</sup>

- 82% are male. However the number of young women who offend, especially violently, has been relatively increasing over the past decade.
- Many, estimated up to 70-80%, have a drug and/or alcohol problem, and a significant number are drug dependent/addicted.
- Most, estimated up to 70%, are not engaged with school - most are not even enrolled at a secondary school. Non-enrolment, rather than truancy, is the problem.
- Most experience family dysfunction and disadvantage; and most lack positive male role models.
- Many have some form of psychological disorder, especially conduct disorder, and display little remorse, let alone any victim empathy. Some will also have a disability such as fetal alcohol spectrum disorder, autism, attention deficit disorder, speech and communication disorders, a specific learning disability (eg dyslexia), or a combination of these.

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<sup>6</sup> Moffitt T E (1996) Adolescence-Limited and Life-Course Persistent Offending: A Complementary Pair of Developmental Theories, in T Thornberry (ed.) *Advances in Criminological Theory: Developmental Theories of Crime and Delinquency*, pp 11-54. London: Transaction Press, 15 as cited in McLaren, above n 1, 17.

<sup>7</sup> McLaren, above n 1, 16.

<sup>8</sup> These statistics were obtained from New Zealand Police National Annual Apprehension Statistics, Ministry of Justice “Child and Youth Prosecution Statistics” (both available on the Statistics New Zealand website) and anecdotal evidence from Youth Court Judges. Maori, our indigenous people, seem to be disproportionately represented at every stage of the youth justice process.

22% of the 14-16 year old population is Maori. However, Maori make up 51% of apprehensions of 14-16 year olds, 55% of prosecutions in the Youth Court over 90% in some areas of high Maori population). They are given 64% of supervision with residence orders (the highest Youth Court order before conviction and transfer to the District Court).

Many have a history of abuse and neglect, and previous involvement with Child, Youth and Family Services.

These characteristics appear to be universal for this small group of serious young offenders. Compare, for example, these two sets of statistics (outcomes from New Zealand research) to this third set of statistics from research in the United Kingdom.

#### **(4) Key Risk Factors for Persisters**

Persistent offenders tend to show the most severe and greatest numbers of risk factors from a relatively early age.

Persisters tend to come from multi-problem backgrounds. These young people are usually seekers of immediate gratification and give no thought to the consequences of their actions. Effective interventions with this group must tackle multiple identified risk factors.

Risk factors in order of the highest to lowest priority for Persisters are:<sup>9</sup>

- Having few social ties (being low in popularity, and engaging in few social activities);
- Mixing with antisocial peers;
- Having family problems, particularly poor parental monitoring of children and negative parent-child relationships;
- Experiencing barriers to treatment, whether low motivation to change, or practical problems such as difficulty in attending appointments due to lack of transport and work hours;
- Showing poor self-management, including impulsive behaviour, poor thinking skills, poor social/interpersonal skills;
- Showing aggressiveness (both verbal and physical, against people and objects) and anger;
- Performing and attending poorly at school, lacking positive involvement in and feelings about school;
- Lacking vocational skills and a job (for older offenders);
- Demonstrating antisocial attitudes that are supportive of crime, theft, drug taking, violence, truancy and unemployment;
- Abusing drugs and alcohol;
- Living in a neighbourhood that is poor, disorganised, with high rates of crime and violence, in overcrowded and/or frequently changing living conditions;
- Lacking cultural pride and positive cultural identity.

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<sup>9</sup> Ibid.

### **Three Studies - Similar Conclusions**

#### **i. Auckland Youth Forensic Services Statistics 2000-2001:**

- 80-85% Male
- Māori & Pacific Island over-represented
- 70% use cannabis; 60% use alcohol
- 50% lived in 3 different placements
- 30-40% "care and protection" history
- 20% involved in gangs
- 70% unemployed or not attending school (40% reached 3<sup>rd</sup> form, 32% reached 4th form)
- History of offending: 5 - 10 offences

#### **ii. Capital and Coast Youth Forensic Services 2000-2004:**

- 83% Male
- Maori over-represented (48%)
- 70% faced cannabis and alcohol issues
- 16% drug dependent; 14% alcohol dependent
- 18% attending school; 28% attending course/training; 45% unemployed
- 45% excluded/expelled from school
- 55% attended more than one school/transient
- 60% in CYFS care at some stage
- 12% living with both parents; 28% with one parent

#### ***United Kingdom Research:***

#### **iii. An Analysis of 4,000 Young Offenders**

- 83% male
- 70% from single parent families
- 41% regularly truanting
- 60% have special educational needs
- Over 50% use cannabis
- 75% smoke and drink
- 75% considered impulsive
- 25% at risk of harm as a result of their own behaviour (9% at risk of suicide)

## Conclusion

As Scott (1999)<sup>10</sup> notes, Desisters and Persisters are at separate ends of a continuum of offending defined primarily by the number of risk factors the young person has experienced.

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Taken in large part from a paper by Principal Youth Court Judge Becroft, Conference on the Rehabilitation of Youth Offenders, "A New Zealand Perspective," Singapore 20-21 November 2007

Thanks to Emily Bruce, research counsel to the Principal Youth Court Judge for her substantial assistance with this paper.

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<sup>10</sup> Scott G (1999) *Young Offenders: Current Issues in Policy and Practice*, Wellington, NZ: Contract Policy Services, as cited in McLaren, above n 1, quoted in K L McLaren, *Tough is not Enough*, above n 1, 23.

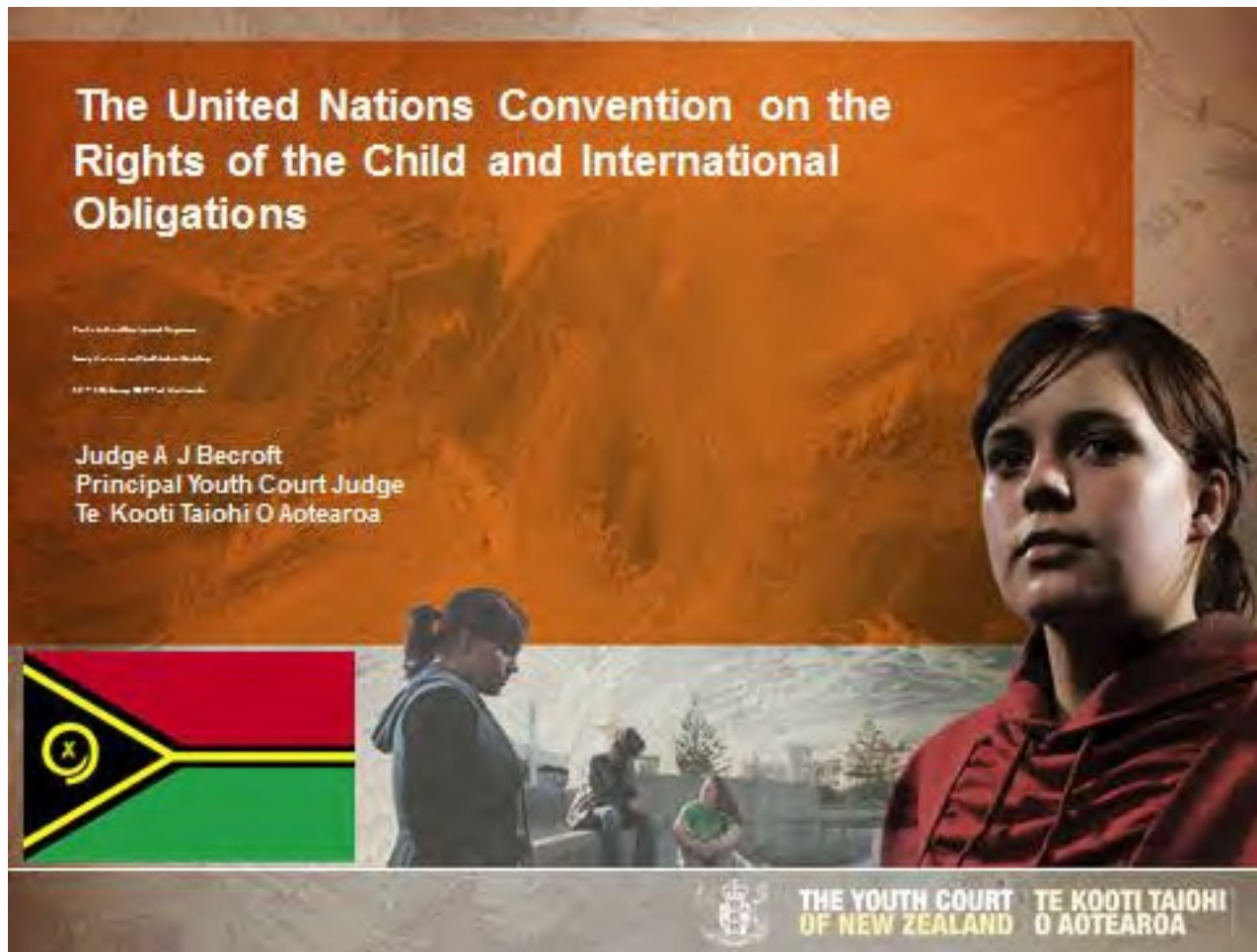
## PowerPoint: Brain Development

If you would like to obtain a copy of this video clip please write to the Office of the Principal Youth Court Judge in New Zealand (Steven.Bishop@justice.govt.nz) and a CD of the clip will be mailed to you.





## Power Point: UNCROC



## Description of the New Zealand Youth Justice Process

*Judge Andrew Becroft, Principal Youth Court Judge of New Zealand Te  
Kaiwhakawa Matua Ki Te Kooti Taiohi O Aotearoa*

### **1. INTRODUCTION**

#### **1.1 PRINCIPLES**

There are a number of key statutory provisions which underpin the New Zealand youth justice process. The part of the Children, Young Persons and their Families Act devoted to youth justice begins with a statement of principles, which follows:(1)

- Unless the public interest requires otherwise, criminal proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter
- Criminal proceedings should not be instituted against a child or young person solely in order to provide any assistance or services needed to advance the welfare of the child or young person, or his or her family, whānau, or family group
- Any measures for dealing with offending by children or young persons should be designed -
  - (i) To strengthen the family, whānau, hapū, iwi, and family group(2) of the child or young person concerned; and
  - (ii) To foster the ability of families, whānau, hapū, iwi, and family groups to develop their own means of dealing with offending by their children and young persons
- A child or young person who commits an offence should be kept in the community so far as that is practicable and consonant with the need to ensure the safety of the public
- A child's or young person's age is a mitigating factor in determining -
  - (i) Whether or not to impose sanctions in respect of offending by a child or young person; and
  - (ii) The nature of any such sanctions
- Any sanctions imposed on a child or young person who commits an offence should -
  - (i) Take the form most likely to maintain and promote the development of the child or young person within his or her family, whānau, hapū, and family group; and
  - (ii) Take the least restrictive form that is appropriate in the circumstances;

NB: footnotes for this paper can be found on the last page).



- Any measures for dealing with offending by a child or young person should so far as it is practicable to do so address the causes underlying the child's or young person's offending
- In the determination of measures for dealing with offending by children or young persons:
  - i) Consideration should be given to the interests and views of any victims of the offending (for example, by encouraging the victims to participate in the processes under this Part for dealing with offending); and
  - ii) Any measures should have proper regard for the interests of any victims of the offending and the impact of the offending on them
- The vulnerability of children and young persons entitles a child or young person to special protection during any investigation relating to the commission or possible commission of an offence by that child or young person.

These principles must guide professionals' dealings with young people throughout the entire youth justice process.

## *1.2 THE YOUTH COURT*

The Youth Court of New Zealand is a division of the New Zealand District Court established by section 433 of the Children, Young Persons and Their Families Act 1989 ("CYPFA"). It deals almost entirely with young people aged 14 to 16 years inclusive.

Child offenders – those aged 10 to 13 years inclusive – are mostly dealt with in the Family Court. This is because child offending is seen as symptomatic of care and protection issues. However, from 1 October 2010 child offenders aged 12 or 13 may also be dealt with in the Youth Court if the offence with which they are charged carries a maximum penalty of at least 14 years, (or 10 years and they have previously offended in a serious way). To date, only around 23 child offenders have been heard in the Youth Court. The Youth Court has the power under s 280A of the Children, Young Persons and their Families Act to transfer these cases out of the Youth Court and back to care and protection proceedings if required. In most of the around 23 cases that power has been used.

All children and young people charged with murder or manslaughter have their cases resolved in the High Court.

## **2. OPTIONS WHEN POLICE DETECT ALLEGED OFFENDING BY A YOUNG PERSON**

The Youth Court process begins with Police detecting alleged offending by a young person. Where this occurs, an enforcement officer has three options:

- To give an on the spot warning or otherwise deal with the matter informally.
- To notify the Police Youth Aid division for further action.
- To arrest the young person.

### *2.1 FORMAL WARNING*

The first consideration when Police apprehend a young offender is whether it would be sufficient to warn the young person. Police deal with around 22% (3) of youth offending by issuing a formal warning then releasing the young person. This is in keeping with the principle that young offenders should be diverted

from the formal justice system wherever possible. It also reflects the nature of much youth offending (i.e. relatively minor).

## 2.2 *ALTERNATIVE ACTION/DIVERSION*

Given the statutory injunction in s208(a) Children, Young Persons and Their Families Act 1989 (CYPFA) not to issue criminal proceedings if there are alternative means of dealing with the matter and unless the public interest otherwise requires, the Police must consider a diversionary programme for the young person if a warning is insufficient or inappropriate. About 42% of all offences are dealt with in this way<sup>(4)</sup>. Diversion/ alternative action is usually locally based, often involves members of the community, and is overseen by the Police Youth Aid division.

The limits of what may be used as a form of alternative action are the limits of the imaginations of those involved. The best Police Youth Aid workers spend considerable time and effort tailoring solutions that satisfy victims, prevent re-offending and re-integrate young people into their communities.

## 2.3 *ARREST*

There are significant restrictions on the right of the Police to arrest a young person where there is good cause to suspect that he or she has committed an offence. Under s214 CYPFA, a young person can only be arrested:

- to ensure the young person's appearance before Court (e.g. where the young person refuses to give name and address details); or
- to prevent the young person from committing further offending or to prevent the loss/ destruction of evidence or witness interference; and
- where a summons would not achieve the above purposes. However, where:
- an offence is a category 4 or category 3 offence for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; *and*
- a Police officer believes arrest is required in the public interest, there is no such restriction, and the Police officer may make the arrest (provided he or she has good cause to suspect the young person of offending).

There are also significant limitations upon the Police questioning of young people.

Upon arrest, the Police may:

- release the young person without charge (an "intention to charge" Family Group Conference should be held if a charge is later to be laid); or
- charge the young person, in which case he or she may be released with or without conditions to appear later in the Youth Court; or
- in some situations, charge and detain the young person in custody for longer than the standard 24 hour maximum, in which case he or she must be brought before the Court as soon as practicable.

### **3. FAMILY GROUP CONFERENCES - GENERALLY**

#### ***3.1 WHEN THEY OCCUR***

Family Group Conferences are the lynchpin of the New Zealand youth justice process. They occur in several situations:

- If Police seek to lay a charge (and there is no arrest) Where charges are laid and are “not denied”.

In addition:

- When Police believe a child or youth offender needs care and protection because there is serious concern for his or her wellbeing due to the number, nature and magnitude of a child offender's offending;
- When a charge is admitted or proved in the Youth Court and there has been no previous opportunity to consider the appropriate way to deal with the young offender; and
- Any other time a Youth Court considers it necessary or desirable.

#### ***3.2 ENTITLED ATTENDEES (5)***

Attendees include:

- Police;
- Young person;
- Parents/guardians of the young person; Wider family of the young person;
- Youth advocate (if it is a court directed FGC) (see paragraph 5 (“Charge Laid in Youth Court” for more information);
- Often, a social worker;
- Most importantly, the victim or victims; and
- Any other person whose attendance is in accordance with the wishes of the family, whānau, or family group of the child or young person.

#### ***3.3 WHAT HAPPENS AT THE FGC***

Expert reports dealing with education, health and welfare and other topics may be available at the FGC.

The FGC must first ascertain whether the offender admits the offence. If he or she admits it, the conference proceeds. If not, the case will be referred back to Court.

At the FGC the offender, together with his or her family, is required to propose a plan aimed at addressing past offending, repairing present harm and meeting future needs. A range of outcomes are available to the offender and his or her family (6). Generally, suggested outcomes must be “necessary or desirable in relation to the child or young person” and must “have regard to the [youth justice] principles set out in..[the CYPF] Act.”(7) More specifically, and depending on the purpose of the Conference, the plan can make a number of recommendations.

The offender and his or her family, together with youth justice professionals who attend the conference, use the information obtained from earlier discussions in the FGC to formulate an appropriate plan. The offender's participation in its formulation is intended to create a feeling of ownership of it, thereby

increasing the likelihood of completion, and subsequent pride in completion, of the plan. The Court retains the overriding responsibility for decision-making. While the Court is required to consider the plan, it is not obliged to adopt it, although it does in the vast majority of cases.

#### **4. "INTENTION TO CHARGE" FAMILY GROUP CONFERENCES**

If the Police wish to charge a young person who has not been arrested, an "intention to charge" Family Group Conference ("FGC") must be convened to consider the matter.

Usually the first question is whether the offending is admitted. If so, usually the FGC will recommend a voluntary plan for the young person to undertake. If it is satisfactorily completed, this will usually be the end of the matter. If not, then a charge may be laid in the Youth Court. Alternatively, the FGC may recommend that a charge be laid without a plan.

It is common practice for the Police to voluntarily submit to an intention to charge FGC in a situation where a young person has been arrested, released and some days or weeks later is to be charged with an offence. Technically, as there has been no arrest, there is no statutory obligation to do this (see: s245). However, this course of action is permissible and, indeed, it is highly desirable that this best practice continues (in accordance with the principles of the CYPFA given effect by the FGC procedure).

#### **5. CHARGE LAID IN YOUTH COURT**

When a charge is laid in the Youth Court, the young person has a youth advocate assigned and paid for. The youth advocate is a lawyer with specialist knowledge of youth law appointed by the court from a panel of lawyers suitably qualified and available.

Virtually all charges across virtually all offence categories relating to young people are heard and determined in the Youth Court, with the following exceptions:

- Murder and manslaughter charges (these are heard in the High Court);
- Non-imprisonable traffic offences (unless the young person is charged with another offence, both offences arise out of the same event or series of events; and the court considers it desirable and convenient that the charges be heard together.
- Where the child or young person elects jury trial; and
- (In the case of a young person) when the Youth Court is satisfied that it is not in the interests of justice for the young person to remain in the Youth Court when a co-defendant is to have a jury trial (nb: this rule does not apply to children charged in the Youth Court).

The young person is required to indicate in the Court whether the charge is "denied" or "not denied".

The young person may elect jury trial if the charge is a charge under category 3 (offences imprisonable by life or two or more years imprisonment) or category 4 (the most serious of those offences), other than murder or manslaughter. The jury trial is held in the District Court.

##### ***5.1 CHARGES NOT DENIED: COURT-DIRECTED FGC***

If the charge is "not denied", a FGC must be convened.

If the charge is “admitted” at the FGC, the Conference will usually formulate a plan for the young person to undertake. The plan should address both the “deed” and the “need”; the consequences and the causes of offending. That is, the young person should be held accountable for the offending but a comprehensive, rehabilitative plan should be formulated to prevent further offending and to allow the young person to develop in a socially beneficial way without further offending (see: s4(f)(i) and (ii)).

The plan will then be presented to the Youth Court. In about 95% of the cases, the plan is accepted and the case is adjourned for the plan to be completed.

If the plan is satisfactorily completed, the young person is often absolutely discharged under s282 CYPFA.

Sometimes the FGC may recommend formal orders being made under s283 CYPFA or, on occasions, such formal orders are necessary because of the young person’s failure or inability to complete an agreed FGC plan.

A Court-ordered FGC may recommend, in addition to any other recommendations that a formal Police caution be given to the young person.

## **5.2 CHARGES DENIED: JUDGE ALONE TRIAL AS FOR ADULTS**

If a charge is denied, the matter is the subject of a Judge alone trial, conducted in the normal adversarial manner as for adults under the provisions of the Criminal Procedure Act 2011. If the charge is dismissed, the young person is free to go. If it is proved in the Youth Court, a FGC must be convened to consider sentencing options.

The Youth Court may either accept a FGC Plan, or may impose one of the orders set out in s283 CYPFA (see paragraph 6 (“Youth Court Orders”) below).

## **6. YOUTH COURT ORDERS**

Most cases that come to Youth Court do not receive formal orders. The usual course is for a plan to be formulated at a FGC and, if this plan is successfully completed, the young person may receive a complete discharge and leave the Court with no criminal record. However, the following orders are available to the Youth Court:

### **6.1 LOWER-END YOUTH COURT ORDERS**

- **Discharge as if the charge were never laid (s 282) Discharge with record of the discharge (s 283(a)) Admonishment (s 283(b))**
- Order that the young person come before the court, if called upon within 12 months after the order is made, so that the court may take further action under this section (s 283(C))
- Fines/Costs/Reparation/Restitution (ss 283(d)-(g)): it is also possible (but not essential) when the young person is under 16, to order a parent or guardian to pay a sum of the prosecution costs, or to pay reparation costs or restitution.
- Forfeiture of property (s 283(h))
- Confiscation of property/disqualification from driving (ss 283(i)-(j))

- Orders to attend parenting, mentoring or drug and alcohol rehabilitation programmes (s 283(ja)-(jc): these are new orders, introduced to the Youth Court in October 2010. Note that the young offender's parents can be ordered to attend the parenting programme, or they themselves can be ordered to attend if they are a parent.
- Supervision order (s 283(k): this order places the young person in the care of the chief executive, or any other person or organisation, for a period of up to 6 months. Community work order (s 283(l))

## 6.2 TOP-END YOUTH COURT ORDERS

The following top-end orders are available to the Youth Court:

- **Supervision with Activity (s283(m))**

Supervision with Activity involves up to six months of supervision during which the young person must attend and undertake a specified programme or activity (8). The six months may be followed by a further period of supervision for up to six months. Plans may be detailed and tailored to fit the specific needs of a particular young person.

- **Supervision with Residence (s283(n))**

The Supervision with Residence order places a young person in the custody of the chief executive of Child, Youth and Family Services for 3-6 months and after this order is completed, a period of 6-12 months supervision follows (9). Young people receiving such an order are usually placed in one of three Youth Justice Residences.

Supervision with Residence is the harshest penalty available to the Youth Court and, as it deals with only the most serious youth offenders, young people on Supervision with Residence are the small but difficult group of young offenders who require intensive and careful intervention. However, Child, Youth and Family Service's *Review of the Residential Strategy* published in June 2004 stated that there was a need for a greater therapeutic focus in the residences to assist young people, rather than merely containing them.

- **Convict and Transfer to the District Court for Sentence (s283(o))**

The Youth Court may convict a young person and transfer them to the District Court for sentence.

- **Prison**

Prison is necessary for community safety and protection. It is the ultimate sanction and needs to be available for the most serious offenders. It is not lawful to impose a sentence of imprisonment in respect of an offence committed when a person is under 17 years of age, unless the offending in question was a category 4 offence, or a category 3 offence for which the maximum penalty available is or includes imprisonment for life or for at least 14 years (10).

Since the inception of the Children, Young Persons and Their Families Act 1989, relatively few young people have been dealt with through the use of convictions in the District and High Court and sentences of penal custody (11).

Imprisonment alone is a poor response to youth crime. There are numerous negative psychological and behavioural consequences for young people who are imprisoned as adults, and with adult offenders (12).

Young inmates may experience intimidation and bullying by older inmates (13). Verbal, physical, sexual and emotional abuse is particularly likely for those incarcerated for the first time, those that are small, from a middle class background, are effeminate in behaviour or lack “streetwise” knowledge (14). Further, juveniles in adult prisons are at greater risk of suicide (15).

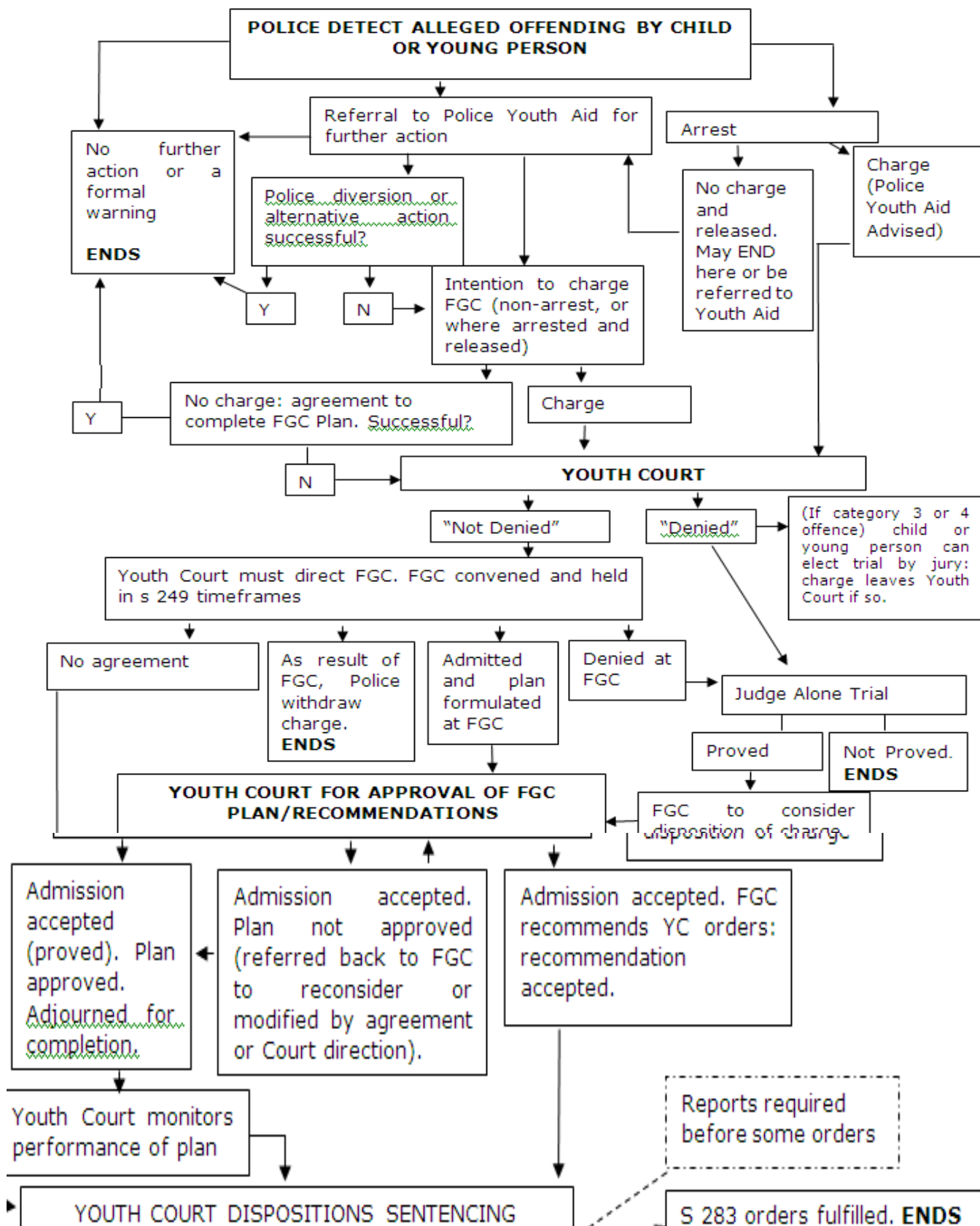
## **7. CARE AND PROTECTION ISSUES**

If, at any stage of the hearing of any proceedings, it appears to the court that the child or young person may be in need of care or protection (as defined in section 14), the matter may be referred to a care and protection co-ordinator and the proceedings adjourned until the matter can be resolved by use of the care and protection provisions of the CYPFA. In this case, the matter may be discharged under s282 CYPFA.

## **8. FLOWCHART OF YOUTH JUSTICE PROCESSES**

The flowchart on the next page shows the processes of the youth justice system.







## 9. FOOTNOTES

- (1) Children, Young Persons and their Families Act 1989, s 208
- (2) Whānau” is the Māori word for family. Māori are the indigenous people of New Zealand. “Hapū” is the Māori word for extended family, “Iwi” describes a Māori sub-tribe.
- (3) Based on Police National Annual Apprehension Statistics (rounded up to the nearest whole number). Available at < [www.stats.govt.nz/tools\\_and\\_services/tools/ TableBuilder/recorded-crime-statistics/ASOC-apprehension-calendar-year- statistics.aspx](http://www.stats.govt.nz/tools_and_services/tools/TableBuilder/recorded-crime-statistics/ASOC-apprehension-calendar-year-statistics.aspx)>.
- (4) Also based on Police National Annual Apprehension Statistics, as above.
- (5) Children, Young Persons and Their Families Act 1989 (NZ), s251.
- (6) Children, Young Persons and Their Families Act 1989 (NZ), s260.
- (7) Children, Young Persons and Their Families Act 1989 (NZ), s260.
- (8) Children, Young Persons and their Families Act 1989 (NZ), s 307.
- (9) Children, Young Persons and their Families Act 1989 (NZ), s 311.
- (10) Sentencing Act 2002, s18.
- (11) Maxwell, Robertson, Kingi, *Achieving the Diversion and Decarceration of Young Offenders*, Crime and Justice Research Centre, Victoria University of Wellington, 2003, 11.
- (12) Adams, 1992; Bishop & Fraser, 2002; Bishop et al., 1996; Calabrese & Adams, 1990; Lane et al., 2002; Taylor, 1996; Tie & Waugh, 2001 quoted in Dr Ian Lambie (2006) *The Negative Impacts on Juvenile Offenders Incarcerated in Adult Prisons*.
- (13) Department of Corrections, *Young Male Inmates (fact sheet, no longer available online)*, as cited in Principal Youth Court Judge A J Becroft “Youth Offending: Factors that Contribute and How the System Responds” (Symposium Child and Youth Offenders: What Works, 2006). Last accessed 2 July 2012 < [www.justice.govt.nz/courts/youth/publications-and-media/speeches/youth-offending-factors-that-contribute-and-how-the-system-responds#64](http://www.justice.govt.nz/courts/youth/publications-and-media/speeches/youth-offending-factors-that-contribute-and-how-the-system-responds#64)
- (14) Maitland & Sluder (1998) quoted in Lambie, above n 12.
- (15) Ibid.

## ANNEX 9: YOUTH JUSTICE PRE- AND POST-WORKSHOPS QUESTIONNAIRES

### PJDP - FAMILY VIOLENCE AND YOUTH JUSTICE WORKSHOP

PORT VILA, VANUATU: 12-15 FEBRUARY, 2013

#### Youth Justice Pre-workshop Questionnaire

Please answer the following questions. This questionnaire will help the faculty to understand your particular training needs and focus training during this orientation course. It will also help us to assess what you have learned from the training at the end of the course.

**Question 10:** Please list two types of youth offenders:

1.

2.

**Question 11:** Please list five characteristics of a good youth justice system:

1.

2.

3.

4.

5.

**Question 12:** Please list three factors should be borne in mind when hearing a youth case?

1.

2.

3.

**Question 13:** Why do young offenders need to be treated differently from adult offenders?

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Please rate your level of knowledge and understanding before the Youth Justice Sessions regarding the following matters by ticking / checking ONE square per question only:

**Question 14:** Understanding the characteristics of a developed Youth Justice system:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>No Understanding</i>	<i>Limited Understanding</i>	<i>Good Understanding</i>	<i>Excellent Understanding</i>

**Question 15:** Applying the need to divert young offenders from the courts in your day-to-day role:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>No Understanding</i>	<i>Limited Understanding</i>	<i>Good Understanding</i>	<i>Excellent Understanding</i>

**Question 16:** Structuring your judicial in court behaviour for young people:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>No Understanding</i>	<i>Limited Understanding</i>	<i>Good Understanding</i>	<i>Excellent Understanding</i>

**Question 17:** How courts could be arranged to better serve young people:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>No Understanding</i>	<i>Limited Understanding</i>	<i>Good Understanding</i>	<i>Excellent Understanding</i>

**Question 18:** Addressing the needs of victims of crime through conferencing:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>No Understanding</i>	<i>Limited Understanding</i>	<i>Good Understanding</i>	<i>Excellent Understanding</i>

*Thank you for your time and assistance with completing this form!*

## PJDP - FAMILY VIOLENCE AND YOUTH JUSTICE WORKSHOP

PORT VILA, VANUATU: 12-15 FEBRUARY, 2013

### Youth Justice Post-workshop Questionnaire

Please rate your level of knowledge and understanding *after* the Youth Justice Sessions regarding the following matters by ticking / checking ONE square per question only:

**Question 1:** Understanding the characteristics of a developed Youth Justice system:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No Understanding	Limited Understanding	Good Understanding	Excellent Understanding

**Question 2:** Applying the need to divert young offenders from the courts in your day-to-day role:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No Understanding	Limited Understanding	Good Understanding	Excellent Understanding

**Question 3:** Structuring your judicial in court behaviour for young people:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No Understanding	Limited Understanding	Good Understanding	Excellent Understanding

**Question 4:** How courts could be arranged to better serve young people:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No Understanding	Limited Understanding	Good Understanding	Excellent Understanding

**Question 5:** Addressing the needs of victims of crime through conferencing:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No Understanding	Limited Understanding	Good Understanding	Excellent Understanding

Please also re-answer the substantive questions asked at the start of this course. This will help us to assess your acquisition of knowledge during the course, and enable us to refine our ongoing training approach.

**Question 6:** Please list two types of youth offenders:

1. \_\_\_\_\_
2. \_\_\_\_\_

**Question 7:** Please list five characteristics of a good youth justice system:

1. \_\_\_\_\_

2.

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3.

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4.

---

5.

---

**Question 8:** Please list three factors should be borne in mind when hearing a youth case?

1.

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2.

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3.

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**Question 9:** Why do young offenders need to be treated differently from adult offenders?

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*Thank you for your time and assistance with completing this form!*

## ANNEX 10: MEMORANDUM OF UNDERSTANDING, VANUATU

# Youth Justice in Vanuatu

## Memorandum of Agreement

### Introduction

On 14 and 15 February 2013 the Pacific Judicial Development Programme (PJDP) hosted a two day youth justice workshop.

The workshop was requested by the Judiciary of Vanuatu and was widely attended by organisations, agencies both government and non-government and the judiciary.

Specifically those attending included; Supreme Court and Magistrates Courts, Child Protection Unit, Vanuatu Police, UNICEF, Law Commission, Vanuatu Women's Crisis Centre, State Law Office, Public Solicitor, Vanuatu Law Society, Office of the Public Prosecutor, Department of Correctional Services, National Council of Chiefs and Wan Smol Bag Community Organisation.

The workshop was convened to consider how a criminal justice process for young people could be developed and introduced into Vanuatu, so as to improve the outcomes for young offenders, their families and victims.

### Context / Preamble

Recognising that there is no youth justice legislation in Vanuatu;

and accepting that there is little in the way of a youth specific justice process in operation;

and mindful that the **United Nations Convention on the Rights of the Child** (UNCROC) has been ratified by Vanuatu on 7 July 1993 which defines a child as being under 18 years;

and recognising the force of the three sets of non-binding rules that deal with youth justice:

1. the UN Guidelines for the Administration of Juvenile Delinquency ("the Riyadh Guidelines")<sup>2</sup>
2. the UN Standard Minimum Rules for the Protection of Juvenile Justice ("the Beijing Rules")<sup>3</sup>, and
3. the UN Rules for the Protection of Juveniles Deprived of their Liberty.<sup>4</sup>

### Agreements

The workshop agrees as follows:

<sup>2</sup> United Nations Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines"), G.A. res. 45/112, annex, 45 U.N. GAOR Supp. (No. 49A) at 201, U.N. Doc. A/45/49 (1990).

<sup>3</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), G.A. res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985).

<sup>4</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, G.A. res. 45/113, annex, 45 U.N. GAOR Supp. (No. 49A) at 205, U.N. Doc. A/45/49 (1990).

1. A separate Young Offenders Act that provides for a specific youth justice process for Vanuatu should be enacted as a matter of urgency to ensure compliance with Vanuatu's United Nations obligations. The signatories to this memorandum will do all that is reasonably within their power to promote the introduction of this legislation;
2. In the absence of specialist Youth Justice Legislation, the attendees and signatories to this memorandum commit themselves to developing a separate justice process for young offenders which will have at least the following agreed features (set out in the following three parts):

#### PART 1: Out of court processes - Pre court

- i. The **Police** will introduce a set of Standard Operating Procedures (SOPs) for the investigation of alleged offences by young people and the interview and treatment of young people during investigation. These SOPs are currently in development, dated August 2011, revised June 2012.
- ii. The **Public Solicitor** will provide a roster of lawyers available to be contacted by the police out of hours to advise youth suspects being investigated / interviewed by the police.
- iii. The **Police** will divert as many young offenders as possible rather than charging them in court, as set out in the SOPs ((i) above and contained in the flowchart 'Options for Dealing with Young Offenders'). These diversion options will include:
  - a. On the spot warning
  - b. Caution
  - c. Mediation
  - d. Community Conferences
- iv. The **Police** will adopt a different colour file for youth offenders
- v. The **Public Prosecutor** will include on every charge sheet, when the alleged offender is a young person, the young person's date of birth and a clear statement that the charge relates to a young person.

#### PART 2: In court processes

- i. The **Courts** will allocate separate days to deal with young people who are charged.
- ii. **Specialist Magistrate(s)** will be specially trained and appointed to preside over separate sittings of **Magistrates Court** to deal with young offenders.
- iii. A different, more informal layout for **court room** furniture will be adopted where practicable.
- iv. A lawyer will be appointed by the **Public Solicitors Office** for every young person appearing in court.
- v. **Court** sittings for young offenders will be held in private with the young offender's name suppressed.
- vi. The **Courts** will encourage and facilitate a young person's participation in the court process and will elicit a young person's views and as far as practicable will give effect to them.

- vii. The **Courts** will adopt timely processes for young offenders.
- viii. The **Courts** will consider referring relevant issues to Community Conferences comprised of the young offender and family, victim, police, lawyer, conference convener and any other interested and relevant party (e.g. customary chiefs / pastor). The Court will consider any recommendations from the Community Conference in assessing penalty.
- ix. **Correctional Services** will attend every separate sitting of the Courts dealing with young offenders and will make available reports for every young person appearing in court when directed by a Court.
- x. Young people will be sentenced by the **Court** to a custodial sentence as a last resort.

### PART 3: Out of court processes - After appearance in court

- i. In order that young people in custody (including while on remand) be kept separate from adults, separate facilities for their detention will be developed.
- ii. Community based alternatives to custodial sentences will be supported and encouraged.
- iii. The **Police** and **Courts** will collect and circulate statistics showing at least the following information:
  - a. Exact age
  - b. Gender
  - c. Home island
  - d. Whether diverted or charged
  - e. Type of charge
  - f. Outcome
  - g. Reoffending rates
- iv. Notwithstanding the collection of statistics participants agreed (save in exceptional circumstances) that in any relevant legislation, details relating to a conviction of young offenders be expunged upon their attaining eighteen years of age.

### Review

This memorandum and its implementation is to be reviewed at least annually and for the first two years every six months. The review is to be conducted by a group including the signatories to this memorandum. The chair of the working group shall be the Chief Magistrate or his nominee.

### Conclusions

Those attending this workshop are unanimous that there are considerable opportunities to develop a separate youth-friendly justice process in Vanuatu even though no appropriate legislation is now in force.

Representatives at the workshop agreed that they could each develop and change their procedures so as to ensure compliance with UN obligations so as to develop a youth specific justice process.

Dated at Port Vila, Vanuatu this 15<sup>th</sup> day of February 2013.



Signed at Port Vila, Vanuatu.

Name	Title	Agency	Signature
Vincent Lunabek	Chief Justice	Judiciary	
Stephen Felix	Chief Magistrate	Judiciary	
Laurent Lulu	Manager	Wan Smol Bag	
Davis Saravanu	Senior Sergeant	Family Protection Unit	
George Twomey	Chief Superintendent	Vanuatu Police	
Brenda Nabirye	Child Protection Officer	UNICEF	
Trevor Rarua	Senior Probation Officer	Correctional Services	
Beverleigh Kanas	Senior Legal Researcher	Law Commission	
Vola Matas	Legal Officer	Women's Crisis Centre	
Jacob Kausiama	Public Solicitor	Public Solicitors Office	
Bill Bani	President	Law Society	
Gray Vuke	Inspector	State Prosecutor Office	
Roselyn. Q. Tor	Research Coordinator	Malvatumauri Council of Chiefs	







# Pacific Judicial Development Programme

## *FAMILY VIOLENCE AND YOUTH JUSTICE PROJECT*

### *WORKSHOP TOOLKIT*

PJDP toolkits are available on: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>

