



MALAWI FACT SHEET

# **DIVERSION OF CHILDREN IN CONFLICT WITH THE LAW**



# THE CURRENT SITUATION

- Currently there are 447 children and young persons in Mzuzu, Kachere, Zomba and Bvumbwe prison.
- The current Children and Young Persons Act does not allow for the conviction, sentencing and imprisonment of children.
- The new Child Bill suggests that “no child shall be imprisoned for any offence”
- Some of the children are in prison for very minor offences like theft.
- Some of them have been on remand for more than 3 years.
- Some are aged 16 years and are serving sentences of about 10 years.
- The children in prison have only one meal per day and do not have all the necessary requirements for proper child development.
- They do not attend school, they do not have recreation and they do not have anything to occupy them with.
- Children in prison are subjected to different abuses.



# DIVERSION OF CHILDREN IN CONFLICT WITH THE LAW

The new Child Bill suggests diversion as one way of dealing with children in conflict with the law.

Diversion can be defined as the channelling of young people from the criminal justice system into programmes that make them accountable for their actions. The programmes into which the young people are sent helps in the following:

- It takes place after arrest at either the court or the Police Station.
- It is way of dealing with children who are at risk of coming in conflict with the law as well as those who have already broken the law.
- It helps develop young people's potential
- Makes young people accountable for their actions
- Encourage them to heal the damage they have caused
- Make them commit their free time to learning a new way of life

**DIVERSION CAN BE DEFINED AS THE CHANNELLING OF YOUNG PEOPLE FROM THE CRIMINAL JUSTICE SYSTEM INTO PROGRAMMES THAT MAKE THEM ACCOUNTABLE FOR THEIR ACTIONS.**



# SELECTION OF A DIVERSION PROGRAM

In selecting a specific diversion option for a particular child at a police station or court, consideration shall be given to:

- The child's cultural, religious and linguistic background
- The child's educational level, cognitive ability, domestic and environmental circumstances
- The proportionality of the option recommended or selected to the offence
- The interests of the society
- The child's age and developmental needs
- Whether the child is a repeat offender
- Any other peculiar circumstances relating to the child



# ADVANTAGES OF A DIVERSION PROGRAM

- Diversion programmes aim to reach several objectives related to both the interest of the community and the offender.
- Rather than focusing on punishment, diversion programmes aim at rehabilitation of the offender and prevention of further offences by seeking to address the underlying factors that contribute to criminal behaviour.
- Diversion is advantageous in the case of young juvenile offenders in avoiding an early and often traumatic encounter with the criminal justice system.
- Encourages the child to take responsibility for his or her action.
- Provides a second chance before the offender is confronted with a generally punitive and adversarial criminal justice system. Once the programme is completed, the criminal charge will be withdrawn and no criminal record will be maintained, thus facilitating rehabilitation and reintegration.
- Diversion programmes address the specific needs of the individual child.
- Allows for reparation or restitution to the victim.
- Promotes reconciliation between the offender and the victim.
- Saves the child from being labelled as a result of being subjected to the justice system.
- The speed of the process of diversion allows to realize the relation between the breach of the law and or offending behaviour and society's reaction.
- The flexibility of diversion allows various sanctions to be combined to better address the individual situation of the offender.
- Promotes an individualised response to the harm caused.

**DIVERSION IS ADVANTAGEOUS IN THE CASE OF YOUNG JUVENILE OFFENDERS IN AVOIDING AN EARLY AND OFTEN TRAUMATIC ENCOUNTER WITH THE CRIMINAL JUSTICE SYSTEM.**





# OFFENCES NOT SUITABLE FOR DIVERSION

The new Child Bill states the following offences as not suitable for diversion:

- Rape
- Attempted rape
- Abduction
- Defilement of a girl under 13 years and attempted defilement
- Defilement of a mentally challenged person
- Manslaughter
- Murder
- Attempted murder
- Infanticide
- Killing an unborn baby
- Disabling in order to commit a felony or misdemeanour
- Stupefying by over powering drug or thing with intent to commit a felony or misdemeanour
- Robbery with violence
- Attempted robbery with violence
- Housebreaking and burglary
- Arson
- Offences against aircraft
- Offences against motor vehicles, trains, etc
- Conspiracy to murder
- Aiding suicide
- Acts intended to cause grievous harm or prevent arrest
- Preventing escape from a wreck
- Maliciously administering poison with intent to harm
- Intentionally endangering safety of persons travelling by railway
- Accessory after the fact to murder

Children charged of the above offences may therefore not be diverted. However the courts have got the discretion to decide whether a child charged with one of the above offences may be diverted or not.



# DIVERSION OPTIONS

Children who are in conflict with the law and those at risk of coming in conflict with the law may be diverted to some of the following programmes:

- Placement under a supervision and guidance order placing the child under the supervision and guidance of a mentor or peer role model
- The issue of compulsory school attendance.
- The issue of positive peer association
- The issue of a good behaviour order requiring a child to abide by an agreement made between the child and his parents to comply with certain standards of behaviour.
- Compulsory attendance at a specified centre or place for a specified vocational or educational purpose for a period not exceeding five hours each week, for a maximum of three months.
- Restitution of a specified object to a victim
- Referral to appear at victim -offender mediation or other restorative justice involving family members.
- Referral to a counselling or therapeutic intervention, which shall be in conjunction with any of the above options
- The issue of an order prohibiting the child from visiting, frequenting or appearing at a specified place.

Note:

Diversion focuses on the child and not the offence. It is intended to help the child be accountable and to reform. It is not a punishment. It is in the best interest of the child.

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