

STRATEGIC PLAN FOR REFORM OF THE JUVENILE JUSTICE SYSTEM

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Introduction

This report is a component of the general plans for the reform of the Criminal Justice System in Maldives that focuses specifically upon issues of Juvenile Justice. It is based on a consultancy carried out between 23 August and 3 September, 2004. The Terms of Reference for the project were to produce a strategic plan for the reform of juvenile justice. In the course of the project key stakeholders were interviewed (see Appendix A) and numerous background materials were reviewed (see Appendix B)

The Government of the Maldives accords high priority to women and children and has demonstrated its general commitment by ratifying the United Nations Convention on the Elimination of Discrimination against Women and the Convention on the Rights of the Child. A report addressing Gender Issues in the Criminal Justice System was completed along with the present report on Juvenile Justice

Pursuant to ratifying the Convention on the Rights of the Child, the Government of the Maldives has taken such steps as enacting a Law on the Protection of the Rights of Children (Law No: 9/91) which was designed to closely follow the CRC. Article 8 of Law 9/91 specifically provides:

Efforts must be made to discourage children from misbehaving and violating rules and regulation on the streets and in public places. The Government must organize, in such manner as is possible at the time, the rehabilitation and upbringing of children who are not reformed by such efforts.

Article 9 of the same law provides for the establishment of a special procedure to deal with juvenile delinquents that gives preference to rehabilitation without punishment. Further, a national council for the protection of the rights of children has been established, and a Unit for the Rights of the Child (URC) has been set up that, as shall be seen below, plays a central role in the provision of services for juvenile offenders. Guidelines have been established that provide, with regard to investigations, court proceedings and the sentencing of juvenile offenders, that the use of detention institutions will be treated as a last resort, and that priority will be given to alternative measures which provide for community based rehabilitation and reintegration.

As the result of this governmental commitment, initial steps have already been taken to implement two forms of diversionary practices (cautioning and conferencing) that are a feature of juvenile justice reforms internationally. Thus, some of the individual “pieces” of a “best practice” juvenile justice system already exist in the country. Currently not in place, and what this document describes, are:

(1) a clearly stated set of *principles* to guide the development of a coherent system of juvenile justice;

(2) a description of an *articulated system* of juvenile justice that indicates the clear relations between various levels and forms of intervention, and provides for a wider set of dispositions than are now available in the law;

(3) a discussion of the development of *juvenile justice act* that would enable the various steps in that system; and

(4) a proposal regarding the *administrative arrangements* that might be established to put the act into practice;

(5) proposals regarding the guidance of *police cautioning* programs; and

(6) proposals regarding the guidance of *conferencing* programs.

The next three sections of the report provide recommendations in relation to specific areas of concern:

(7) Drug Abuse Prevention and Intervention

(8) Young women and crime

(9) Providing for the Prevention of Juvenile Delinquency

The final section of the report outlines a number of specific proposals for the implementation of some of the recommendations in this report, including:

(10) a restatement of the recommendation of this report, and

(11) a proposed set of strategies for implementing the report.

I. Principles

Recommendation 1: That guiding principles be developed for a juvenile justice system and that this set of principles be included in the legislation that establishes the juvenile justice system.

A juvenile justice system needs to be established that is founded on principles that recognize the needs and best interests of young people and incorporate Restorative Justice Principles. The development of this set of principles should ensure that the juvenile justice system is in compliance with the Convention on the Rights of the Child and other relevant UN documents such as the “Beijing Rules”. It should also reflect the government’s commitment to gender equality by ensuring that the system is consistent with the Convention on the Elimination of Discrimination Against Women.

Restorative Justice is founded on the principle that the process of juvenile justice should be concerned with *repairing the harm* the crime causes the community. In this process the victim, community and the offender have a role to play. The offender in a Restorative Justice process accepts responsibility for their actions, and acknowledges a debt to the victim and to the community. The offender makes a commitment to take actions to repair the harm, with the focus of the process being on repair of the social injury to the community. At the same time, the Community acknowledges a commitment to Restorative Justice based and the need to participate in making the changes necessary to avoid such behaviours in the future. This entails a commitment to the assumption that the stigma of crime is removable and that an objective of the process is to create the possibilities for the offender to make amends for their crime, to show remorse, and to be reintegrated into their community.

The implementation of a juvenile justice system, as distinct from the adult criminal justice system, recognises that young people under the age of 18 are in a particularly important developmental stage in the life cycle. The juvenile justice system will foster a process of personal development and education. It will draw upon community sources whenever possible for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention of the law, and of effectively, fairly and humanely dealing with the juveniles in conflict with the law (United Nations Standard Minimum Rules for the Administration of Juvenile Justice – “The Beijing Rules”). In so doing it will recognise the differing circumstances and needs of girls and boys.

The establishment of a comprehensive, well integrated juvenile justice system requires that there is an agreed upon set of principles that provide the foundations for the system and an ongoing reference point to guide the operation and development of the system. The set of principles should be included in the legislation that establishes the juvenile justice system. This set of principles should be developed and refined in consultation with all parties involved in the operation of the Juvenile Justice System.

A number of objectives can be proposed to guide the development of a set of principles for the development of a juvenile justice system, these would include:

The community should be protected from offences.

The child should be held accountable and encouraged to accept responsibility.

The child should be diverted from the juvenile justice system, unless the nature of the offences and the child’s criminal history indicate that proceedings should be started.

The victim should have an opportunity to participate.

If practicable, the decisions affecting a child should be made and implemented within a time frame appropriate to the child’s sense of time.

The proceedings should provide the child with developmental and support services to assist in overcoming offending and becoming fully autonomous.

Proceedings should be fair and just, and the child should be given an opportunity to participate, and understand proceedings. (These have been abstracted from the New South Wales *Young Offenders Act 1997*, and the Queensland *Juvenile Justice Act 1992*. See also the South Australia *Young Offenders Act 1993*; The Tasmania *Youth Justice Act 1997*; and the Western Australia *Young Offenders Act 1994*).

II. A Comprehensive Model for Juvenile Justice

Recommendation 2: A comprehensive juvenile justice model should be developed, based on the guiding principles, that provides for different levels of intervention at various points in the juvenile justice system, and which maximizes the opportunity for diversion from the system at the early stages of contact with the system .

The model, as proposed in the following, assumes that priority is given to the least restrictive option and that the more restrictive options would not be taken unless the less restrictive options had already been tried.

A. The Police

This plan would recognize that the first point of contact with the juvenile justice system by the offender will be with the police. The police currently refer all juvenile offenders in the first instance to the Child Protection Unit (CPU). In addition, the police then refer all such cases to the Unit for the Rights of the Child (URC), where the child is offered a range of counselling and advocacy services.

At present, the major dispositions available to the police once the case has been referred to the CPU, consist of either a caution, or a referral of the case for prosecution (that is, the referral to the URC is not a juvenile justice disposition, it is essentially a form of “diversion” out of the juvenile justice system).

In the proposed plan:

1. All cases involving juveniles will continue to be referred to the Child Protection Unit.
2. The Child Protection Unit would continue to refer all cases to the URC
3. There would be four levels of disposition available to the police:
 - a) **Informal Caution**, to be used in cases of a first time offender who has engaged in a minor summary offence. This is an “on-the-spot” warning by the attending police officer.
 - b) **Formal Caution**, to be used in with all first time offenders for all but the more serious crimes. A formal caution would be applied where the offender admits to the crime, and when the offender and parents (or guardian) consent to the caution. The caution would be delivered at a police station in the presence of a parent or guardian. The young person would be provided with a written statement of caution (See Section V for guidance regarding the implementation of police cautioning programs).
 - c) Referral to the Juvenile Justice Unit for a **Community Conference**. To be used in cases where the child has already been formally warned on at least one occasion. (See Section VI for more details regarding the implementation of conferencing programs). The agreements reached by community conferences would be reported to the Prosecutors Office for monitoring to ensure that the outcomes do not entail penalties greater than would be given by a court.
 - d) Referral to the prosecutor for **adjudication by the Juvenile Court**, to be used for more serious offences and where early diversion is not deemed appropriate, or where the young person has already been to a Community Conference (See Section VI for a discussion of the criteria to be considered in decided whether to refer a case to a conference or onward for prosecution).

B. The Prosecutor's Office

The second level of processing occurs at the level of Prosecution decision making. In making decisions at this point the Prosecutor would take into account such matters as the seriousness of the crime, the young persons' prior criminal record, and whether or

not the young person has already been to a Community Conference. Three forms of decisions would be available to the Prosecutor:

1. Dismissal of the case, either because the case appears not to merit further action, or perhaps because of the lack of sufficient evidence to sustain a successful prosecution.
2. Referral of the case to the Juvenile Justice Unit for a Community Conference; or
3. Prosecution of the case in the Juvenile Court.

C. The Juvenile Court

The third level of processing occurs at the level of the Juvenile Court. Cases would only be brought before the court that involved the most serious of offences and/or where the young person had previously participated in Community Conferences. The Principles of the new Juvenile Justice Act would provide a foundation for the Judge's decisions. In accordance with those Principles, preference would always be given to the least restrictive option appropriate given the nature of the offence, the young person's criminal background, and the best interests of the child.

It would be anticipated that there will be provided a new hierarchy of actions to be taken by Juvenile Court that provided for a range of community based options. These will include:

1. Dismissal of the case either because the case appears in the opinion of the Judge to merit no further action, or because of the lack of sufficient evidence to sustain a successful prosecution.
2. Referral of the case back to the Juvenile Justice Unit for a Community Conference.
3. Placing the juvenile offender on a **Good Behaviour Bond** (and thus no conviction is recorded if the conditions of the GBB are met).
4. **Suspension** of the proceedings on a **short-term** basis so that the offender can be referred to such alternatives as a drug rehabilitation program, and educational program, a work or work training program, or on community service. If the offender is successful in meeting the conditions of the suspension, the original charge would be dismissed.
5. **Suspension** of the proceedings on a **short-term** basis in order that the case might be referred to the Juvenile Justice Unit for a **Sentencing Conference**. In this circumstances, the outcomes of the Sentencing Conference are reported back to the Juvenile Court Judge, and then provide the basis for the Judge's disposition of the case (for a discussion of the implementation of Sentencing Conferences, and the anticipated sentencing options after these conferences, see Section VI).
6. Fine
7. Placing the young person on a **Community Based Order** under a condition of **Probation** (where the offender would be supervised in the community by the Juvenile Justice Unit).
8. Placing the young person on a **Community Based Order** under a condition of **Community Service** (where again the offender would be

- supervised by the Juvenile Justice Unit and would be required to participate in a stipulated community service project)
9. Placing the offender on a **Community Based Order** under a condition of **house arrest**. It is urged that such orders be used only in exceptional circumstances, and for a short period of time (an upper limit of 6 months, with most for shorter periods). The Order would be supervised by the Juvenile Justice Unit. This Order should be formulated to allow for the young person to attend school, work, or community service/programs.
 10. A **Suspended Jail Sentence**, with supervision by the Juvenile Justice Unit.
 11. A **Jail Sentence**, as provided in the Sentencing Guidelines.

Currently there is only one sitting Juvenile Court Judge who hears cases only in Male'. In the preparation of enabling legislation, it would be expected that in cases involving juveniles outside of Male', the judge or magistrate would hear cases within the framework of the Juvenile Justice Act, serving in such cases as a Judge of the Juvenile Court. Given the lack of training in juvenile law on the part of such judges, training in the new Juvenile Justice Act, and the various options as provided in this Model, will have to be provided by a training section of the Juvenile Justice Unit.

Consistent with the reasoning offered in the report of Professor Robinson, it would be anticipated that for juveniles, as for adults, the code would propose the elimination of flogging as a legal form of punishment (see Section 6.4 of the Robinson Report, p. 13).

Specific Gender Concerns

The current practice that raises the most concern in relation to women as both victims and offenders are those in relation to cases of "Zina" (sex outside of marriage, consensual and non-consensual). In these cases a woman's accusations need to be verified by two men or four women. Thus, rape and sexual violence remain impossible to prove in virtually all cases. Consequently, women are reluctant to report these offences, especially given the additional possibility of being re-victimised by the perpetrator in the legal process.

The sentence in relation to "Zina" currently allows for public lashings. Given the strict rules of evidence relating to this offence, cases are rarely established against perpetrators. A woman's pregnancy may however establish her commission of this offence. In effect it means that a woman who has been a victim of rape can be treated as an offender.

The current law establishes a minimum age limit of 18 for a person to receive adult punishments. There are currently three exceptions, one of which is if a woman has had a child. In practice, this means that current law allows for a young woman under the age of 18, who has been a victim of sexual abuse and is consequently pregnant, to receive lashings in a public setting. The victim must then endure the pain and public humiliation of her situation, both the illegitimate pregnancy and the public lashings, which have significant ramifications for her subsequent life opportunities. The perpetrator, on the other hand, is likely to remain publicly unidentified.

A number of recommendations regarding legislative reform arise from the current practice in this area and are detailed in the Gender Issues in Criminal Justice Report. The recommendations relate to the establishment in laws of crimes including rape (inside and outside of marriage), ensuring that in relation to criminal offending, all children under the age of 18 are under the jurisdiction of the Juvenile Court, and establishing new rules of evidence.

D. Juvenile Detention

The ultimate penalty within a hierarchy of juvenile sanctions would be a sentence to a period of detention. Consistent with the general commitment of the Government of Maldives to conform with United Nations Conventions (and to provide international leadership in such conformity), it would be expected that sentences to detention would at a minimum conform to the provisions of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (14 December 1990). Section 13 of these Rules, for example, provides that:

Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.

It would be anticipated that to guarantee the protection of such rights, there would be systematic review of detention programs by such units as the Human Rights Commission and the URC. The potential for enduring negative consequences of detention has resulted in various proposals to hold such consequences to a minimum. Typical would be the U.N. provision under the Rules noted above that:

Juveniles detained in facilities should be guaranteed the full benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society (Section 12).

It is especially important to underscore the principle that while it is inevitable that some young offenders will need to be detained, that, as recognized among the “fundamental perspectives” of the UN Rules for the Protection of Juvenile Deprived of their Liberty:

Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. (Section 2)

Institutionalisation, especially of the young, is thereby recognised as a harsh, destructive, and expensive disposition. While it may be necessary in cases of serious offences, its use should be restricted to exceptional cases where a last resort punishment is called for.

Consistent with the UN Rules, among the many expected features of such detention would be that juveniles should be separated from adults (Section 29). This ruling

recognizes that detention for young people needs to have distinctive features related to the young person's developmental stage in their life cycle, and the particular vulnerability of young people in an adult prison system. In light of these concerns, consideration should be given to creating the option for the adult criminal court to sentence a young person between 19 – 21 years to the youth detention center. The judge would have this option having considered the nature of the crime, the prior criminal history, prior juvenile and criminal justice sentences, the maturity and vulnerability of the young person, and their best interests.

The UN Rules also recommend that wherever possible open facilities for juvenile should be established (Section 30). While detained, juveniles are expected to have "...the right to facilities that meet all the requirements of health and human dignity" (Section 31), and that even while detained juveniles of compulsory school age retain "...the right to an education suited to his or her needs and abilities and designed to prepare him or her for return to society" (Section 38).

These United Nations Rules, of course, only speak to the minimum of general rules and conditions, and it would be expected that these rules would have to be shaped and moulded in particular ways to meet the specific conditions found in the Maldives. In the overall strategic plan for juvenile justice, it would be provided that the supervision and operation of juvenile detention would be one of the components of the portfolio of the Juvenile Justice Unit.

These UN Rules apply also to pre-trial detention. Again, the United Nations Rules are explicit with regard to the limitation of such detention:

Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. (Article 17)

The proposed program for juvenile justice reform should address this issue of pre-trial detention, and make explicit provision that its use should be rare and in exceptional circumstances. Universal international experience demonstrates that pre-trial detention is most often not necessary, and has the potential to have damaging effects of family and social life disruption that often prove unwarranted when the offender has his or her case disposed of with a non-custodial option (also, of course, in a nation with limited resources, such detention is exceptionally expensive). The limitation in the use of pre-trial detention is often a result of having both explicit rules, and appropriate training for those using the rules, that clarify the restricted circumstances where such detention is necessary.

At the time of writing of this report, the detention arrangements for young people were in the process of change. Nonetheless, it seems inevitable that formal arrangements for juvenile detention in a separate facility operated by the Juvenile Justice Unit will have to be established. When that happens, the detention of young people under the new juvenile justice system should be in keeping with the Principles of the Act which will ensure that the detention of young people is in compliance with the Convention of the Rights of the Child and United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

Gender Issues

Little information was available regarding the situation of girls or women in detention, and time constraints alone did not allow time to visit places of secure detention. Adult women are currently held at the same site as men. While women have separate living quarters, programs are conducted with men. Young women on pre-trial detention are apparently held in the same center with older, convicted female offenders. Adult women have access to their children while they are young, but questions were raised about the suitability of the conditions. The situation of young women under the age of 18 with children was not apparent.

International research on women and girls' imprisonment consistently identifies a number of issues including: sexual assault and harassment; the need for gender specific services and programs; access to education/work training programs; self harm; access to children and concerns about the welfare of their children; mental health issues and access to drug treatment programs.

The detention of young people is of such significance that the process of detainment and the circumstances of that detention need to be well documented. In the course of this report the consultants did not come across any documents to this effect. It is therefore recommended

Recommendation 3: A review be conducted of the secure detainment of young people. The review should consider the process of detainment, the circumstances of their detainment and the compliance of that detainment with relevant UN documents including the Convention on the Rights of the Child, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Convention on the Elimination of Discrimination Against Women .

E. Juvenile Parole.

It is recommended that upon release from detention, there be a period of supervised release on parole, with overall supervision by a Juvenile Parole Board, and ongoing supervision of the offender by the Juvenile Justice Unit. Here the practices should be generally consistent with the projected plans for the Criminal Justice System generally, where the report by Professor Robinson anticipates that every sentence to detention would include a term of parole on release, during which supervision would be authorized and restrictions imposed for violations of release rules.

III. A New Juvenile Justice Act

Recommendation 4: A new Juvenile Justice Act be written that provides the necessary legal basis for the various steps of the new Juvenile Justice System, including: police cautioning, the Juvenile Justice Unit; Community and Sentencing

Conference; a sentencing hierarchy that provides for more extensive community based options; sentencing guidelines; and a youth parole board. The Act will establish that all young people under the age of 18 years (present exceptions are to be lifted) will come under the jurisdiction of the Juvenile Court.

There currently exists legislation in the Maldives regarding juvenile offending that addresses such issues as the recognition of a Juvenile Court, the specification of ages which define the jurisdiction of the Court, a statement of offences relevant to the Court, and a provision of a limited set of sentencing options available to the court.

A new Act is required that reviews these and further provides for: (1) a legal basis for such diversionary steps as police cautioning and community conferencing; (2) a legal basis for such steps as dismissals, suspensions of proceedings, and sentencing conferences; (3) a wider range of sentencing options that enables a range of community based orders including probation; and (4) the creation of a Youth Parole Board.

In considering the formulation of such an Act, those engaged in the task, in addition to consulting the existing legislation in Maldives regarding juvenile offending, may find it useful to consider such models as the *Young Offenders Act of 1997* for the State of New South Wales which also incorporates restorative justice principles, including the use of police cautioning and conferencing.

These recommendations are consistent with the recommendations in the report of Professor Robinson on the reform of the wider criminal justice system that urged the greater use of non-incarcerative sentences. That report commented that community alternatives tend to be less costly, they reduce family and employment or education dislocation, and thereby have a direct impact on the likelihood of recidivism.

IV. The Specification of Governmental Bodies Necessary for Implementation

Recommendation 5. A Juvenile Justice Unit be created in a Ministry that has responsibilities in relation to the welfare of young people.

In order to implement the Juvenile Justice Model proposed here, a Juvenile Justice Unit would be created to contain the following elements:

(1) a *legal section* that would be responsible for drafting the new Juvenile Justice Act, and addressing the legal issues that emerge with the implementation of that Act and the new programs;

(2) a *program section* that would have sub-sections with responsibilities for carrying out functions that include Community Conferences, Sentencing Conferences, and Community Supervision that would include Community Based Orders such as Probation, Community Service, and House Arrest. Ideally, this program section would take over responsibility for the administration of all facilities and programs concerned with Juvenile Detention.

This program section would draw extensively on existing community supports and agencies providing services for young people in the community. The role of the program section would be to facilitate and monitor community based services being utilised by young people in their care

The section would ensure that programs and services were accessible to girls, and that programs and services were provided that met girls needs.

(3) a *data management and research section* that would develop a system for the collation, management, analysis and utilisation of both quantitative and qualitative information and data regarding children who come into conflict with the law, and more specifically those juveniles who become engaged in one or another of the programs of the Juvenile Justice Unit; and

(4) a *community education and training section* that would carry out activities that would include increasing community awareness about, and involvement in, programs to address youthful offending and its prevention, training of staff of the Juvenile Justice Unit, and the professional development of community leaders and key government personnel regarding issues related to juvenile delinquency and approaches to its prevention and control. The education and training programs would also be developed in consultation with the Ministry of Gender, Family Development and Social Security to ensure that they were sensitive to gender issues and that the training included in relation to training on matters related to gender issues.

It is envisaged that every effort will be made to ensure that Community Conferences are held in the young person's local community. This will entail the unit provide training to leaders in local communities to act as facilitators of community conferences.

This unit should be located in a Ministry that has a commitment to the welfare of young people as opposed to in a Ministry that has responsibility for the adult criminal justice system. The situation of the juvenile justice system in such an environment will ensure that the different objectives and practices of the two systems are made apparent. Further, the unit will need to have access to a broad range of community programs and services for young people.

V. Guidance Regarding the Implementation of Cautioning

It is anticipated that a major thrust of the new Juvenile Justice reform packages would be to provide a base in the criminal law (within the Juvenile Justice Act) for cautioning and conferencing. Regarding cautioning by the police, two forms are proposed, informal and formal.

Informal cautions, as provided in most Australian juvenile justice legislation, are intended for minor summary offences that typically do not involve violence. Recipients of informal cautions will be spoken to by the police, and may have their names taken down in a police notebook, but in most cases, no further action will be taken. Further, no admission of the alleged offence is required.

Formal cautions can be given at a police station, or elsewhere if the person giving the caution considers it appropriate. Family members may be present at a caution, and while victims are not present, they might be notified that the offender has been cautioned. In states such as Victoria and Queensland, the offender must admit to the crime. The offender may be required to provide a written apology to the victim but in most situations no other undertakings are required (although such undertakings are available in South Australia). Police can use the caution as an opportunity to advise the young person or their parents of services that are available so that they may be able to assist them to prevent further offending.

In their report on diversion programs in Australia, Alder and Polk (2001, p. 22) found that the following were common elements of formal cautioning programs:

- a. There must be sufficient admissible evidence to establish the offence.
- b. The young person must be willing to admit to the allegations.
- c. The young person must be willing to consent to the cautioning process. Thus, in some circumstances the juvenile may elect to proceed through the formal justice system process, rather than agree to participate in the caution.
- d. The process is generally limited to first-time and non-serious offenders.
- e. In most Australian jurisdictions the caution would consist of an interview session held at a local police station, conducted by a senior police officer, and involving the offender and the parents (or other family members).
- f. Upon completion of the formal cautioning process, the offender is free to leave, and there will be no further actions taken regarding this offence.

In some Cautioning programs, the child and the parent are asked to sign an undertaking at the end of the cautioning process.

The development of cautioning programs and the training in relation to cautioning programs will need to ensure that they are used in relation to offences committed by young women and that the process is sensitive to the circumstances and needs of girls.

VI. Guidance Regarding Approaches to Conferencing

“Family Group Conferences”, as they were originally referred in New Zealand (where the programs were initiated in legislation in 1989), have become one of the major emerging forms of programs internationally to respond to juvenile offending. Various forms of such conferences have now spread to the United Kingdom, the United States, many nations in Europe such as Belgium, Singapore (the programs of which have been consulted by personnel in Maldives), and in Australia (where now all states and territories have enshrined one or another form of conferencing in their juvenile justice legislation).

While the approaches vary from place to place, essentially conferencing aims to promote acceptance of responsibility by the young offender, to enhance the rights of victims and provide a positive role for victims in a restorative process, and to provide ways for enhancing the community resources available to the offender. Typically the conference brings together the various parties (offenders and their families, victims, other community representatives) in a process that is intended to emphasise restorative processes within the community. In the United States, Gordon Bazemore

has referred to what he calls a “balanced system” of restorative justice which, while it requires accountability on the part of the offender, also presumes that communities at the same time are accountable in terms of assuring provision of developmental services to the offender.

The proposal presented in this report involves two forms of conferences:

Community Conferences are a form of pre-court diversion. The referrals to community conferences in most circumstances will come from the Child Protection Unit of the Police. In states such as New South Wales (which might provide a model for such conferences in Maldives), the relevant legislation (the *Young Offenders Act 1997*) provides that any summary offence, or indictable offence triable summarily, may be referred to a conference (the offences excluded from this option would be offences resulting in death, sexual violence, robbery and serious drug trafficking offences).

The police authorities may decide to refer the case to a caution, or to the juvenile court for prosecution or to a community conference, based on a consideration of such criteria as:

- The seriousness of the offence
- The degree of violence involved
- The harm caused to the victim
- The number and nature of previous offences, and the number of times the child has been dealt with under the act, and
- Any other matters the official thinks relevant.

The child must admit the offence and consent to participation in a conference for this action to proceed.

The conference *participants* would normally include the following:

1. A young offender (who has admitted to the offence),.
2. His or her supporters (often, a parent or guardian).
3. The victim, his or her supporters, a police officer.
4. The conference convenor (or coordinator).

Other participants in some conferencing practices include a legal representative, and Indigenous Elder, and/or other representatives of the Community who are willing and able to contribute to the development of a community integration process for the young person (eg in the Maldives this might be a representative from the URC).

In Australian law, again using the example of New South Wales, details of the preparation and convening of the conference are provided in the juvenile justice legislation. Written notice of the meeting and explanation must be provided to relevant parties.

Guidelines are established in training manuals for the conduct of the conference, which prescribe such steps as the young offender providing an account of the offence, followed by the victim’s statement. All parties may contribute to these discussions.

Conference outcomes in the New South Wales context must be realistic and appropriate.. The time for completion of the outcome plan is prescribed in the law (six months), although the regulations provide that this can be extended at the discretion of the conference administrator.

The outcome plans in a typical conference can provide that:

- An oral or written apology is made
- A reparation to the victim is made
- The child participates in a relevant program
- Actions are taken directed towards re-integrating the child into the community
- The plan must set out monitoring requirements and time limits

A critical provision is that the sanctions are not more severe than a court would impose. In the proposed model, the agreements reached in conferences would be forwarded to the Prosecutors office not for approval by this office but as a matter of record. The Prosecutors Office will review outcomes on a regular basis to monitor that overall the agreements are not overly severe and will provide advice to relevant conference convenors if a pattern of disproportionate agreements is identified..

The second form of conferencing proposed in this report consists of *Sentencing Conferences*, which are a form of Juvenile Court diversion. It is proposed here that the Sentencing Conference occur after there has been an adjudication of the case, but where the proceedings are suspended pending the outcome of the conference. In this regard, this form of conference is analogous to the system found in Singapore, where what are called “Family Conferences” are not a substitute for criminal proceedings, but are provided to assist the Juvenile Court in reaching the most appropriate sentencing outcome given the circumstances of the case, and the outcome of the process of the Conference.

It would be proposed that other than the location of the conference at this particular point in juvenile justice processing, many of the issues of community conferencing would be carried over into sentencing conferences, including the nature of the participants and the general outcomes of the conference. It should be noted, however, that where a choice exists as to whether the case be handled by a Community Conference or a Sentencing Conference, that wherever possible the former be chosen, since from discussions with justice personnel in the Maldives it was pointed out that any action taken after the matter has been referred and considered by the Juvenile Court may occur months if not years after the precipitating events. It goes without saying that the nature of the conference process, involving offenders, victims, families and community representatives, are probably most effective if the process can occur relatively close to the time the original offence has occurred.

The Sentencing Conferences would be convened by a staff member from the JJU. It is to be anticipated that these conferences, in addition to such restorative steps as apologies or reparations, will also as a step in planning for sentencing consider the appropriate forms of further justice system programming that fit the case. These are likely to include requiring the offender to participate in some form of community service or training program.

Gender concerns

Previous commentary on conferencing in the juvenile justice system has identified a number of issues related to girls' participation that need to be addressed in the development and practice of conferencing (Alder 2001). The development of both forms of Conferencing will need to ensure that they are used in relation to offences committed by young women and that the process is sensitive to the circumstances and needs of girls.

Words of Caution

A number of unanticipated consequences have been identified in the implementation of some conferencing schemes. While the intention of Conferencing in most systems into which it has been introduced is to reduce the number of young people moving deeper into the system (ie diversion), there is evidence that unless correct protocols are put into place, this objective is not met. To the contrary the number of young people brought into the juvenile justice system can be increased. It also has to be ensured that the outcomes of conferences are in keeping with the principles of Restorative Justice and do not become overly punitive and do not exceed a penalty that would otherwise be given by the court. A process has to be developed to ensure that the child does not end up being punished twice for the same offence. Finally, the process has to be monitored to ensure that it is being made available to all young children who are eligible and that some categories of young people are not being given this option.

VII. Drug Abuse Prevention and Intervention for Juveniles

Recommendation 6: (a) That the Recommendations of the David Macdonald report on the development of drug services for young people be implemented.

(b) Planning should be carried out to assure (1) the development of a wider range of drug treatment programs in the community that are voluntarily accessed through health services and include programs designed to meet the needs of girls and women; and (2) girls and women in secure detention should have access to drug treatment programs that are not shared with men.

Previous reports have indicated the special significance of drug abuse in the pattern of juvenile offending in Maldives. In particular, in his report of May, 2004, David Macdonald argued that a major consequence of the current emphasis on punishment and incarceration for drug offenders as been “the criminalisation of a generation of young people” (p. 2), and that as a consequence of the “overuse of imprisonment” that incarceration now has a reduced deterrent effect. In his report Macdonald observed that:

Being labelled as a drug offender and/or drug abuser/addict has reportedly led to widespread stigmatisation and social exclusion, leaving the drug user with a criminal record, expulsion for school or workplace, no schooling during

banishment, and difficulties in obtaining employment, housing, visas and a passport. (p.2)

Macdonald went on, using in part the document produced in late 2003, **A Rapid Assessment of Drug Abuse in Maldives**, to document many of the current social consequences of the present legal framework for addressing drug abuse, including noting that drug use has become a secret hidden activity, the lack of confidentiality within treatment services, and, critically, the limited treatment options currently available (pp. 3-4). Consistent with the thrust of this present report on juvenile justice, Macdonald noted in particular the current limited sentencing options and the lack of non-custodial sentences for drug-users and dealer-users (pp.4-5).

In short, there is a critical overlap between issues to be addressed in the reform of juvenile justice (and criminal justice), and new policies that need to be developed to address the major problem that is emerging in Maldives regarding drug use among young people. Some of these issues can be addressed through the general principles and laws relating to juvenile justice that will provide for a wider range of sentencing options that permit early intervention and diversion for all offenders including those charged with drug offences, including referral to an expanded range of community based treatment programs at such stages as cautions, conferences and community based orders. Thus, the new laws ought to be clear that these diversion and early intervention options are available to those charged with drug offences.

In addition, however, there will need to be continued effort made to address the wider problems posed by drug abuse, as identified in the Rapid Assessment document and the Macdonald report. Action is needed on the 14 general recommendations, and the 7 “key” recommendations urged by Macdonald.

Gender Issues

While statistics were not available, the investigators were informed that many, if not most, women and young women involved in the criminal justice system had either been sentenced for drug offences or had committed other offences related to their drug use. The provision of drug treatment programs for women is therefore called for to stem this flow of women into the criminal justice system.

Women sentenced to prison were housed in the same location as men. While their living quarters were separate, any program activities were held with the men. The situation of girls sentenced for drug offences was not clarified.

At the moment treatment for girls and women is available voluntarily through the Narcotics Control Board. This treatment consists of a Therapeutic Community approach and requires that the person live in a secure center. While the girls and women have separate sleeping quarters within this unit, men and women are brought together for the treatment programs.

This arrangement presents several problems for women.

1. For girls and women with children and/or other family responsibilities, it is not possible to place themselves away from the family home for the length of time required for treatment in a Therapeutic Community.

2. Voluntarily accessing service through an organization such as the Narcotics control board is extremely difficult for girls and women in a society in which drug use is even more stigmatizing for women than it is for men. The Fashan report notes that “Drug use among females appears to be even more hidden than among males.” Parents who are reluctant to acknowledge their son’s drug use, are even more reluctant to publicly acknowledge it in the case of daughters. As a result women, or girls’ parents, are unlikely to seek assistance for their drug use through the Narcotics Control Board.

3. There is a need for some gender specific drug based programs. Women and girls are often using drugs for different reasons to men, there are often differences in their drug use patterns and the ways in which they access drugs.

IX. Providing for the Prevention of Juvenile Delinquency

An important guiding principle in the development of a comprehensive approach to the prevention of juvenile delinquency is the critical importance of agencies and organizations outside of the formal juvenile justice system. In the opening statement of “fundamental principles” as stated in the United Nations Guidelines for the Prevention of Juvenile Delinquency (“The Riyadh Guidelines”), Section 6 states explicitly that:

Community-based services and programmes should be developed for the prevention of juvenile delinquency... Formal agencies of social control should only be utilised as a means of last resort.

Even earlier, the “Beijing Rules” adopted in 1985 as part of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice proposed in Section 1.4 that:

Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.

Consistent with these guidelines, it would be anticipated that there would continue to be a strong presence of the current URC which under the present system provides an important resource to young people who are referred to it at the stage of contact with police in the Child Protection Unit. The important feature of the services offered by this agency is that they are able to function independently from the justice system. Further, such a Unit can provide important sources of community advocacy relating to such other processes as education or training, that advocacy coming without carrying the complications that might arise if and when the advocacy originates from within the juvenile justice system.

The involvement of the URC is consistent with Article 57 of the Riyadh Guidelines that provide that there should be such an independent organization which serves to “...ensure that the status, rights, and interests of young persons are upheld and that proper referral to available services is made.” In this regard, it would seem that the present functioning of the URC is an example of “best practice” within the Riyadh Guidelines, and the work of this Unit merits continued support by other agencies of government.

The various counselling and advocacy services provided by the URC are similar to those offered in what are considered to be exemplary diversion programs reported in Australia by Alder and Polk (2003), such as the Killara program in Western Australia, and the Youth and Family Support Service in Queensland. The URC program, however, has two major advantages not found in these Australian programs: (1) the URC is located firmly outside of the juvenile justice system and therefore can offer a range of services and options that are independent of any later justice system decisions; and (2) the URC throughout its programs maintains a commitment to the human and constitutional rights of children, because of its mandate emerging from the UN Convention on the Rights of the Child. In short, the URC is a critical and importance resource to young people generally in Maldives, and while it technically is organised outside of the juvenile justice system, it provides an essential resource for that system.

Recommendation 7: The URC should be strengthened and sufficiently well resourced to meet the needs of all young people coming in to contact with the Juvenile Justice system

There are important changes and developments that are taking place within the education and training sector. Of special interest, for example, will be the development of alternative pathways of schooling and training that have great potential in terms of resources for offenders caught up in the juvenile justice system, since often their period in juvenile justice may mean that the more routine pathways of education have been systematically disrupted beyond repair. Continued developments within the educational sector, as demonstrated by the provision of classes providing for a “second chance” for students who have not been able to function satisfactorily in the formal educational system by the Centre for Continuing Education in Male’, are an important resource for offenders involved in the juvenile justice system who often are in a position where they need such a “second chance” (It is significant that 2 of the 11 pages of the Riyadh Guidelines are devoted exclusively to education programmes).

Recommendation 8: The Juvenile Justice Unit work in collaboration with the Ministry of Education to expand the range of educational options for both boys and girls who have been, or are currently involved with the juvenile justice system.

X. Recommendations

Several recommendations have been proposed in this report, including:

Recommendation 1: That guiding principles be developed for a juvenile justice system and that this set of principles be included in the legislation that establishes the juvenile justice system.

Recommendation 2: A comprehensive juvenile justice model should be developed based on the guiding principles that provides for different levels of intervention at various points in the juvenile justice system, and which maximises the opportunity for diversion from the system at the early stages of contact with the system.

Recommendation 3: A review be conducted of the secure detainment of young people. The review should consider the process of detainment, the circumstances of their detainment and the compliance of that detainment with relevant UN documents including the Convention on the Rights of the Child, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Convention on the Elimination of Discrimination Against Women. .

Recommendation 4: A new Juvenile Justice Act be written that provides the necessary legal basis for the various steps of the new Juvenile Justice System, including: police cautioning; the Juvenile Justice Unit; Community and Sentencing Conferences; a sentencing hierarchy that provides for more extensive community based options; sentencing guidelines; and a youth parole board. The Act will establish that all young people under the age of 18 years (present exceptions are to be lifted) will come under the jurisdiction of the Juvenile Court.

Recommendation 5. A Juvenile Justice Unit be created in a Ministry that has responsibilities in relation to the welfare of young people.

Recommendation 6: (a) That the Recommendations of the David Macdonald report on the development of drug services for young people be implemented.

(b) Planning should be carried out to assure (1) the development of a wider range of drug treatment programs in the community that are voluntarily accessed through health services and include programs designed to meet the needs of girls and women; and (2) girls and women in secure detention should have access to drug treatment programs that are not shared with men.

Recommendation 7: The URC should be strengthened and sufficiently well resourced to meet the needs of all young people coming into contact with the Juvenile Justice system

Recommendation 8: The range of educational and community services options for girls and boys who have been, or are currently involved with the juvenile justice systems be expanded

XI. Strategic Plans for the Initial Stages of the Juvenile Justice System

A number of steps, or strategies, are proposed here to guide the implementation of the plans found in this report. These include:

Strategy 1 - The formation of a Juvenile Justice Development Committee (JJDC).

This Committee will be required in order to implement Recommendations 1,2,4 and 5. It will consist of the Ministers of each of the relevant portfolios including the Minister for Gender, Family Development and Social Security.

Responsibility: The Attorney- General's Department should take initial responsibility for convening this Committee

Actions: Once formed this Juvenile Justice Development Committee would;
Establish a Working Committee that would consist of Senior Advisers from each of their departments.

Approve the Guiding Principles for the Juvenile Justice Act.

Approve an overall Juvenile Justice Model

Approve the Draft legislation of the new Juvenile Justice Act

Nominate the Ministerial location of the Juvenile Justice Unit

Determine the initial budget for the Juvenile Justice Unit

Nominate the members of the Community Youth Alternatives Action Team (see Strategy 6) and the Drug Abuse Action Team (see Strategy 7). Membership should include representatives of relevant Ministries and community members who have the potential to contribute to the development of programs. Establish their administrative and funding base and Terms of Reference.

Strategy 2 – Drafting a new Juvenile Justice Act. The steps here are involved in the implementation of Recommendation 4):

Responsibility: Attorney General's Department will be responsible for action to draft the new legislation, with the draft Act to be approved by the JJDC.

Action: The current juvenile justice legislation is limited in terms of its explicit provision for diversion and non-custodial options. New legislation is required that enables such steps as police cautioning and community conferencing at the pre-court stage, and provides for juvenile courts new non-custodial sentencing options. The legislation will have to state the jurisdictional parameters of the court, and address other matters such as the prohibition of punishments that are deemed unconstitutional. Models for such acts can be found in the juvenile justice acts for such states in Australia as New South Wales, Queensland, South Australia and Western Australia.

Strategy 3 – The Development and Implementation of the Juvenile Justice Unit.

The formation of the JJU is called for in Recommendation 5, but is of course required for the implementation of the Juvenile Justice Act and the new Model Juvenile Justice System.

Responsibility: The Ministry responsible for the JJU as agreed by the Juvenile Justice Development Committee will oversee the initial establishment of this unit.

Actions: Several steps are required here. One initial step is to provide a Position Description, conduct a search and appoint a Director of the Juvenile Justice

Unit. Once appointed the Director would join the Juvenile Justice Committee. The Director would then be responsible for the development of a Strategic Plan for the framing, development and funding of the JJU.

Resourcing decisions would have to be made at the ministerial level. The Director of the JJU would, as well, in collaboration with organisations such as UNICEF, develop proposals for the funding of the Juvenile Justice Unit and/or components of the Unit.

Strategy 4 – Training and Technical Assistance. In the implementation of Recommendation 5, wide needs for training and technical assistance will evolve.

Responsibility: The Ministry responsible for the JJU as agreed by the Juvenile Justice Development Committee in collaboration with the Ministry of Education and UNICEF and/or UNDP will have responsibility for the development of appropriate programs of training and technical assistance.

Actions: A major task will be to develop proposals for funding technical assistance in the implementation of the Juvenile Justice Act. In particular funds might be sought for (1) the implementation of conferences and the training of those people who will facilitate juvenile justice conferences, especially in areas outside of Male'; (2) the provision of training for those who will serve as juvenile court judges, especially since the new Juvenile Justice Act will present them with a number of new jurisdictional, procedural and sentencing matters that they will have to resolve; (3) the training of police in the new processes involved in both informal and formal cautions, as well as the information regarding decisions to refer cases to community conferences; and (4) training of the staff members of the various sections of the JJU.

Strategy 5 – Review of Detention of Young People. This relates specifically to issues raised in Recommendation 4.

Responsibility: The Ministry of Gender, Family Development and Social Security, and specifically the Unit for the Rights of the Child are the appropriate locations for this important set of tasks, since these should be seen as central to issues of the rights of children as specified in the UN Conventions and Rules.

Action: As a matter of priority, the Ministry in collaboration with UNICEF and/or UNDP develop a proposal for external funding of this review.

Strategy 6 – The Development of Educational and Community Service Options. The steps involved here relate to Recommendation 8.

Responsibility- The Ministry of Gender, Family Development and Social Security, the Ministry of Education, Ministry of Youth Affairs

Actions: The first step in this process would consist of the establishment of an interdepartmental Community Youth Alternatives Action Team. The Action Team then would carry out an assessment of the existing programs of education and community service, and then propose specific new options for such programs, especially as these will be needed for the new community based orders. While the JJU will participate on this Action Team, it is important in the interests of an overall Delinquency Prevention Strategy that the programs are not located in the JJU. The JJU would access such programs as part of the Orders they supervise, but would not be responsible for the programs which would be available to young people regardless of their contact with the juvenile justice system. A proposal be developed in collaboration with relevant United Nations offices for the funding of a consultant to

work with the Ministries to identify potential programs and to advise on a strategy for implementation and potential funding sources and arrangements.

Membership: The Action Team should include community representatives, including business interests (eg representatives for the Resorts), that would be interested in supporting the development of work/training options for young people.

Strategy 7: Implementation of the Macdonald recommendations regarding drug abuse policies and programs. Steps here relate to

Recommendation 6.

Responsibility: The Drug Abuse Action Team (to be established by the Juvenile Justice Development Committee)

Actions: - establish a set of priorities for implementation of the Macdonald recommendations.

- work with communities across the Maldives to design programs suitable for drug users
- in collaboration with relevant UN departments, develop funding proposals for Technical Assistance in the framing, development and implementation of programs.
- Work with the Consultants developing the new Juvenile Justice Act to ensure consistency of the Act with the Macdonald recommendations.
- Work with the Program Section of the new Juvenile Justice Unit once it is established to make recommendations regarding community options.

Appendix A

Consultations with:

Attorney General:

Dr. Hassan Saeed, Attorney General, Attorney General's Office, 3rd Floor, Huravee Building, Male'.

Aaishath Azima Shakoor, Deputy Director, Legal Affairs, Attorney General's Office

Ministry of Justice:

Ahmed Zahir, Minister of Justice

Ministry of Education

Dr. Mahamood Shougee, Minister of Education

Director, Centre for Continuing Education, Male'

Ministry of Gender, Family Development and Social Security

Dr. Aishath Shiham, Director, Unit for the Rights of Children

Maana Rafiu, Director, Gender and Development Section

Ministry of Defence and National Security

Major General Adam Zahir, Commissioner of Police

Maumoon Hameed, Legal Counsel to the Police

Human Rights Commission

Ahmed Mujthaba, Chairman, Human Rights Commission

United Nations

Nashida Sattar, Program Officer, UNDP Maldives

Dunya Maumoon, Assistant Representative, UNFPA

APPENDIX B.

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