

A MALDIVIAN PERSPECTIVE ON JUVENILE JUSTICE

Zaeema Nasheed Aboobakuru*

I. INTRODUCTION

The Maldives is a signatory to the *United Nations Convention on the Rights of the Child*.¹ In 1991, the Maldivian parliament enacted the *Law on the Protection of the Rights of the Child*,² to give effect to the rights and state obligations under the Convention. Sections 9 and 29 of the said Law, prescribes a separate criminal justice system for minors accused of criminal wrongdoing.³ The new *Penal Code of the Maldives* reinforces the requirement of a specialized justice system for juvenile offenders.⁴

The number of minors engaged in criminal behaviour has increased rapidly over the years, and their involvement in serious criminal offences such as murder, gang violence, organized crime, and drug trafficking offences has risen at an alarming rate. With the limited resources and expertise that are currently at our disposal, we have attempted to gain some understanding of the causes and patterns of juvenile offending in the Maldives. Some factors that stand out in this discussion are our unique geography, as well as the underlying socio-economic issues.

In this paper, we aim to provide information about the relevant legislation governing this area of the law, a brief outline of the causes and patterns of juvenile offending in the Maldives, the extent of compliance with international standards and norms and best practices, challenges in implementing crime prevention and criminal justice policies as well as exploring possible solutions.

II. JURISDICTION OVER JUVENILE CRIMES

On 1st August 1997, the Juvenile Court was established in the capital city, Male', vested with jurisdiction to adjudicate criminal offences committed by children under the age of 18, unless otherwise provided by law. Although the Juvenile Court came into existence prior to the enactment of the *Judicature Act*,⁵ the jurisdiction of the Court has now been incorporated in the *Judicature Act*.⁶

The Drug Court has special jurisdiction under the *Drug Act*⁷ to adjudicate drug abuse offences, where the juvenile confesses to the abuse of drugs.

Further, magistrate courts in the atolls also have jurisdiction over juvenile offences where the matter falls within the judicial sector in which the court operates, unless it has been exempted under the *Judicature Act*⁸ or in any other statute. However, major criminal offences such as murder, rape, sedition and treason, terrorism, dishonesty offences that exceed a monetary value of Maldivian Rufiya 100,000.00, counterfeit offences, and property offences that exceed a monetary value of Maldivian Rufiya 5000,000.00, and all drug offences are exempted from the jurisdiction of the magistrate courts.⁹ The above-listed cases must therefore,

*Registrar, Juvenile Court, Maldives.

¹ *United Nations Convention on the Rights of the Child* (1989) (A/RES/44/25, 20th November 1989).

² *Law on the Protection of the Rights of the Child 1991* (No: 9/91).

³ *Law on the Protection of the Rights of the Child 1991* (No: 9/91) (1991), ss 9 and 29.

⁴ *Penal Code of the Maldives 2014* (No: 9/2014), s 53(d).

⁵ *Judicature Act 2010* (No: 22/2010).

⁶ *Judicature Act 2010* (No: 22/2010), sch 4.

⁷ *Drug Act 2011* (No: 17/2011).

⁸ *Judicature Act 2010* (No: 22/2010).

⁹ *Judicature Act 2010* (No: 22/2010), sch 5.

be submitted to the Juvenile Court in Male'. This is law as of 19th December 2016.

Given the fact that the country is now implementing the new *Penal Code of the Maldives*,¹⁰ as well as the *Criminal Procedure Act*¹¹ set to come into force on the 2nd of July 2017, more changes are to be expected.

III. THE JUVENILE JUSTICE UNIT

The Juvenile Justice Unit (JJU), which operates under the Ministry of Home Affairs, is tasked with the mandate to formulate national policies on juvenile justice, and to provide assistance and rehabilitation services to children in conflict with the law.¹²

Social workers and counsellors from the JJU work in close collaboration with the relevant government agencies, in order to provide the optimum outcome for the juvenile concerned. As such, the institution has become an integral part of the juvenile justice system in the Maldives. Where a juvenile offender is concerned, the JJU is a party to the proceedings. The *Juvenile Court Regulation* expressly requires the JJU's presence at the proceedings at the Court.¹³

IV. LEGISLATION

Article 35(a) of the *Constitution of the Republic of Maldives*¹⁴ affords special protection and special assistance to children and young persons, provided by the family, the community and the State. The Maldivian legal system recognizes the international definition of children, as those below the age of 18 years.¹⁵

The Juvenile Justice Bill,¹⁶ which is comprehensive legislation, is currently in the final stages of drafting at the Attorney General's Office. At present, matters concerning the administration of juvenile justice are governed by the *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences*¹⁷ which has been given force of law in Schedule 2 of the *General Regulations Act*.¹⁸

Section 4 and 5 of the said regulation lists details about the age of criminal responsibility in the Maldives, which begins at 10 years.¹⁹ Between the ages of 10–15 years, minors can be charged for prescribed Shari'ah offences (Hadd offences) such as apostasy, treason, fornication, defamation (Qadf),²⁰ alcohol consumption, murder and related offences, as well as all drug-related offences. Minors above the age of 15 years can be held accountable on all criminal offences. With the operation of the new *Penal Code of the Maldives*,²¹ more changes are to be expected to the current regime of juvenile offences.

Special laws such as the *Prohibition on Gang Violence Act*,²² allows authorities to charge minors of and above the age of 14 years for gang-related criminal activity.

Juvenile offenders who confess to the abuse of drugs have their cases forwarded to the Drug Court, which has special jurisdiction under the *Drug Act*²³ to adjudicate drug abuse offences. Indicative assessments are made to evaluate the level of addiction and to determine the most appropriate treatment plan for the individual.²⁴ As per section 67 of the *Drug Act*, the court may issue "Rehabilitation Orders" for the individual

¹⁰ *Penal Code of the Maldives 2014* (No: 9/2014).

¹¹ *Criminal Procedure Act 2016* (No: 12/2016).

¹² Juvenile Justice Unit / Ministry of Home Affairs <<http://jju.gov.mv/>>.

¹³ *Juvenile Court Regulation 2014* (R-25/2014), s 54(4).

¹⁴ *Constitution of the Republic of Maldives 2008*, art 35(a).

¹⁵ *Law on the Protection of the Rights of the Child 1991* (No:9/91), s 30; *Penal Code of the Maldives 2014* (No: 9/2014), s 17(64); *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences* (2006)/XX/MJ, s 2(a).

¹⁶ Juvenile Justice Bill.

¹⁷ *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences* (2006)/XX/MJ.

¹⁸ *General Regulations Act 2008* (No: 6/2008), sch 2.

¹⁹ *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences* (2006)/XX/MJ, ss 4 and 5.

²⁰ Defamation ("Qadf") in Islamic Sharia amounts to the malicious accusation of adultery.

²¹ *Penal Code of the Maldives 2014* (No: 9/2014).

²² *Prohibition on Gang Violence Act 2010* (No: 18/2010), s 19(b).

²³ *Drug Act 2011* (17/2011).

to participate in the drug rehabilitation programme carried out by the National Drug Agency.²⁵ In cases of non-compliance, the court has power to terminate rehabilitation orders and to issue orders for incarceration under section 82(b) of the *Act*.²⁶

The new *Drug Act*²⁷ was the result of changed community perceptions that saw drug addiction as a medical condition that needed treatment. At the same time it was also an attempt to strike a balance between this new perception and the necessity of saving the community from the scourge of drug addiction and the associated socio-economic costs. The new legislation therefore imposed harsher penalties on the sale and trafficking of drugs.

In addition to other general defences, the new *Penal Code of the Maldives* provides a defence for children below the age of 15 years accused of criminal wrongdoing, who are entitled to the defence by reason of their immaturity.²⁸ The defence excludes Hadd offences under the Islamic Shari'ah and violent criminal offences.²⁹ However, the legal operation of this very technical defence remains to be seen as thus far, it has not been argued by the defence in any of the proceedings before the Court. Moreover, it raises interesting questions about the desirability of early intervention in the case of at-risk youth. As this is an issue that has direct relevance to the age of criminal responsibility in the Maldives, it remains to be seen how the High Court of the Maldives may interpret the provision, and provide guidance to the authorities.

Except in cases where the Islamic Shari'ah prescribes punishment (*Hadd* offences), juvenile offenders receive 2/3rds of the minimum penalty stipulated under the relevant law.³⁰ If it is a first offence, the judge has discretion to issue a suspended sentence,³¹ and the Court has greatly used this discretion in order to provide the juvenile with the chance to reform.

Where Islamic Shari'ah prescribes punishment for certain offences (*Hadd* offences) such as murder, the court or judge has no discretion to provide any leniency in the sentence.³² As per the *Constitution* of the Maldives, our legal system is governed by the principles of Islam, and no law contrary to this can be enacted in the country.³³ Islamic Shari'ah prescribes capital punishment for persons convicted of murder, where the heirs of the victim are unanimous in seeking legal retribution. However, the implementation of the sentence will be postponed until the juvenile attains 18 years of age.³⁴ The regulation governing capital punishment lists various procedural safeguards before the implementation of a death sentence, such as the exhaustion of the appeal process, and mediation between the offender and the victim's family with regard to the death sentence.³⁵ The Ministry of Islamic Affairs has the mandate to coordinate the process of mediation with due consideration to the best interests of the child. Beginning from 2013, the court has sentenced five (5) juveniles to death. All five have appealed to the High Court of the Maldives.

Given the seriousness of Shari'ah offences and the prescribed punishments, as well as to ensure justice is served, the Supreme Court has issued Circular No: 2015/14/SC³⁶ requiring the courts to send cases involving Shari'ah offences for automatic appeal to the High Court and the Supreme Court of the Maldives.

In addition to this, there are special provisions in the new *Criminal Procedure Act*³⁷ that recognize procedural differences in the investigation, prosecution and adjudication of offences committed by minors.

²⁴ *Drug Act 2011* (17/2011), ss 62 and 63.

²⁵ *Drug Act 2011* (17/2011), s 67.

²⁶ *Drug Act 2011* (17/2011), s 82(b).

²⁷ *Drug Act 2011* (17/2011).

²⁸ *Penal Code of the Maldives 2014* (No: 9/2014) s 53(b)(1) and (2).

²⁹ *Penal Code of the Maldives 2014* (No: 9/2014) s 53(c).

³⁰ *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences* (2006)/XX/MJ, s 17(e)(1).

³¹ *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences* (2006)/XX/MJ, s 24.

³² The Holy Quran, Ch(2):178; Ch(17):33.

³³ *Constitution of the Republic of Maldives 2008*, s 10.

³⁴ *Regulation on Investigation and Execution of Sentence for Willful Murder 2014* (R-33/2014), s 11(1)(a); *Penal Code of the Maldives 2014* (No: 9/2014), s 53(c).

³⁵ *Regulation on Investigation and Execution of Sentence for Willful Murder 2014* (R-33/2014), ss 8 and 9.

³⁶ Supreme Court of the Maldives, Circular No: 2015/14/SC (15.11.2015) <www.supremecourt.gov.mv>.

³⁷ *Criminal Procedure Act 2016* (No: 12/2016).

Parents or guardians of juveniles arrested must be duly informed of the reasons for arrest, and the law stipulates a maximum period of four (4) hours to fulfill this notification procedure.³⁸ Further, minors may only be interviewed by the Police, in the presence of a parent or guardian or in the presence of those able to guarantee the best interests of the child, such as social workers from the Juvenile Justice Unit.³⁹

V. BRIEF OUTLINE OF THE CAUSES AND PATTERNS OF JUVENILE OFFENDING IN THE MALDIVES

A large majority of the population resides in the capital, Male' city, often living in congested housing conditions. This includes children and their families who migrate from the islands in the hope of attaining better education, health services and job opportunities, facilities that are inadequate within the atolls. The meagre income their families earn is spent on rent. As a result, in some cases, children turn to sources other than their families to fulfill their needs and wants.⁴⁰

Underage girls and boys engage in prostitution and drug offences as a means of earning income.⁴¹ Gangs exploit these vulnerabilities within the community and have also increasingly made use of the leniency granted to minors under the law, to manipulate juveniles into committing the crime of drug trafficking.⁴² For instance, whereas an adult can be sentenced to 25 years imprisonment for drug trafficking,⁴³ juveniles may only be sentenced to 2/3rds of that time,⁴⁴ i.e., a term of 16 years and 8 months, which may be revoked by the Juvenile Court if the juvenile successfully completes the rehabilitation programme. Juvenile offenders who have gained notoriety within the system are well aware of the leniency the law affords them, and hence, have at times abused the process. Juveniles who are arrested with drugs, with a quantity that amounts to the offence of drug trafficking, have sometimes confessed to the abuse of drugs, even though they are clean – for the sole purpose of having their cases channeled to the Drug Court for rehabilitation orders and to avoid the much harsher sentence of trafficking in drugs.⁴⁵

Minors have also been used by wealthy business persons and politicians to commit political violence such as vandalism, serious assault and murder.⁴⁶ Criminal gangs attract juvenile offenders who come from neglected family backgrounds to their lifestyle, providing them with a sense of identity and brotherhood as well as protection from rival gangs.⁴⁷ Once in, they find it next to impossible to exit gang life, for fear of their and their family's safety.⁴⁸

Further, some cultural factors contribute in this cycle of poverty, helplessness and crime. Maldives has one of the highest divorce rates in the world.⁴⁹ Most juveniles who are brought to court come from dysfunctional families, lacking the normal hierarchical structures of a stable family life. They either live with their single mothers, step parents or grandparents, who at times have proved to be unable or unwilling to provide the necessary care, support and nurturing conducive to a stable environment for a child to thrive in.⁵⁰ Fathers, who are seen as authority figures within our culture, are in some cases, completely absent from the lives of their children. In very unfortunate situations, some juveniles have been completely abandoned by their families, who refuse to attend the court hearings or visit the juvenile in prison. The Juvenile Court has

³⁸ *Criminal Procedure Act 2016* (No: 12/2016), s 43(e).

³⁹ *Criminal Procedure Act 2016* (No: 12/2016), s 46(j).

⁴⁰ Human Rights Commission of the Maldives, *Submission to the Universal Periodic Review of the Maldives*, April-May 2011 <http://www.hrcm.org.mv/Publications/otherdocuments/UPR_submission_Sept_2014.pdf>, p. 4.

⁴¹ *Ibid.*

⁴² "Rapid Situation Assessment of Gangs in Male" Maldives 2012 The Asia Foundation in collaboration with MIPSTAR, p.9 (available online at: <<http://asiafoundation.org/publication/rapid-situation-assessment-of-gangs-in-male/>>).

⁴³ *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences* (2006)/XX/MJ, s 17(e)(1).

⁴⁴ *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences* (2006)/XX/MJ, s 17(e)(1).

⁴⁵ Anecdotal evidence from consultations with key stakeholders during case conferences at the Juvenile Court.

⁴⁶ "Rapid Situation Assessment of Gangs in Male" Maldives 2012 The Asia Foundation in collaboration with MIPSTAR, pp 18-19 (available online at: <<http://asiafoundation.org/publication/rapid-situation-assessment-of-gangs-in-male/>>).

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ "The haven for honeymooners where everyone gets divorced", *The Telegraph*, 26 September 2016 (available online at: <<http://www.telegraph.co.uk/travel/maps-and-graphics/mapped-countries-with-highest-divorce-rate/>>).

⁵⁰ Information contained in the confidential Social Inquiry Reports submitted to the Court by the Juvenile Justice Unit.

issued six (6) "Protection Orders" between 2014 – 2016 granting the State, custody over children in conflict with the law, who come from such neglected backgrounds and are in dire need of care and support for them to be reintegrated into society as rehabilitated individuals.

Most children who enter into criminal life become repeat offenders and gain notoriety within the system. They begin with petty crimes and progress in their descent to serious criminality. Juveniles who have been convicted of murder had a series of criminal records that initially began with minor offences such as theft, disturbance of peace and order offences, etc.⁵¹ Some of these juveniles had served time and had been released to the community after a period of rehabilitation. Nonetheless, lack of proper intervention mechanisms and treatment programmes—that takes into account our cultural and socio-economic factors, led to their relapse into criminal behaviour. As for the gender disparities, girls are more likely to be involved in sexual offences, whereas boys are involved in various criminal offences, including sexual offences.⁵²

VI. COMPLIANCE WITH INTERNATIONAL STANDARDS AND NORMS

As per the *Strategic Plan for Reform of the Juvenile Justice System*,⁵³ the nation follows the principles of the restorative justice model that seeks to address the injury caused to the victim, the wrong done to the society, as well as the accountability, rehabilitation and reintegration of the offender. Rules and regulations on investigation, prosecution and adjudication have been designed to give effect to the rights and obligations under the *CRC* and other international human rights treaties.⁵⁴ Additionally, the UN Guidelines on Juvenile Justice have become an integral part of practice at the Juvenile Court of the Maldives.⁵⁵

A. Investigation

The regulation governing the conduct of criminal matters involving juveniles stipulates the confidential and expeditious determination of cases at every phase of the criminal justice system.⁵⁶ Investigating officers are required to be in plain clothes and must consider the best interests of the child at all times.⁵⁷ Having considered the nature, seriousness and gravity of the offence, and the criminal record of the child, the investigating authorities have discretion to issue informal and formal warnings, providing the child with an opportunity to reform, instead of forwarding the matter for prosecution.⁵⁸ Such warnings take the form of a binding agreement between the authorities and the juvenile and their parent or guardian, with conditions and consequences in the event of breach.

All interviews and communications with the child must be undertaken in the presence of a parent/guardian or in the presence of such other persons able to guarantee the best interests of the child.⁵⁹ Provisions in the new *Criminal Procedure Act* require the police to audio or video record interviews of all arrested persons.⁶⁰

Once an arrest is made, the Maldives Police Service is required to send referrals to the Juvenile Justice Unit,⁶¹ which will then assign a case worker for the juvenile, to provide support and assistance throughout the criminal justice process.

Article 48(d) of the *Constitution of the Republic of Maldives* requires any person(s) arrested to be brought before a judge within 24 hours to determine the validity of arrest and further remand in police custody.⁶²

⁵¹ Court Registry of Criminal Records (Confidential information).

⁵² Court Registry of Criminal Records.

⁵³ *Strategic Plan for Reform of the Juvenile Justice System* 30 September 2004, Attorney General's Office (available online at: <<http://www.mvlaw.gov.mv/pdf/publications/5.pdf>>).

⁵⁴ *United Nations Convention on the Rights of the Child* (1989), art 2, 3, 12 & 40; *International Covenant on Civil and Political Rights* (1966) (RES/2200A (XXI))(16th December 1966) art 14.4.

⁵⁵ *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (Beijing Rules) (A/RES/40/33) (1985).

⁵⁶ *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences* (2006)/XX/MJ, ss 3 and 21; *Juvenile Court Regulation* 2014 (R-25/2014), s 122(1).

⁵⁷ *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences* (2006)/XX/MJ, s 9(b).

⁵⁸ *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences* (2006)/XX/MJ, s 10.

⁵⁹ *Criminal Procedure Act 2016* (No: 12/2016), s 46(j).

⁶⁰ *Criminal Procedure Act 2016* (No: 12/2016), s 46(k).

⁶¹ *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences* (2006)/XX/MJ, s 11(b).

According to the Juvenile Court statistics, 597 remand hearings were held in the year 2015, of which most were brought in for subsequent offending.⁶³ Beginning from 2016, there has been a steady decline in the number of juveniles brought to court for further remand in custody with 500 hearings in 2016 and just 111 hearings by the end of May 2017.

B. Prosecution

Juvenile cases received at the Prosecutor General's Office (PGO) are investigated, and if the case warrants a prosecution, it is submitted to the Court. Prosecutorial Guidelines⁶⁴ on juvenile offences are as follows:

1. Where appropriate, having regard to the nature and gravity of the offence, to dispose of cases committed by children without recourse to formal trial proceedings.
2. As a general rule, having regard to the sufficiency of evidence received, sexual offences committed against children (including those perpetrated by juveniles) are to be sent for prosecution, save for exceptional circumstances.

The current policy at the Prosecutor General's Office, is to minimize the number of cases sent for prosecution, unless they are serious in nature. Instead, the PGO relies on agreements with juveniles, diverting them away from prosecution, with conditions and consequences in the event of subsequent criminal behaviour. The *Criminal Procedure Act* provides a mechanism for the Prosecutor General's Office to counsel offenders who commit minor offences and who confess to the crime during the investigatory stage, instead of pressing charges and prosecuting the matter.⁶⁵ According to section 100 of the *Act*, the Prosecutor General must enter into an agreement with the accused if the Prosecutor General decides not to prosecute the matter, with assurance from the accused to abide by the conditions of the agreement.⁶⁶ The Prosecutor General must consider the interests of justice as well as the best interests of the child in concluding such an agreement.⁶⁷ Juveniles are then required to participate in rehabilitation programmes under the supervision of the Maldives Police Service and the Juvenile Justice Unit.

Further, the Prosecutor General also has discretion to discontinue proceedings or withdraw charges at any time before the court issues a verdict.⁶⁸ The office of the Prosecutor General has frequently used this discretionary power to withdraw minor cases from the Court, in order to pave way for the rehabilitation of juveniles.

C. Adjudication

1. Case Management

In order to facilitate a speedy process in juvenile cases, the Court requires the Prosecutor General to submit written reasons explaining the delay in submitting the case if a year has lapsed between the submission and the date of the incident.⁶⁹ The court, on its own initiative, implemented case management procedures such as stricter guidelines to schedule hearings in order to ensure continuous proceedings. Unless there are justifiable circumstances for the delay, a first hearing must be scheduled within 3 working days of the court receiving the case documents.⁷⁰ Further, judges must decide on cases assigned to them within 6 months, and if it exceeds that period, must submit written reasons to the Chief Judge of the Court, and report to the Chief Judge on the progress of the case at least once a month.⁷¹ The Supreme Court of the Maldives has issued Practice Directions (No: 2015/08)⁷² requiring all courts to streamline its case management procedures to provide for the speedy determination of cases. Additionally, the *Criminal Procedure Act* envisages the implementation of continuous hearings⁷³ and pre-trial procedures,⁷⁴ to further expedite the trial

⁶² *Constitution of the Republic of Maldives 2008*, art 48(d).

⁶³ Disaggregated data unavailable, but evident from the Court Registry of Criminal Records (Confidential information).

⁶⁴ Published on the Prosecutor General's Office website <www.pgoffice.gov.mv>.

⁶⁵ *Criminal Procedure Act 2016* (No: 12/2016) s 100.

⁶⁶ *Criminal Procedure Act 2016* (No: 12/2016) s 100.

⁶⁷ *Criminal Procedure Act 2016* (No: 12/2016), s 99.

⁶⁸ *Constitution of the Republic of Maldives 2008*, art 223; *Prosecutor General's Act 2008* (No: 9/2008), s 15.

⁶⁹ *Juvenile Court Regulation 2014* (R-25/2014), s 35(9).

⁷⁰ *Juvenile Court Regulation 2014* (R-25/2014), s 43.

⁷¹ *Judges' Act 2010* (No: 13/2010), s 55(a).

⁷² Supreme Court of the Maldives, Practice Directions (No: 2015/08) 12.08.2015 (available online at: <www.supremecourt.gov.mv>).

process—the Maldivian judiciary is still in the process of adapting to these new procedures.

2. Proceedings

According to the spirit of the CRC⁷⁵ and the relevant UN Guidelines, all hearings at the Court are closed to the public to ensure maximum protection and privacy to the juvenile.⁷⁶ All personal information of the juvenile are redacted from the media releases and case reports published on the Court's website.

Case workers from the Juvenile Justice Unit are required to attend all proceedings including remand hearings and trials, along with the parent or guardian.⁷⁷ In cases, where the juvenile is also a victim of abuse, the Ministry of Family and Gender as well as the Human Rights Commission of the Maldives, may apply to intervene in the proceedings as and when necessary.⁷⁸

Every child brought before the court is guaranteed due process and a fair trial. They are provided with all legal rights, including the right to legal representation.⁷⁹ Article 53(b) of the *Constitution* states: "In serious criminal cases, the State shall provide a lawyer for an accused person who cannot afford to engage one."⁸⁰ Currently, legal aid is provided only in cases involving serious criminal offences such as murder, trafficking in drugs, major assaults with a lethal weapon, assaults causing grievous bodily harm, terrorism cases, counterfeit offences, dishonesty offences that exceed a monetary value of Maldivian Rufiyaa 50,000.00, offences of sedition and treason, as well as offences that stipulate a mandatory sentence of 25 years' imprisonment.⁸¹ The Attorney General's Office is currently holding consultations to finalize the *Draft Legal Aid Bill* and to establish a mechanism for pro bono legal representation, and the Public Defenders' Office.

The Court conducts its judicial proceedings in compliance with Article 12 of the *CRC*, by respecting the child's right to be heard in all matters affecting the child.⁸² Juveniles are actively encouraged to speak at judicial proceedings as well as at the community conferences held at the Court. Any child who does not understand or speak the local language is provided with an interpreter at the hearing. The Juvenile Justice Unit is required to submit social inquiry reports both at the remand stage and during trial and sentencing.⁸³ It must be noted that the views of the child are given due weight in the disposition of remand hearings, where the child is given responsibility to adhere to the conditions of release, or house arrest. Generally, the judge would order the child to attend school or vocational centres at designated times, under the supervision of the parent or guardian.

3. Conferencing

The Court conducts three types of conferences in relation to the cases submitted to the Court: Case Conference; Family Conference and Community Conference.

A Case Conference enquires into the desirability of proceeding to trial, by exploring other options for the juvenile. It may also be held to clarify issues related to the juvenile and to bring the parties up to date with the records of the juvenile concerned. All stakeholders, including the Maldives Police Service, the Prosecutor General's Office and the Juvenile Justice Unit take part in this conference.

A Family Conference is usually held when there are pressing family issues that need to be addressed, for instance, lack of family care and support for the juvenile, or cooperation with the authorities.

⁷³ *Criminal Procedure Act 2016* (No: 12/2016), s 142.

⁷⁴ *Criminal Procedure Act 2016* (No: 12/2016), ch 13.

⁷⁵ *United Nations Convention on the Rights of the Child* (1989), arts 2, 3, 12, & 40.

⁷⁶ *Constitution of the Republic of Maldives 2008*, art 42(c)(2); *United Nations Convention on the Rights of the Child*(1989), art 40(2) (b)(vii); *International Covenant on Civil and Political Rights* (1966), art 14.1; *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (Beijing Rules) (A/RES/40/33)(1985), r 8.

⁷⁷ *Juvenile Court Regulation 2014* (R-25/2014), s 54.

⁷⁸ *Juvenile Court Regulation 2014* (R-25/2014), s 54.

⁷⁹ *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences* (2006)/XX/MJ, s 8; *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (Beijing Rules) (A/RES/40/33)(1985), r 7 and 15.

⁸⁰ *Constitution of the Republic of Maldives 2008*, art 53(b).

⁸¹ Attorney General's Office Guidelines on Legal Aid (available online at: <www.agoffice.gov.mv>).

⁸² *United Nations Convention on the Rights of the Child* (1989), art 12.

⁸³ *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (Beijing Rules) (A/RES/40/33) (1985), r. 16.

In the final stages of the case, the Probation Officer, would make arrangements to hold a Community Conference, where prospects of the juvenile's rehabilitation may be explored. In keeping with the principles of the restorative justice model, the conference serves as an avenue for the victim and the offender to meet, paving way for a dialogue between the parties. If the Court thinks it is in the best interest of the victim and the juvenile to meet, the court may make such arrangements. Juvenile offenders are encouraged to apologize, compensate for the injury or pain caused, or provide restitution for the damage caused. In 2015, the Court held a total of 52 conferences in relation to cases submitted to the court.

4. Sentencing, Incarceration, Rehabilitation and Reintegration

Where the judge has discretion to sentence the juvenile to house arrest, the juvenile may be ordered to attend educational or vocational centres,⁸⁴ and the Maldives Correctional Services would take on the task of monitoring the juvenile. Juveniles enrolled in the rehabilitation programme are subjected to periodic reviews. Between 2010 and 2015, eighty-nine (89) juveniles were admitted into the rehabilitation programme, of which 11.2% successfully completed the programme having been released with the remainder of their sentences revoked. 44% of non-compliance cases were sent back to serve the remainder of their sentences.

Conviction for serious offences, such as drug trafficking, leads to a lengthy period of incarceration.⁸⁵ There are no separate detention centres for juveniles. They are currently held in adult facilities, albeit separate from the adults. These institutions lack the necessary resources and capacity to conduct rehabilitation for the juveniles. However, some measure of rehabilitation opportunities are provided while in prison. This includes encouraging them to enlist in O/L courses and Quranic learning "Qari" courses. They are also provided with Islamic counselling services, individual counselling sessions with the Juvenile Justice Unit, as well as programmes aimed at raising awareness about crime and criminal behaviour in order to prevent further offending.

The Juvenile Justice Unit, in close collaboration with the Maldives Police Service, the Prosecutor General's Office, the Juvenile Court and the Maldives Institute of Technology, began an ambitious juvenile rehabilitation programme titled "Ummeedhu (Hope)" in June 2016, with Phase I of the programme held as a boot camp at Dh Atoll. Vaani. The programme enlisted 20 participants with minor to serious criminal records. As this is a very recent programme, with Phase II consisting of educational and vocational training and job placements, yet to be completed, evaluating the success of the programme remains inconclusive for now.

D. Challenges

Resources and capacity are the most significant hurdles in implementing international best practices in this area of the law.

Key legislation remains pending. The *Draft Juvenile Justice Bill*, which would enable wide-ranging changes to the current system, is yet to be enacted as law.

Unreasonable delays in the investigation and prosecution of matters involving minors is of great concern. There have been instances where cases have been submitted to court by the Prosecutor General, after two or more years have passed since the incident. Delays in the prosecution of juvenile offences have consequences for the child's educational and employment prospects. In some instances, juvenile offenders are adults with dependent families and responsibilities by the time their cases are submitted to the court. Under the restorative justice model, the juvenile's sense of wrongdoing is a basic requirement for his or her reformation to begin, but delays in the prosecution and adjudication would mean that the chances of the restorative justice procedures to have impact would have elapsed. This is partly due to the difficulties encountered in submitting cases to the Magistrate Courts in the atolls, as well as difficulties in tracing the whereabouts of the accused.⁸⁶

The country lacks a systematic rehabilitation programme that clearly identifies target groups and their

⁸⁴ *Regulation on Conducting Trials, Investigation and Fair Sentencing of Juvenile Offences* (2006)/XX/MJ (R-25/2014), ss 17(b) & 19.

⁸⁵ *Drug Act 2011* (No:17/2011).

⁸⁶ Concerns raised by the Prosecutor General's Office during stakeholder consultations.

particular risks and needs. Different categories of offenders require different types of interventions and treatment programmes.⁸⁷ Although it is too early to evaluate the success of the “Ummeedhu (Hope)” programme—authorities have noted instances of relapse to criminal behaviour among some participants, once they were brought back from the camp. This was due to the lack of a suitable environment for the juveniles to reform, as the ground realities remained unchanged. The Prosecutor General’s Office has decided to prosecute minors who reoffended, as they had breached the conditions agreed with the Prosecutor General’s Office.

Given that we have been unable to implement a successful rehabilitation scheme yet in the Maldives, institutional arrangements become crucially important especially in the case of juveniles. There are no juvenile specific detention or rehabilitation centres at the moment.⁸⁸ The Education and Training Centre for Children (ETCC) which had some measure of success in conducting juvenile rehabilitation has now been closed due to maintenance purposes. The Court has been in consultation with the relevant government agencies since 2010, but thus far, there has been no progress on this issue. In order to raise concern over this and encourage authorities to implement this measure, the Juvenile Court has begun issuing orders for juveniles to be placed specifically in juvenile rehabilitation centres beginning on 1st of July 2015.

In addition, although the *Drug Act* 2011 stipulates the establishment of child-specific detoxification and treatment centres within eighteen months from the date of ratification of the law,⁸⁹ there are no specific treatment centres for juveniles convicted of drug abuse. The current practice is to treat them while in the community. This has not proved to be very effective, as attendance at these community treatment centres that also cater for adults are based on voluntary compliance with the court order.

Our unique geography has also proved to be a factor hindering efforts at implementing a nation-wide juvenile rehabilitation scheme. Article 20 of the *Constitution* guarantees, “equality before and under the law, and the right to equal protection and equal benefit of the law”.⁹⁰ Most magistrate courts in the atolls lack the capacity and resources to provide probation and juvenile rehabilitation facilities. Some of the international best practices followed at the Juvenile Court in Male’ are unavailable in the magistrate courts. There is no presence of the Juvenile Justice Unit (JJU) within the atolls, to some extent the Ministry of Family and Gender has stepped into the breach to provide support to juveniles accused of crime. But the lack of JJU’s presence within the atolls is a major factor impeding efforts to coordinate rehabilitation programmes for juveniles residing in the islands.⁹¹ The Juvenile Court has had limited success in coordinating rehabilitation efforts with the island councils.

Inter-agency coordination has at times been difficult to achieve, due to overlapping mandates and the absence of a unified approach to child care and juvenile justice. This is especially true in the case of dual status youth, who make up the bulk of children in conflict with the law. The social inquiry reports submitted by the JJU are replete with instances of abuse, neglect and abandonment of children—issues that should have put the authorities on notice, before the children ended up in the criminal justice system as offenders.

E. Possible Solutions

The authorities need to step up efforts to pass the Juvenile Justice Bill in order to devise a comprehensive mechanism for the administration of juvenile justice in the Maldives.

The new *Criminal Procedure Act* introduces electronic submission of cases.⁹² Agencies working within the criminal justice system must enforce a concerted effort in the expeditious processing of juvenile offences at every stage. It is expected that this would provide some remedy to the problem of delayed submission of cases.

⁸⁷ *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (Beijing Rules) (A/RES/40/33)(1985), r. 26; *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (A/RES/45/113) (1990), ss. C, D & E.

⁸⁸ *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (A/RES/45/113) (1990).

⁸⁹ *Drug Act 2011* (No: 17/2011), s 47(a)(3).

⁹⁰ *Constitution of the Republic of Maldives 2008*, art 20.

⁹¹ Discussions at stakeholder consultations.

⁹² *Criminal Procedure Act 2016* (No: 12/2016), s 78.

The country needs to devise a comprehensive rehabilitation and reintegration plan. International best practice dictates that such treatment programmes should proceed on a risks and needs basis, and must be individualized to fit the particular circumstances of the juvenile concerned.⁹³ The plan must also take into account our geographical uniqueness and address issues of coordination between Male' and the atolls. The Maldives Police Service is looking to expand their role in juvenile crime prevention, by planning and implementing school programmes for minors who are within the vulnerable age-group as well as the at-risk group.

Establishing juvenile detention and rehabilitation centres is critical to the implementation of effective rehabilitation schemes. A juvenile drug rehabilitation facility is of utmost importance to combat drug addiction among minors, and existing structures need to be strengthened as well as compliance and monitoring mechanisms. We have renewed our efforts and are currently in dialogue with the Ministry of Home Affairs and the relevant government agencies concerning the establishment of well-resourced detention and rehabilitation centres for juvenile offenders. The current Minister of Home Affairs has been briefed about the situation and the changes that are required immediately.

We need to find ways to transfer knowledge and expertise from Male' to the magistrate courts in the atolls, where juveniles can be provided with equal protection and equal benefit of the law. To counter the infrastructural deficiencies within the atolls, an option is to enlist the support of the magistrate courts in the supervision and monitoring of juvenile offenders who have been placed on probation or in rehabilitation by the Juvenile Court orders. In addition, civil society groups can act as an auxiliary to the formal structures of the criminal justice system, by providing monitoring and support facilities within the atolls.

Specialization within their respective agencies and departments is vital for the successful implementation of juvenile justice policies.⁹⁴ The Family and Child Protection Unit (FCPU) is a specialized unit of the Maldives Police Service that investigates domestic violence and juvenile offences; however, other units and departments, such as the Drug Enforcement Department and the Serious and Organized Crime Department, also investigate crimes where juveniles are involved. Many of the batches of investigating officers, corrections officers and custodial personnel now receive introductory guidance to the principles of juvenile justice and international standards and norms. To effect real change in the entrenched mindsets and less than favourable practices, officers need much more than a week-long training workshop. They need to be able to internalize the belief that the special principles and functions of the juvenile justice system serve an important purpose and contribute to the overall strengthening of the law enforcement agencies and the criminal justice system.

Similarly, prosecutors and defence lawyers handling juvenile cases need to be trained in juvenile justice principles and best practices, as the juvenile justice trial proceedings greatly vary from the mainstream criminal justice processes. Further, they should be aware of their respective duties to the court and to the accused. In this respect, special communication skills have proved to be vital. Most juveniles and minors who become witnesses in court, lack the ability to converse in formal language or to follow-through rigorous examination and cross examination. Lawyers therefore should be able to adapt their language according to the understanding of the accused or witness.

Child care and protection agencies must step-up efforts to be vigilant, and pay special attention to the category of dual status youth who initially enter the system as victims. Issues of abuse or neglect must be dealt with promptly and effectively. While international best practice recommends children not to be removed from family life as far as possible, there may be cases when, in the best interests of the child, that is the right thing to do. Further, inter-agency coordination is vital for the successful implementation of child rights and juvenile justice polices. To that end, an efficient, child victim and juvenile offender database is important, in order to keep the agencies up-to-date with the location and status of minors, involved in the system.

More research is required to understand the causes of juvenile offending and ways to better implement

⁹³ *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (A/RES/45/113) (1990).

⁹⁴ *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (Beijing Rules) (A/RES/40/33) (1985), r 12; *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (A/RES/45/113) (1990), V.

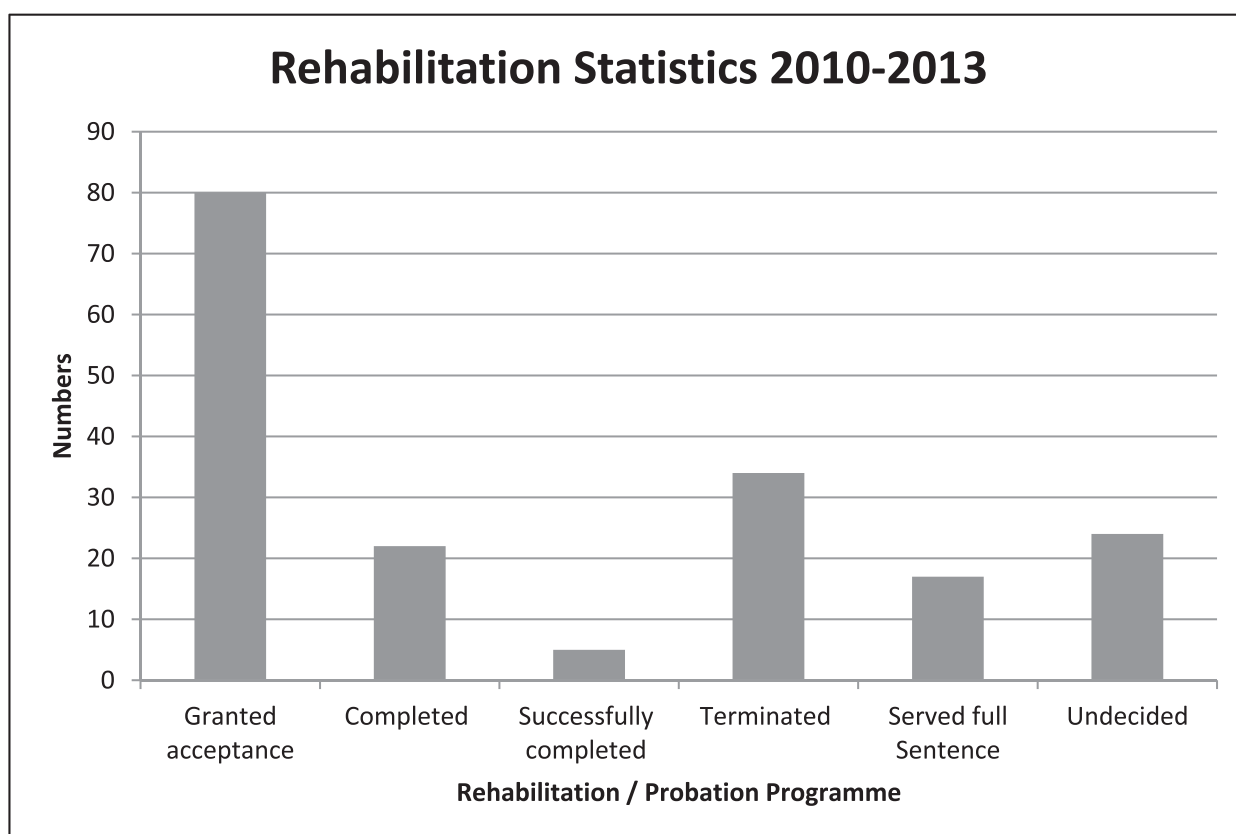
juvenile justice policies. Maintaining a systematized statistical database is a requirement for analytical studies on this subject. Partnering with international organizations and foreign governments and institutions would be of assistance to improving our current regime of juvenile justice.

VII. CONCLUSION

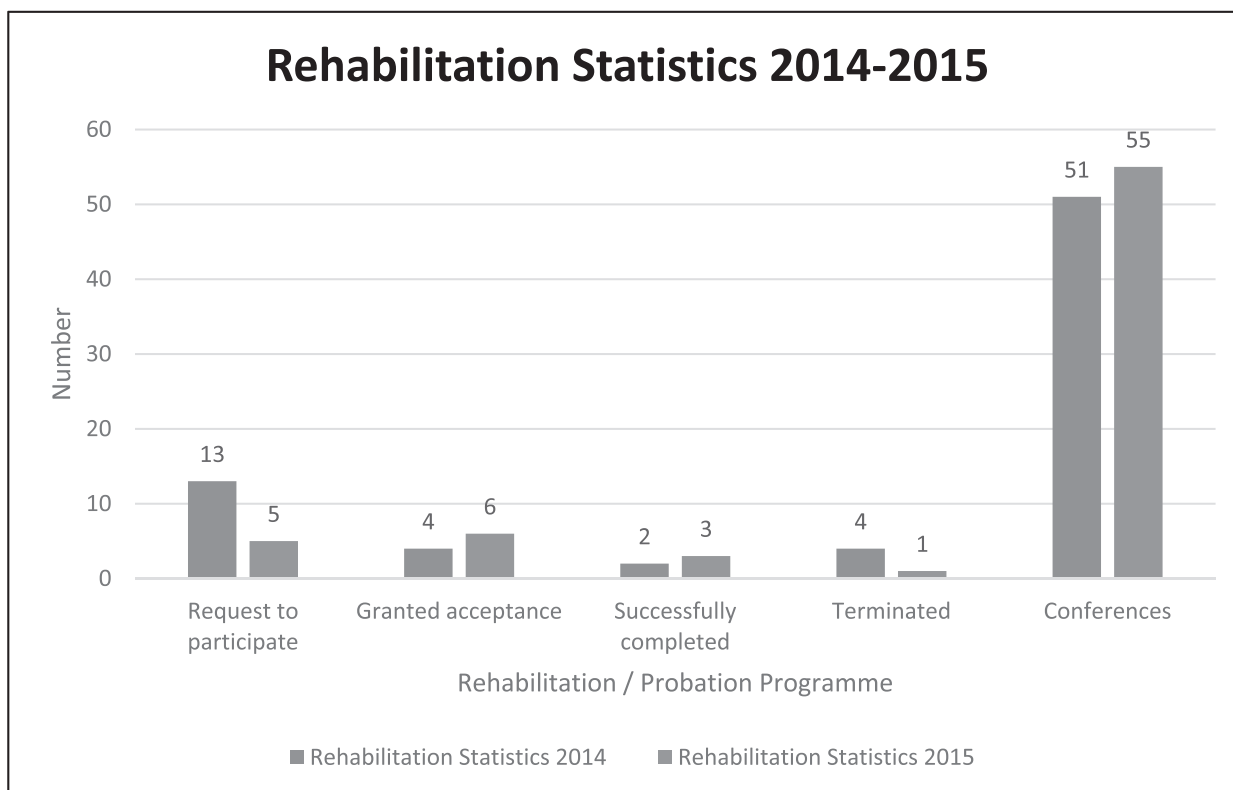
The country has made significant improvements in the field of Juvenile Justice since becoming party to the *UN Convention on the Rights of the Child*.⁹⁵ A look at the current system would reveal the progress achieved in implementing international norms and best practices in this area of the law. The nation has incorporated the restorative justice model in its juvenile justice policies, and has had some measure of success in implementing rehabilitation and reintegration programmes.

Still, hurdles remain. Capacity, lack of resources and expertise stand out as the most crucial factors hindering further development. The recent reforms to the criminal justice system have highlighted the need for reform of the juvenile justice system, which are more urgent than ever. We aim to maintain a sustained effort towards our commitment to the development of the juvenile justice system in the Maldives.

ANNEX A JUVENILE REHABILITATION STATISTICS - JUVENILE COURT OF THE MALDIVES



⁹⁵ *United Nations Convention on the Rights of the Child* (1989).



**Request to participate* – generally juveniles who are accused of criminal behaviour are given an opportunity to participate in the rehabilitation programme by submitting documents of confirmation from an educational institution, vocational training centre or job confirmation from employer.

**Granted acceptance* – the total number of juvenile applications accepted into the programme during the year. This will include undecided applications from the previous year.

**Completed Programme* – the number of juveniles who completed the rehabilitation programme for the designated duration.

**Successfully completed* – the number of juveniles who successfully completed the rehabilitation programme, with the remainder of their sentence revoked by the Court.

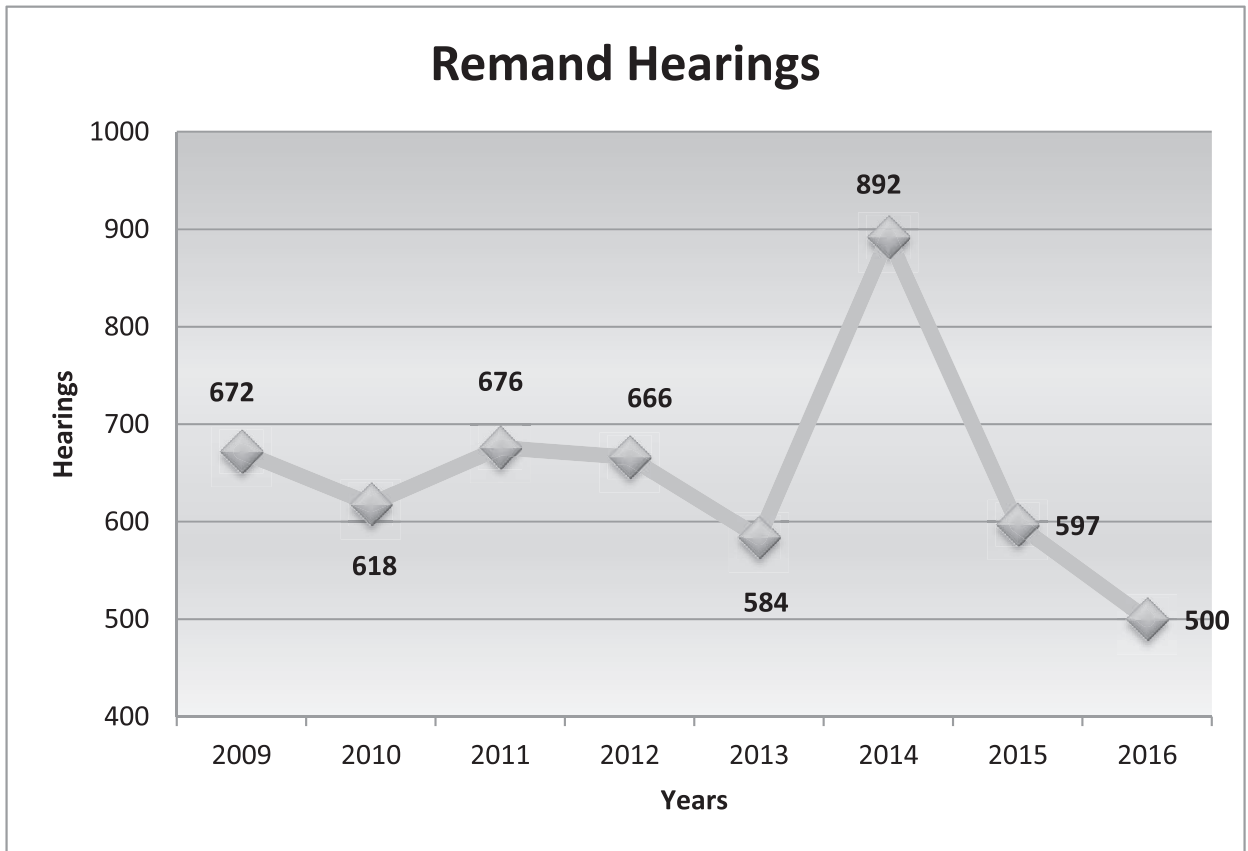
**Terminated* – the number of juveniles who were terminated from the rehabilitation programme and sent back to prison to serve the remainder of their sentence.

**Served Full Sentence* – the number of juveniles who took part in the rehabilitation programme but also served their full sentence.

**Undecided* – the number of applications to participate in the rehabilitation programme that remained undecided at the end of the year

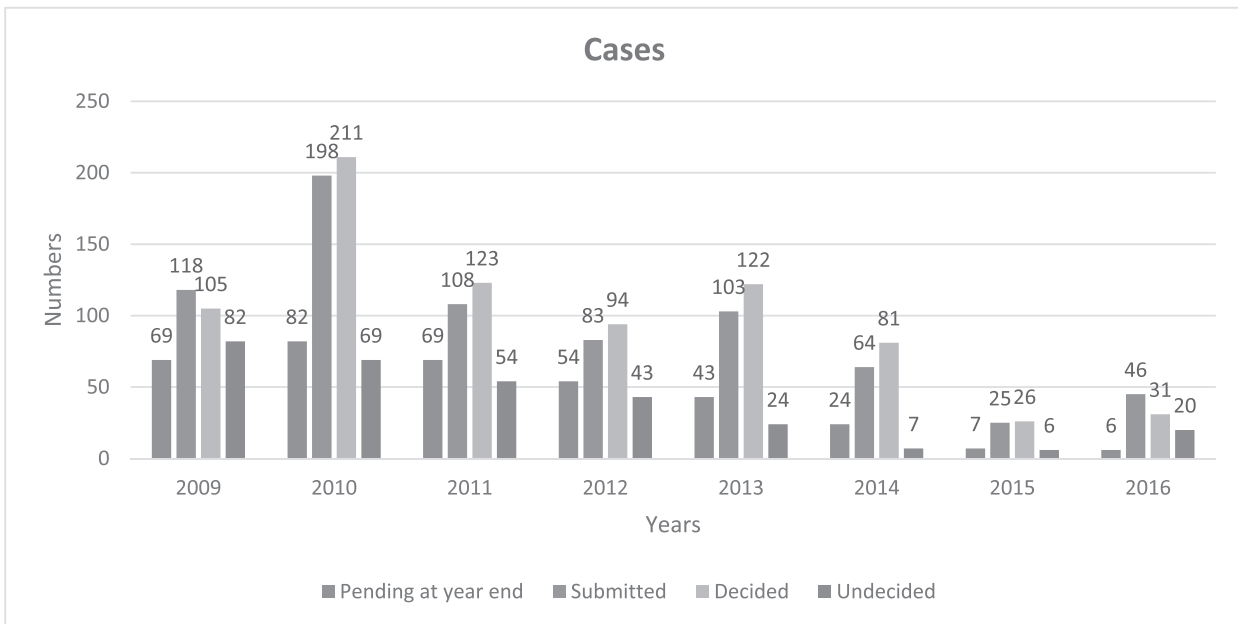
**Conferences* – the number of conferences held regarding juvenile offenders during the year. This may include several conferences held on individual juvenile offenders.

ANNEX B
REMAND HEARING STATISTICS - 2009-2016



**as of 19.12.2016*

**ANNEX C
CASES SUBMITTED TO COURT - 2009-2016**



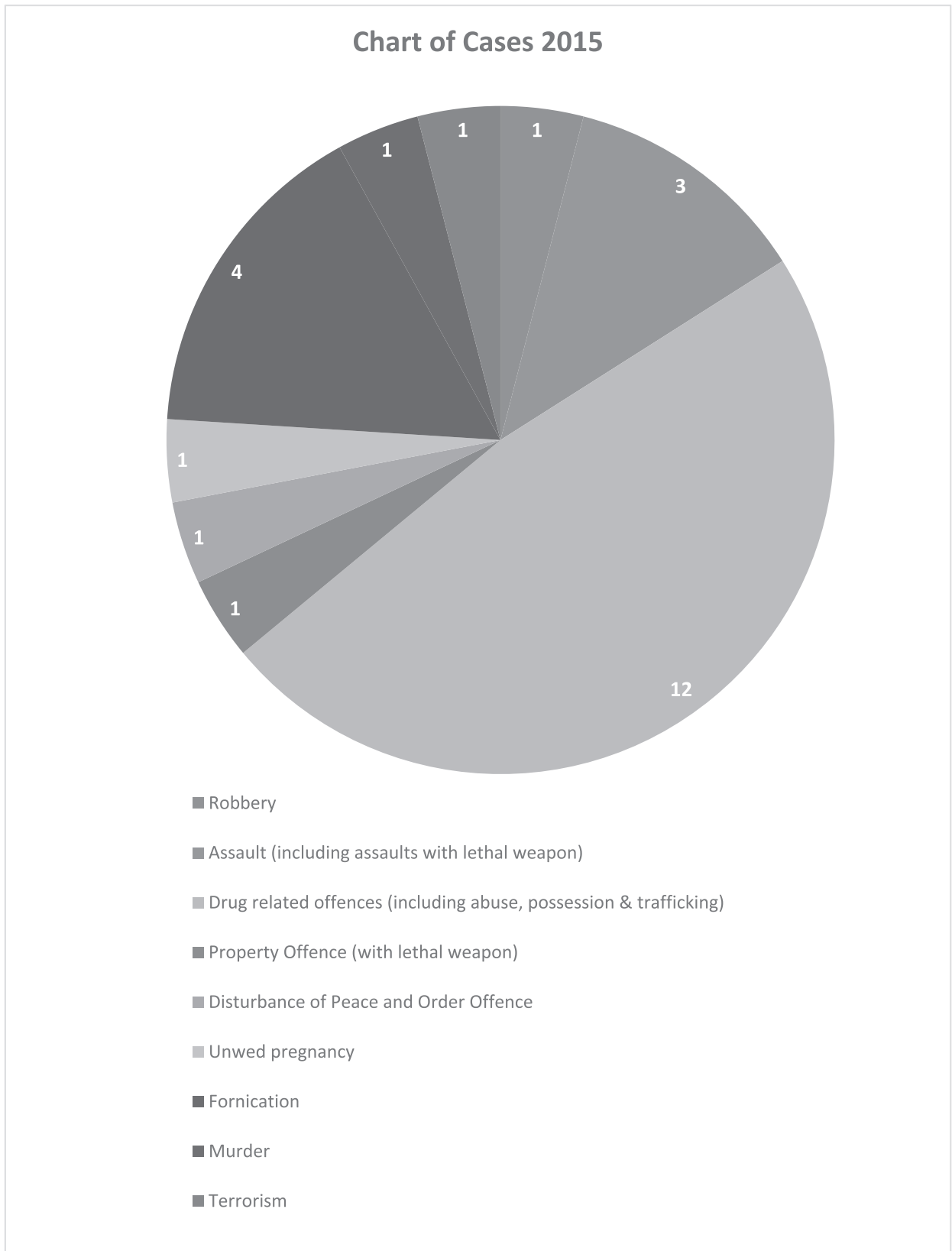
**Pending at year end* – the number of undecided cases from previous years at the beginning of the current year (there was a huge backlog of cases which was reduced after the establishment of the Drug Court)

**Submitted* – the total number of cases submitted to court during the year.

**Decided* – the number of cases in which the court has passed a verdict and issued a sentence

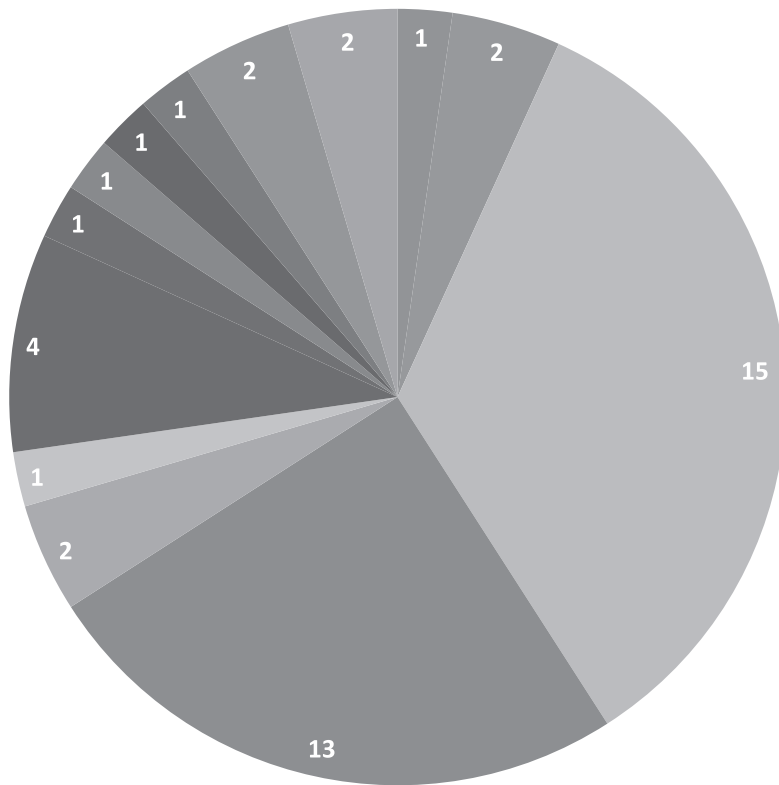
**Undecided* – the number of cases that remained undecided at the end of the current year.

ANNEX D
TYPES OF CASES - 2015



ANNEX E
TYPES OF CASES - 2016

Chart of Cases 2016



- Disobedience to lawful order
- Assault
- Drug related offences (including abuse, possession & trafficking)
- Property Offence
- Disturbance of Peace and Order Offence
- Criminal Trespass
- Fornication
- Unwed Pregnancy
- Unlawful sexual contact
- Indecent sexual offence
- Possession of contraband
- Murder
- Terrorism