

POLICE TRAINING MANUAL

A course guide for trainers of
police officials who work with
juvenile offenders

Namibian Police
Legal Assistance Centre
United Nations Children's Fund

Juvenile Justice in Namibia

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Copies of this manual are obtainable from:

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NAMIBIA

OPENING SESSION

OBJECTIVES

- * By the end of this session, participants should have:
 - met one another and the facilitator;
 - reviewed the course objectives;
 - participated in group exercises;
 - be acquainted with developments relating to juvenile justice in Namibia;
 - realise the need to treat young offenders differently to adult offenders.

STRUCTURE AND TIMING

⌚	Introduction of facilitator and participants	10 minutes
⌚	Expectations of participants	10 minutes
⌚	Imagination exercise	15 minutes
⌚	Background of juvenile justice in Namibia	10 minutes
⌚	Buzz Groups	5 minutes
⌚	Brainstorming	5 minutes
	TOTAL	55 minutes

PREPARATIONS

- * Before the first session, write up the aims and objectives of the course and an outline of the course content on flip-charts.
- * The questions listed in Part 2 of the Imagination Exercise should also be written up on different flip-charts before the session begins.
- * Ensure that you have enough copies of the handout for each of the participants. Handout 1 is the Diversion Programme contract entitled *Sworn Statement by Juvenile Offender*.

SESSION FLOW

Introductions

- * Briefly introduce yourself to the participants.
- * Ask them to turn to the person next to them and to introduce themselves. After introducing themselves they should tell that person one good thing about themselves and one bad thing. These introductions should then be made to the plenary. (It is possible that participants will be reluctant to reveal anything bad about themselves. If this is the case they should merely ask the person who will be introducing them to the plenary to say that the bad thing is confidential.)

Expectations

- * Ask the participants what their expectations are of the course. As they respond, list their responses on a flip-chart.
- * Then display the aims and objectives and the content outline which you wrote up beforehand. You will then be able to tell the participants which of their expectations will be met and which will not. This exercise is aimed at minimising frustration should expectations of the course not be met.
- * These flip-charts must remain visible to the participants throughout the course. At the end of the course the expectations, aims and objectives should be revisited to determine whether or not they were met.
- * Arrangements as to times for starting and ending sessions and breaking for meals and tea should be agreed upon at this point.

Imagination exercise

Part 1

- * Tell the participants to think of themselves not as police officers but as parents.
- * They must imagine one of their own children at the age of 15.
- * They must think about the aspirations that they have for their children at that age, and their ideals as parents.
- * Now they must imagine themselves being telephoned at work and informed that their child has been arrested for stealing a bar of chocolate at a local shopping centre.
- * Ask the participants to share their feelings about the news of the arrest with the person sitting next to them.
- * Get feedback from the group about their feelings and record this on a flip-chart.

Part 2

- * Display the flip-charts on which you wrote up the following questions:

ARREST

- How do you want the police to treat your child on arrest?
- Do you want to be informed about your child's arrest?
- If you do not have a telephone, what would you want the police to do to inform you?
- What would you want the police to do if you are out of town on a training course and it is impossible to contact you?

AWAITING TRIAL

- Would you want your child to await trial in the police cells? If not, why not?
- Where would you want your child to await trial if not in the police cells?
- Would you want your child to share a cell with adults? If not, why not?
- Would you want your child to continue with their education while awaiting trial?

SCREENING AT PRE-TRIAL STAGE

- Would you want your child to be interviewed by social workers before appearing in court?
- Would you want your child to have a criminal record?
- Would you prefer that the criminal charges are withdrawn before the trial on condition that your child participates in an educational programme that emphasises the difference between right and wrong?
- Would you like your child to be given a second chance?
- Do you think a period in prison or a police cell would teach your child the difference between right and wrong?
- Would you want your child to learn a lesson?

COURT PROCEDURES

- If your child has to go to court, would you try to arrange for legal representation?
- Would your child understand the legal terms and the language used by court personnel?
- Would you understand them?
- If your child would not understand, would you like someone to explain in a language that they will understand?
- Would you like someone to explain the court procedures to your child beforehand?

SENTENCING

- What kind of sentence should the magistrate hand down to your child?
- What purpose should the sentence serve?
- Would you want your child to take responsibility for their crime? Do you want your child to realise the difference between right and wrong?
- Would you want your child to be sentenced to a term of imprisonment?
- Would you want your child to be fined? Who would pay the fine?
- Would you want your child to receive a postponed sentence? Would you want your child to have a criminal record?

AFTERCARE

- Would you want access to social services if underlying problems motivating your child's behaviour are identified?
- Would you be interested in finding out what these problems are?
- * Record the feedback on flip-charts and display these at all of the following sessions.
- * Use a separate sheet of paper for each topic.
- * Now explain to the participants that their answers could be seen as the principles that guide the treatment of their child.

! If these are the principles which they want applied to their own children, then these same principles should apply to all Namibian children.

Lecture 1

JUVENILE JUSTICE IN NAMIBIA: BACKGROUND

The beginning

! When the Namibian Government ratified the Convention on the Rights of the Child (CRC) in 1990, it expressed agreement to be bound by the articles and obligations in the Convention.

* Tell the participants that the term “ratification” will be discussed in the next session.

Ratification of the CRC provided an important framework for the **programme of cooperation between the Government and UNICEF** which aimed to improve the living conditions of Namibia’s children and women and to create a greater national awareness of children’s rights.

One of the projects included in this programme is targeted at “**children and women in especially difficult circumstances**” (CWEDC). Children in conflict with the law fall into this category.

As a direct result of the CWEDC project it was decided that a multi-disciplinary team would undertake a preliminary investigation into the circumstances of children in prison. This took the form of a survey, and the findings were published as a report entitled *A Study of Young Offenders in Namibia*.

- Both the Namibian public and specialists in the area of children’s rights were **shocked by the outcome** of the survey:
 - ä The majority of offenders had been sentenced to a term of imprisonment **without access to lawyers**.
 - ä The majority had appeared in court **without the presence of their parents or guardians**.
 - ä **Pre-trial detention was common**, with the average period being 3 months.
 - ä The majority of offenders were serving sentences for **non-violent crimes** (i.e. economic crimes).
 - ä The majority were **illiterate** and had **dropped out of school** at an early stage.
 - ä The majority had been **raised by a grandparent**.
 - ä **Abuse of young offenders** by older and/or more hardened prisoners was **common**.
 - ä Half of the offenders had friends or family members who had exposed them to **alcohol and drugs**.
 - ä All of the offenders came from **low-income homes**.
 - ä A definite **racial bias** was perceived: there were no white children in prison!

OHT 1

In 1994 the Ministry of Health and Social Services hosted a national workshop on the content of **new children's legislation**. This was done because the CRC obliges States Parties to bring national legislation into line with the standards and principles it contains. One full day of the workshop was devoted to discussing the pressing issue of juvenile justice in Namibia.

New developments

FIRST STEPS

A **Juvenile Justice Forum (JJF)** was established after this discussion, in July 1994. The JJF is comprised of government line ministries, NGOs and interested individuals. It seeks to analyse the system of juvenile justice and take concrete steps for change. Since its establishment, the JJF has contributed towards and facilitated many positive changes in the juvenile justice arena.

The Legal Assistance Centre (LAC) was mandated by the JJF to start a **Pilot Diversions Programme**, and in 1995 the Prosecutor General granted permission for the programme to be conducted at the Windhoek Magistrate's Court. The aim was to ensure that children were properly assessed before being propelled into the criminal justice system. This assessment involved screening all children under the age of 18 who were alleged to have committed a criminal offence.

In 1995 a workshop was held for all role-players in the area of juvenile justice. The police also attended this workshop and formed the **Arrest and Awaiting Trial Committee** to look at issues pertaining to the arrest and awaiting trial phase of juvenile justice. This committee has taken positive steps to improve the situation.

The **Arrest and Awaiting Trial Committee** is a sub-committee of the JJF and reports back to the JJF on a monthly basis.

The major change made in this area of juvenile justice is that an attempt has been made to **separate awaiting trial juveniles from their adult counterparts**. This has been effected by allocating **two cells at Wanaheda Police Station for juvenile offenders**. An internal NAMPOL directive stipulates that all juveniles arrested in the Windhoek magisterial district must be taken to Wanaheda Police Station immediately after being arrested.

Two police officers at this police station have been designated to assist in **tracing parents or guardians** and moves are afoot to train volunteers from the community to assist the police with this difficult task.

A further intention is to make the living conditions at the Wanaheda cells as **child-friendly** as possible by, for example, painting the cells in bright colours. However, while this is a very positive development it is certainly not the end of the road, because no matter how child-friendly a police cell is, it remains a place where people are detained and from which they cannot leave of their own free will.

Other problems to consider are: (1) that children are still arrested and detained for very minor crimes; and (2) that only in Windhoek is an attempt being made to separate children from adults, so children living in rural areas are still at risk of being detained together with adults.

SCREENING

The screening or assessment of young offenders takes place at the **Windhoek Magistrate's Court**. The process is carried out by LAC **Juvenile Justice Project (JJP)** personnel and by **social workers** from the Ministry of Health and Social Services. All juveniles are screened by a social worker when they attend court for the first time. Screening is done on a daily basis.

- The **aims** of the screening process are to:
 - **identify the circumstances** surrounding the offence as well as the personal circumstances of the offender;
 - **ensure placement with parents/guardians or a responsible community member** as soon as possible after arrest - if the juvenile is still in custody when screening takes place;
 - **monitor** the treatment of juveniles by the police;
 - **make recommendations** to the senior prosecutor at the Windhoek Magistrate's Court as to whether or not the juvenile concerned should be diverted from formal court procedures and prison sentences.

OHT 2

How screening is carried out:

- The control prosecutor gives all the **juvenile dockets** to the social worker before the offender appears in court.
- Trained social workers **interview** the offender and their parents or guardians in order to ascertain whether the offender admits to committing the offence, and to establish the personal circumstances of the offender.
- If parents or guardians are not present at court, the investigating officer is requested to **trace and inform** them of the arrest.
- Where parents or guardians or other responsible adults cannot be traced, JJP personnel ensure that the offender is **transferred to Wanaheda Police Station** - if they are already in custody at another police station. The case will then have to be postponed until the relevant persons have been traced.

! All attempts are made to avoid returning a juvenile to the cells, but in certain instances this is unavoidable.

- Where parents or guardians are present and the offender admits to the offence, the screener assesses whether **diversion** is a possible option.
- The screener will discuss possible diversionary options with the offender and obtain their **consent** to participate.
- The screener **may recommend diversion** at this stage,
OR
contact the victim to discuss the victim's feelings about the crime.

- The victim and offender may then meet in a mediated process known as the “**consensus decision-making process**”. This meeting takes place **one week after** the initial screening process. The screener makes a **recommendation** to the senior prosecutor depending on the outcome of this meeting.

! **The senior prosecutor makes the final decision as to diversion. The social worker cannot decide to divert a child but can only make a recommendation.**

- If the case is to be diverted the charge will be **provisionally withdrawn** on the condition that the young offender complies with one or other stipulated condition.
- The young person signs a **contract** stating that he or she will comply with the conditions of diversions.

* Hand out a copy of this contract to every participant.

- Where guilt is denied the accused person is advised to obtain legal representation and the case proceeds to **trial**.
- Where there is non-compliance with the conditions for diversion the docket will be returned to the senior prosecutor for a further decision. The **charges may be reinstated**.

! **The screening process is carried out in a child-friendly manner with every attempt made not to frighten the child or to force them to admit to the crime. The focus is on upholding the child’s rights.**

Problems

The following **problems** may be encountered:

- The screening process is often subject to **delays** due to missing parents or guardians. Screeners often have to trace the parents themselves, causing a slight bottleneck.
- Due to loopholes in the system and inadequate monitoring mechanisms, juvenile offenders are sometimes **held for more than 48 hours** and are **not screened** before their first court appearance.

DIVERSION

Basis for diversion

- The offender should **freely admit guilt**.
- The process is a mediated one in terms of which **all role-players must be satisfied** with the outcome.

! **Remember that the final decision is always made by the prosecutor and not by any other role-player.**

☰ OHT 3

- **Potential recommendations:**

- Unconditional **withdrawal of the charges**
- Attendance of **life-skills programme** as condition for withdrawal
- A **letter of apology** to the victim as the condition for withdrawal
- **Supervision** by a probation officer as the condition for withdrawal
- **Victim-offender mediation**
- Referral to a **children's court enquiry**
- Referral to the **juvenile court for trial**

! **These recommendations are not mutually exclusive, e.g. attendance of a life- skills programme may be coupled with probational supervision.**

- * Tell the participants that the diversion programmes will be covered in detail in Session 4 of the course.

Buzz group exercise

- * Divide the participants into 4 buzz groups.
- * Each group should be assigned one of the following four topics to discuss:
 - Arrest
 - Awaiting Trial
 - Court Procedures and Sentencing
 - Prevention and Aftercare
- * Each group must discuss the topic in terms of their experience in dealing with juvenile offenders.
- * As facilitator, it is important that you acknowledge the experience of the trainees.
- * Write up the outcome of each group's discussion on separate flip-charts.

Brainstorming exercise

- * Ask the plenary to brainstorm reasons for treating young offenders differently to adults.
- * Write the responses onto a transparency and project the transparency.
- * You can then add to the discussion by drawing the participants' attention to the following:

The **Criminal Procedure Act** defines juveniles as a **special category of offenders**: all persons under the age of 18 are juveniles in terms of the Act. The Act affords **additional safeguards** to this category of offenders. For example, the trial of a juvenile must be held in-camera. Our **Constitution** also treats children as a special category of persons (in Article 15).

- * Tell the group that the Criminal Procedure Act will be dealt with in greater detail later on in the course, but at this stage the important point to note is that **the law itself says that juveniles should be treated differently to adult accused persons.**

Our **courts** also recognise that juveniles should be treated differently to adults. In the case of *S v Machasa en Andere 1991(2) SASV 308(A)*, the judge stated as follows:

“It is doubtful whether, in considering the blameworthiness of an accused under the age of 18 years, it serves any purpose to introduce the concept of ‘inherent wickedness’. A person under the age of 18 years is naturally immature. He has, as a rule, a lack of sound judgement and self-control and is more easily susceptible to the influence of others - even if only from the conduct of those who serve as examples to him. Therefore, what can be regarded as inherent wickedness in the case of an adult or a person in his late teenage years, can in the case of one under the age of 18 years be the consequence of the aforementioned characteristics and circumstances.

Apart from what the law says, there is universal agreement that the need of children for protection is based on their physical and mental immaturity. We owe to our children the best that we have to give, yet **children often stand to lose the most in situations of conflict or hardship.**

Many children who break the law are **socialised in violence and harsh socio-economic circumstances.**

The courts are overloaded with children who have committed petty offences, such as theft of a packet of sugar, **merely because they are hungry.** While theft is not to be condoned, it is important to realise that **once children enter the cycle of crime, they are doomed to a lifetime of conflict - a dismal future.**

If we agree that we owe it to our children to give them a better life, then surely we should try to intervene, as early as possible, to **ensure that they are not exposed to negative role models.**

! **Advocates of juvenile justice throughout the world are unanimous in their agreement that prison is a breeding ground for crime.**

• **Young people need special treatment because:**

- they have not had the same **experiences** as adults;
- both **negative and positive experiences shape the adult** person;
- they are more **vulnerable** to harm than adults;
- they can easily become **victims**;
- they are **vulnerable in general**;
- they have **special needs**;
- they are **emotionally immature**;
- they are more susceptible to **negative influences.**

! **The guiding principle in the Convention on the Rights of the Child is “the best interests of the child”. This means that where any decision is taken concerning a child, the child’s best interests should be taken into account and should guide the decision-maker.**

REFERENCES

- 📖 *A Study of Young Offenders in Namibia*, Prisons Service, Legal Assistance Centre, Ministry of Youth and Sport, UNICEF, Windhoek, 1995.

CASE CITATIONS

- 📄 *S v Machase en Ander* 1991(2) SASV 308 (AD).

THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

Session 2

OBJECTIVES

- * **By the end of this session, participants should:**
 - understand what “the Convention” is;
 - understand what “ratification” means;
 - be aware of the main articles and obligations contained in the Convention;
 - be aware of the key principles of the Convention;
 - have read the report of the Committee on the Rights of the Child;
 - understand what Article 37 says about the arrest, detention or imprisonment of a child
 - be aware of what Article 40 of the Convention says in relation to the treatment of juveniles who conflict with the law (especially as regards their due process rights);
 - be aware of the direct support of Article 40 for the principle of diversion;
 - understand the importance of treating a child with dignity;
 - have answered the questions on the Convention.

STRUCTURE AND TIMING

🕒	Video	30 minutes
🕒	Lecture	20 minutes
🕒	Questions	30 minutes

TOTAL 80 minutes

PREPARATIONS

- * Ensure that you have a video player ready for screening the video.
- * You should watch the video (which is supplied with this manual) prior to the start of the course.
- * Ensure that you have enough copies of the handout for each of the participants.
- * The facilitator has the option to facilitate this lecture him/herself or to request outside facilitation from an expert in the field. If you do want to invite an expert to facilitation, you could contact a member of the Juvenile Justice Forum for information as to who could be invited.

SESSION FLOW

Video

- * The session will begin with the screening of the video, which is meant to introduce the participants to the concept of **children’s rights** and to the **United Nations Convention on the Rights of the Child (CRC)**.
- * Show as much of the video as you think is necessary.

Lecture

- * If you decided to facilitate the session yourself rather than invite an expert to do so, you should begin by introducing the United Nations Convention on the Rights of the Child (CRC) as follows:

What is a “convention”?

A convention is an **international human rights treaty** (agreement) which provides for universally accepted standards in relation to children’s rights.

A convention is **stronger than a declaration**, because once a convention is signed and ratified by a country, it becomes **legally binding** on that country. (The countries that ratify a convention are known as the “States Parties” to that convention.)

What is the Convention on the Rights of the Child?

This particular convention was the result of extensive negotiation with member states of the United Nations (UN). It took 10 years to draft and was eventually **unanimously accepted by the member states of the UN**.

Namibia ratified the CRC just after independence in September 1990.

If a country “ratifies” an international agreement, it means that it **strongly supports** the agreement, that it agrees to be bound by the agreement, and that it **accepts its obligations** under the agreement. Namibia, as a State Party to the CRC, is obliged to **amend its national legislation** to bring it in line with the CRC, and to **regularly report on implementation** of the CRC in this country.

One of the most striking aspects of the CRC is its comprehensiveness: it **guarantees all human rights** which are protected by other human rights conventions, and it goes further by **affording children special protection**.

- The CRC operates as an **umbrella for the three sets of rules on juvenile justice**:
 - ä The Beijing Rules;
 - ä The Riyadh Guidelines; and
 - ä The Rules for the Protection of Juveniles Deprived of Their Liberty.

! **This connection to the three sets of rules is very important since it lends weight to the rules which do not have the same binding status as the CRC.**

☰ OHT 1

OBLIGATIONS

- **Articles 1 to 5 of the CRC contain the overall obligations:**
 - ä Article 1 defines a child as being **under the age of 18 years**.
 - ä Article 2 states that the rights in the CRC should be enjoyed by **all children** without discrimination.
 - ä Article 3 tells States Parties that they must ensure that all actions taken are in the **best interests of the child**.
 - ä Article 4 tells States Parties to undertake **specific implementation measures**, such as legislative or administrative measures.
 - ä Article 5 stipulates that States Parties must **respect the responsibilities, rights and duties** of a child's parents, extended family members, community or legal guardians.

! **The CRC is not trying to take the traditional role of parenting away from parents: it merely seeks to ensure that all actions taken are in the best interests of the child, whether taken by parents, police, the school or the State. (Parents still have rights and duties in respect of their children!)**

☰ OHT 2

RIGHTS

- **The CRC affords children particular rights:**
 - ä They have the **right to be provided with certain things**, such as a name and nationality, as well as **services**, such as health care and education.
 - ä They have the **right to be protected** from torture, exploitation, arbitrary detention and unwarranted removal from parents.
 - ä They have the **right of participation in decisions** which affect them.

☰ OHT 3

KEY PRINCIPLES

- **The following are the key principles of the CRC, which should always be borne in mind when dealing with children:**
 - ä **Non-discrimination**
 - ä **Best interests of the child**
 - ä **Right to life, survival and development**
 - ä **Respect for the views of the child**

MONITORING

Monitoring of the implementation of the CRC is effected by way of **reports** by States Parties. An **initial report** must be submitted **two years after ratification**, and thereafter a report must be submitted **once every five years**.

The reports are considered by the **Committee on the Rights of the Child**. This is a committee of experts in the fields of children's rights, based in Geneva, Switzerland. After the Committee has considered the report, it gives feedback to the reporting state.

Namibia submitted its first report in 1992.

REPORT OF THE COMMITTEE

- * Hand a copy of the **Concluding Observations of the Committee on the Rights of the Child** to all the participants.
- * Tell the participants to take special note of **point (20)** of the Concluding Observations, which refers to Articles 37 and 40 of the CRC. These Articles deal with juvenile justice.
- * When they have finished reading the report, continue with the lecture.

The Committee suggested that a **system of juvenile justice** in Namibia be guided by Articles 37 and 40 of the CRC, and by the Beijing rules, Riyadh Guidelines and UN Rules for the Protection of Juveniles Deprived of Their Liberty. This fact indicated the extent of the Committee's concern about the situation.

It was also recommended that **all role-players receive training** on juvenile justice.

The Juvenile Justice Forum, the Arrest and Awaiting Trial Committee, the holding cells at Wanaheda Police Station, the Pilot Diversions Programme and screening process at the Windhoek Magistrate's Court, the workshops with police, prosecutors, magistrates, social workers, youth officers and NGOs, and this police training course, are all initiatives taken in Namibia which aim to improve the situation referred to by the Committee.

ARTICLE 37

- **This article of the CRC is a "protection clause":**
 - ä It protects children from **torture, cruel punishment, unlawful arrest or deprivation of liberty**.
 - ä It specifically states that the arrest, detention or imprisonment of a child must only be used a **last resort** and for the **shortest possible period of time**.
 - ä It provides that if a child is deprived of liberty, this should be done in a manner that is **humane** and **respectful of the inherent dignity of human beings**, and which takes account of the **special needs of a person of that age**.
 - ä It provides that a child must be **separated from adults unless it is in the child's best interests** not to be separated. (In most situations it will be in the child's best interests to be separated from adults. However, should it occur that child and parents are arrested together, it may not be in the child's best interests to be separated. It will depend on the particular circumstances of the family. In general, children in detention should be separated from adults.)

- ! The separation of children from adults in detention is one of the minimum requirements of a juvenile justice system.

☰ OHT 4

ARTICLE 40

- Article 40 not only goes further than Article 37, but it is also the **longest and most detailed article** of the CRC. It states that every child who is accused or convicted of a crime has the right to be treated in a manner which:
 - promotes their **dignity and worth**;
 - reinforces their **respect** for the human rights and fundamental freedoms of others;
 - takes into account their **age**; and
 - promotes their **reintegration** and playing of a **meaningful role** in the community.

☰ OHT 5

- A child's encounter with the police can be a **frightening and emotionally painful** experience. Treating a child in a way which will not harm them involves both **mental and physical** components. You might not assault the child physically, but if you use harsh words towards the child the effect can be equally damaging. **Verbal and non-verbal behaviour** are fundamental in this regard:
 - **Speak** to the child in a way which takes account of his or her unique characteristics.
 - **Listen** to the child in the same way.
 - Unnecessarily pushing someone away, turning away when they begin to speak, or punctuating remarks by pointing your finger, all contain **negative messages**.
 - **Be open**. Listen attentively and respond honestly. Try to build a relationship of **trust**, not fear. **Explain** what you are doing and why you are doing it.
 - **Do not see yourself as a punisher!**
 - **Be courteous**. Teenagers are especially sensitive to a heavy-handed approach or the suggestion of being treated as children.
 - **Be compassionate**. As a police officer you are in a position to alleviate a lot of the stress which crime causes.
 - **Do not be arrogant!**
- **Article 40 specifically states that young offenders have the rights:**

☰ OHT 6

- to be **presumed innocent** until proven guilty in court;
- to be **informed promptly and directly of the charges**;
- to be informed of these in the **presence of their parents/guardians**, if appropriate;
- to have **legal or other appropriate assistance** in preparing their defence;
- to have the **case fairly determined without delay**;
- to have **legal or other appropriate assistance in court**;
- to have their **parents/guardians present in court**;
- to **silence**, meaning not to be forced to give evidence or confess;
- to call and cross-examine **witnesses**;

- ä to a **review** of any decision if found guilty;
- ä to a free **interpreter**;
- ä to **privacy** throughout the proceedings.

Article 40 **directly supports the principle of diversion** by stating that, “Wherever appropriate and desirable, alternatives to judicial proceedings and institutional placements should be provided for children who conflict with the law.” The condition is that these alternatives should fully respect the child’s human rights and legal safeguards. Alternatives could be orders for institutional care, guidance and supervision, counselling, probation, foster care and educational and vocational training programmes.

According to Article 40, these alternatives should be provided to ensure that children are dealt with in a manner which supports their **well-being**, and which is proportionate to both their circumstances and the offence. This is also known as the **principle of proportionality**. This principle will be discussed in greater detail in the next session, which covers the Beijing Rules.

OHT 7

Small-group exercise





- * Divide the participants into small groups. Each group must answer the following questions:
 1. What does “ratification” mean?
 2. The CRC is an umbrella for which rules?
 3. Name one key principle of the CRC.
 4. What does Article 37 say about the arrest or detention of a child?
 5. What does Article 40 say about judicial proceedings and institutional placements?
 6. When is the State under an obligation to provide alternatives to judicial proceedings and institutional placements?
 7. Why is the State under an obligation to provide alternatives to court proceedings?
 8. Name three rights that the CRC affords to an accused juvenile.
- * Each group should appoint a scribe to record the answers on flip-charts.
- * Each group should appoint a reporter to give feedback to the plenary.
- * The relevant flip-chart/s should be displayed while feedback is given.

ANSWERS

1. To ratify an agreement means to **agree to be bound** by it, or to **accept the obligations** imposed by it. Namibia ratified the CRC and is therefore obliged to implement its provisions (e.g. by amending national legislation to bring it in line with the CRC) and to report regularly on the implementation process.
2. The CRC is an umbrella for the **Beijing Rules**, the **Riyadh Guidelines** and the **UN Rules for the Protection of Juveniles Deprived of Their Liberty**.

3. The four key principles of the CRC are: **non-discrimination; best interests of the child; right to life, survival and development; respect for the views of the child.**
4. The arrest, detention or imprisonment of a child should be used only as a measure of **last resort** and for the **shortest possible period of time**. Every child deprived of liberty must be **treated humanely** and with **respect for their inherent dignity** as a human being, and in a manner which takes account of the **needs of a person of their age**. In particular, every child deprived of liberty must be **separated from adults** unless it is considered to be in the **child's best interests** not to separate them. Children deprived of liberty have the **right to maintain contact with family** through correspondence and visits, except in exceptional circumstances.
5. These should be **avoided**.
6. Where a **juvenile** is involved.
7. Children should be dealt with in a manner appropriate to their **well-being** and **proportionate** to both their circumstances and the offence. Children have **special needs**.
8. To be **presumed innocent** until proven guilty in court; to be **informed promptly** and directly of the charges; to be informed of these in the **presence of parents/guardians**; to have **legal or other appropriate assistance** in the preparation of their defence; to have the **case fairly determined without delay**; to have legal or other appropriate **assistance in court**; to have **parents/guardians present in court**; to **remain silent, or not to be forced** to give evidence or confess; to call and cross-examine **witnesses**; **review** of the decision if found guilty; free **interpreter**; **privacy** throughout the proceedings.

REFERENCES

-  *Child Rights: A UNICEF Training Package*, 8 April 1993.
-  *Concluding Observations of the Committee on the Rights of the Child: Namibia* (CRC/C/15/Add.14), 7 February 1994.
-  *International Standards Concerning the Rights of the Child: United Nations Convention on the Rights of the Child*, Nigel Cantwell Defence for Children International.
-  *United Nations Convention on the Rights of the Child*.

THE BEIJING RULES

OBJECTIVES

- * **By the end of this session, participants should:**
 - understand the importance of the Beijing Rules
 - be aware of their fundamental principles;
 - understand the aims of juvenile justice (especially the principle of proportionality);
 - understand the importance of discretion;
 - be aware of how the police should act in terms of the Rules;
 - be aware of what the Rules say about diversion;
 - have discussed the possibility of creating specialised units;
 - have brainstormed alternatives to pre-trial detention;
 - have answered the questions on the Rules.

STRUCTURE AND TIMING

🕒	Lecture	15 minutes
🕒	Questions	30 minutes
	TOTAL	45 minutes

SESSION FLOW

- * Begin this session with the lecture.

Lecture

What are the Beijing Rules?

The proper title of these Rules is the **United Nations Standard Minimum Rules for the Administration of Juvenile Justice**. We refer to them as the “Beijing Rules” for the sake of convenience. The Beijing Rules were adopted by the United Nations in Beijing, China, in 1985. This is the first set of international rules to comprehensively detail standards for the administration of juvenile justice.

One of the most important aspects of the Beijing Rules is that they provide for the **development of separate and specialised systems of juvenile justice**. Thus the development of a separate juvenile justice system in Namibia, or any proposal for legislative change which may affect juvenile offenders, should bear in mind the Beijing Rules.

Although the Beijing Rules are not legally binding, **certain principles have been incorporated into the Convention on the Rights of the Child and are therefore binding.** In addition, the Committee on the Rights of the Child specifically recommended that the administration of juvenile justice in Namibia be guided by these Rules. It is therefore important to be aware of and to uphold their provisions, especially those referring to law enforcement officials.

OHT 1

Content of the Beijing Rules

The Beijing Rules are divided into six parts:

- Part 1 deals with **fundamental principles**;
- Part 2 with **investigation and prosecution**;
- Part 3 with **adjudication and disposition**;
- Part 4 with **non-institutional treatment**;
- Part 5 with **institutional treatment**; and
- Part 6 with **research, planning, policy formulation and evaluation**.

We will focus on Parts 1 and 2 in this course.

PART 1: FUNDAMENTAL PRINCIPLES

OHT 2

- There are **13 fundamental principles** in the Beijing Rules:
 - ä The **fair and humane treatment** of juveniles who conflict with law, thus promoting the **well-being** of the child.
 - ä The system must **react proportionately** to both offender and offence (“principle of proportionality”).
 - ä The use of community programmes for **diversion** from formal court procedures, with the **juvenile's consent**.
 - ä The use of **detention** only as a measure of **last resort**, for the **shortest possible period of time**.
 - ä Juveniles should be **detained separately from adults**.
 - ä Proceedings should always be conducted in the **best interests of the child**.
 - ä Proceedings should be conducted in a manner which encourages the **child's full participation**.
 - ä **Deprivation of a child's liberty** should be **carefully considered** and **only for serious offences**.
 - ä **Capital and corporal punishment should be abolished**.
 - ä **Institutionalisation** should be a **last resort measure** after consideration of alternatives.
 - ä There should be **continuous and specialised training for police officers** dealing with juveniles.
 - ä Where juveniles *do* undergo institutional treatment, **educational services** should be provided to enable the juvenile to return to society.
 - ä **Release** should be considered **as soon as possible** after arrest.

The aims of a juvenile justice system

☰ OHT 3

Two of the most important principles in terms of juvenile justice are the **promotion of the young offender's well-being** and the **principle of proportionality**. These principles constitute the **aims** of a juvenile justice system.

The **principle of proportionality** calls for a **fair reaction** to a juvenile offender. This reaction should not only be to the **nature of the offence**, but also to the **personal circumstances of the offender**.

The **principle of punishment looks only at the offence** and focuses on punishment without taking any other factors into account. The more serious the offence, the greater is the punishment. The proportionality principle also looks at the offence, but in conjunction with other considerations such as the **social status** of the offender, their **family situation**, the **harm caused** by the offence, the offender's **attempt to compensate the victim** and their **willingness to turn away from a life of crime**.

! It is important to understand that reacting proportionately does not mean ignoring the victim's position or the harm caused by the crime. The punishment principle, on the other hand, focuses on punishment and *does not really take into account the position of the victim*.

Discretion (Rule 6)

Discretion means choice. The Beijing Rules call for discretion when dealing with juveniles who conflict with the law. The words *may* and *can* are always indicators of discretion, whereas the word *shall* leaves no choice.

This provision is important because it allows personnel who deal with young offenders to **react in the most appropriate way** and to take into account the personal circumstances of the offender.

Discretion is open to abuse, but having to be **accountable** to a superior for making a decision (i.e. exercising discretion) **lessens the possibility of abuse**. Not allowing discretion would mean that there can never be alternatives to judicial procedures or sentencing when dealing with children who conflict with the law.

Due process rights (Rules 7 and 8)

☰ OHT 4

- The Beijing Rules provide for the **due process rights which are essential for a trial to be fair and just**. These rights are also protected by Article 40 of the CRC. They are:
 - the **presumption of innocence**;
 - the right to be **notified of the charges**;
 - the right to **remain silent**;

- the right to **legal representation**;
- the right to the **presence of parents/guardians**;
- the right to **call and cross-examine witnesses**;
- the right of **appeal**;
- the right to **privacy**.

PART 2: INVESTIGATION AND PROSECUTION

Part 2 of the Beijing Rules is perhaps the **most important part for the police to know**. This is because Part 2 **pertains to the point of a child's initial contact with the justice system**; the point at which law enforcement agencies become involved with the child.

Initial contact with justice system

This initial contact **might profoundly influence the juvenile's attitude towards the State and society**. The **success or failure of subsequent interventions** is to a large extent dependent on this initial contact. If a person is treated badly by the police at this point, it will be difficult for them to build up a relationship of trust and to cooperate later.

! **The Beijing Rules state that the police should behave in a manner appropriate to the legal status of the juvenile, and in a manner which promotes the well-being of the juvenile.** Note the similarity to Article 37 of the CRC.

Promotion of the well-being of the juvenile means that the **police should not treat the juvenile in a rough, humiliating or uncaring fashion**. Many of the juveniles who have been screened at the Windhoek Magistrate's Court complain that they were slapped in the charge office. This is an example of how *not* to treat a young offender, even if they are guilty of the alleged crime.

! **Police should remember that at the stage of initial intervention by law enforcement agencies, the presumption of innocence still applies!**

Diversion (Rule 11)

OHT 5

Part 2 of the Beijing Rules deals with diversion, which is also mentioned in Article 40 of the CRC. Diversion in the context of these Rules means that **alternatives to formal processing through the criminal justice system** should be considered and provided in certain circumstances. The rule stipulates that **wherever appropriate, consideration should be given to dealing with juvenile offenders without resorting to a formal trial**.

This **does not mean that diversion should occur in all cases**. It is important to understand that it is the **possibility** of diversion which ought to be considered (carefully). Whether or not diversion should occur will depend on various factors, including the gravity of the offence.

* For training purposes it is important to stress that the Beijing Rules propose that **diversion should be used at any point of the decision-making process by both**

the police and the prosecution. As a police officer **you could divert a child from being arrested by releasing them into the care of a responsible community member.**

The Beijing Rules highlight the **benefits of diversion**, for example, the **avoidance of a stigma** associated with conviction and sentence.

They also suggest that in some cases, such as for **non-serious offences**, the best possible response may be **no intervention at all**. This could be the best response where the **family or community has already responded** to a child's wrongdoing. To refrain from intervention in such an instance **empowers communities to solve their own problems**.

A juvenile must not feel pressurised to confess to an offence in order to avoid a criminal trial. The Beijing Rules provide that the **free consent** (i.e. of their own free will and in full knowledge of the consequences) **of the juvenile and their parents/guardians** is a **pre-requisite for diversion** to take place.

! This is very important and should always be borne in mind. The purpose of diversion is not to get innocent young people to confess to crimes which they did not commit, but rather to give certain offenders a second chance and an opportunity to repair the damage caused by their actions.

Training and specialisation

Part 2 also call for the **training of all law enforcement officials**. (This training course was developed with this aim in mind!) **Specialisation within the police** is also called for, because the police are the young offender's first contact with the justice system, thus it is important that officials **act in an informed and appropriate manner**. The Rules suggest the establishment of units which deal exclusively with juvenile crime and its prevention in large cities.

? **Would this be feasible or desirable in Windhoek?**
Ask the participants what they think.

Avoidance of delay

The avoidance of unnecessary delay when a juvenile enters the justice system is also of vital importance. This means that **investigating officers should prioritise tracing** of the child's parents/guardians or other responsible adults when the child is arrested. The **witnesses** necessary to the case should also be traced as speedily as possible in order to avoid long postponements once the case reaches court.

! **The tracing process should start immediately at the stage of arrest.**

Pre-trial detention

Rule 13 of Part 2 states that pre-trial detention should only be used as a **measure of last resort and for the shortest possible period of time**. These exact words are repeated in Article 37 of the CRC. Whenever possible, this form of detention should be **replaced by alternative measures** such as close supervision, intensive care or placement with a family or home.

OHT 6

What possible alternatives are there to pre-trial detention in Namibia?

Ask the participants to brainstorm this question for a few minutes.

- * You could add to the brainstorm by referring to the following:
 - The soon-to-be-started I.D.Y.S. *Change of Lifestyle Homes Project*, which aims to provide a place for juveniles to await trial;
 - The Bridge in Mariental - an NGO which runs a halfway house for released prisoners;
 - Personnel of the JJP who might be able to access a willing family to care for the child;
 - Social workers of the MOHSS who screen young offenders and may recommend a life-skills programme or another alternative;
 - etc, etc.

The idea is to stimulate creative thinking about alternatives to pre-trial incarceration in police cells.

- **If juveniles are detained**, the Beijing Rules provide that:
 - ä they shall be **entitled to all the rights and guarantees contained in the UN Standard Minimum Rules for the Treatment of Prisoners**;
 - ä they shall be **kept separate from adults** and shall be detained in a **separate institution**, or, if this is not possible, in a **separate part of the institution**; and
 - ä they shall receive **all the necessary care, protection and assistance which they require in view of their age, sex and personality**.

Research

The Beijing Rules state that research should also be promoted as a **basis for effective planning, policy formulation and regular evaluation**.



Small-group exercise

- * Divide the participants into small groups. Each group must answer all of the following questions:
 1. What are the aims of a juvenile justice system?
 2. What is the principle of proportionality?
 3. How should a police officer behave towards a juvenile offender?
 4. What do the Beijing Rules say about diversion?
- * Each group should appoint a scribe to record the answers on flip-charts.
- * Each group should appoint a reporter to give feedback to the plenary.
- * The relevant flip-chart/s should be displayed while feedback is given.
- * After the feedback you should have a “go-around” in terms of which every participant is encouraged to air his or her views about the Beijing Rules.

ANSWERS

1. To promote the **well-being** of the juvenile offender and to ensure a **proportionate reaction** to both the circumstances of the offender and the offence.
2. The **principle of proportionality** calls for a **fair reaction** to a juvenile offender. This reaction is not only to the nature of the offence but also to the personal circumstances of the offender. The principle is to view the offence in conjunction with considerations such as the social status of the offender, their family situation, the harm caused by the offence, the offender's attempt to compensate the victim and their willingness to turn away from a life of crime. Reacting proportionately does not mean ignoring the victim's position or the harm caused by the crime. The punishment principle, on the other hand, focuses on punishment and does not really take the victim's needs into account.
3. The police should behave in manner appropriate to the **legal status** of the juvenile, and in a manner which promotes their **well-being**. Behaving in a manner appropriate to the legal status of the juvenile means taking their **age** into account.
4. **Diversion** should always be considered as an option.

REFERENCES

-  *United Nations Standard Minimum Rules for the Administration of Juvenile Justice.*
-  Van Bueren G. & Tootell A., *International Standards Concerning the Rights of the Child: United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)*, Nigel Cantwell Defence for Children International.

THE RIYADH GUIDELINES

Session 4

OBJECTIVES

- * **By the end of this session, participants should:**
 - have discussed the feasibility of running crime prevention programmes in Namibia;
 - have identified problems involved in prevention activities;
 - understand the negative consequences of labelling someone a “delinquent”;
 - be aware of the aim of prevention policies;
 - be aware of the criteria for institutionalisation;
 - have discussed concrete ways to address crime prevention in Namibia.

STRUCTURE AND TIMING

🕒	Lecture	15 minutes
🕒	Discussion	15 minutes
	TOTAL	30 minutes

SESSION FLOW

- * Begin this session with the lecture.

Lecture

What are the Riyadh Guidelines?

The proper title of the Riyadh Guidelines is the **United Nations Guidelines for the Prevention of Juvenile Delinquency**.

The Riyadh Guidelines were adopted by the UN General Assembly one year after the CRC, and should be interpreted as supplementary (built on) to the CRC. **The Riyadh Guidelines embody a new approach to the prevention of juvenile crime.**

The Riyadh Guidelines were specifically referred to in the **report of the Committee on the Rights of the Child**. They **emphasise the holistic** (all encompassing) **nature of the administration of juvenile justice**.

Diversion programmes cannot work in a vacuum, and without prevention programmes the high rate of **recidivism** (repetition of crime by the same offenders) in Namibia and elsewhere will probably continue to escalate.

! The most progressive innovation of the Guidelines lies in the viewing of prevention policies as being for *all young people and not just for offenders*.

The aim is to successfully integrate children and young persons into society through social structures such as the family, community, peer groups, schools, vocational training and work.

The Guidelines encourage active prevention of crime rather than merely reacting once a crime has been committed. This includes educating the public. In respect of juvenile crime prevention, this might include working on developing youth-law enforcement relations through programmes run in schools.

? Ask the participants whether they have any ideas about this.

! “Prevention” is a measure taken before a criminal or delinquent act has actually occurred, for the purpose of guarding against such an act.

Control, on the other hand, is a measure taken *after* the crime or act has been committed. Routine police activities can therefore be judged as either preventive or controlling, depending on the circumstances.

? Ask the participants how much time they spend on each aspect of policing.

? What are the problems in engaging in prevention activities?

! Instead of *formal* institutions of social control, such as the law courts, community-based services should be developed.

One of the fundamental principles of the Guidelines (Part 1) is giving consideration to the fact that youthful behaviour or conduct which does not conform to social norms and values is often part of the “growing up” (maturation) process and tends to disappear spontaneously with the transition to adulthood. In this respect, labelling a young person as a “deviant”, “delinquent” or “pre-delinquent” often contributes to the development of a consistent pattern of undesirable behaviour: The particular youth will end up feeling more alienated from society and will have less reason for not committing further crimes.

Content of the Riyadh Guidelines

GENERAL PREVENTION POLICIES

General Prevention Policies are discussed in Part 3, which stipulates that **comprehensive prevention plans should be instituted at every level of government**.

This includes:

- **in-depth analysis of the problem** and **lists** of available programmes, services, facilities and resources;
- **well-defined responsibilities for all role-players** involved in prevention;
- **coordination of prevention efforts** between governmental and non-governmental agencies;
- **constant monitoring of policies** on prevention;
- methods for effectively **reducing the opportunity to commit delinquent acts**;
- **community involvement**;
- **inter-disciplinary cooperation** between national, state, regional and local governments, with the involvement of the private sector and child care, health care, educational, social, law enforcement and judicial agencies;
- **youth participation in delinquency prevention policies and processes**, including community resources, youth self-help initiatives, and victim compensation and assistance programmes; and
- **specialised personnel** at all levels.

Importance of the family

The Guidelines emphasise the importance of the family as a **central unit responsible for the socialisation of children**. This **includes the extended family**. In this respect, **society has a responsibility to assist the family** in providing care and protection. Adequate arrangements, including day care, should be provided.

Where a stable family environment is lacking, and community efforts in this regard have failed, and the extended family cannot fulfil this role, **alternative placements**, including foster care and adoption, should be considered. These placements should **replicate** (imitate, be modelled on), **to the greatest extent possible, a stable and settled environment**.

Measures should also be taken to provide families with opportunities to learn about parental roles and obligations, to promote positive parent-child relationships, to sensitise parents to the problems of children and young persons, and to encourage involvement in family and community-based activities.

Aim of prevention measures

The aim of prevention measures should be to **promote human rights in general and children's rights in particular**. This is why the Guidelines stipulate that, "*Young persons should be informed about the law and their rights and responsibilities, as well as the universal value system, including United Nations instruments.*" (Article 23)

As such, prevention no longer means reacting to dangerous behaviour or situations, but rather, it means **developing a culture of human rights**. Prevention measures aim to **promote the general well-being of children**, with the spin-off being the prevention of juvenile delinquency.

At the same time, the Guidelines recognise that in certain circumstances **specialised programmes** will have to be available: "*Particular attention should be extended to young persons who are at social risk,*" (Article 24) and, "*special assistance [should be given to] school drop-outs.*" (Article 30) Government also has "*special responsibility*" to provide necessary services for homeless or street children. (Article 38)

Institutionalisation

The institutionalisation of young people should be a **measure of last resort** and for the **minimum necessary period**, and the **best interests of the young person** should be of paramount importance. (Article 46)

- **Criteria** authorising formal intervention of this type should be **strictly defined and limited** to the following situations:
 - Where the child or young person has **suffered harm** inflicted by parents/guardians.
 - Where there has been **sexual or physical abuse** by parents/guardians.
 - Where a child has been **neglected, abandoned or exploited** by parents/guardians.
 - Where a child has been **threatened by physical or moral danger** due to behaviour of parents/guardians.
 - Where a serious physical or psychological danger to the child has manifested itself in the child’s behaviour and **neither the parents, the guardians, the child him/herself, nor any non-residential community service can meet the danger by means other than institutionalisation**. (“Last resort” means using this option after all other options have failed!)

Multi-disciplinary approach

A multi-disciplinary approach is recommended when dealing with this aspect (prevention) of juvenile justice. **Initiatives such as the Juvenile Justice Forum are therefore to be encouraged.**

Training



Law enforcement officials should be trained to deal with the special needs of young people. They should also be familiar with and use diversion programmes.

 OHT 1

Small-group discussion

- * Divide the participants into small groups of no more than four persons per group. Each group should consider one way in which to comply with the Riyadh Guidelines. The groups should specify **who** would be involved, **what** would be done, **how** it would be done, **where** it would be done and **when** it would be done. The **focus** of the discussion should be on **crime prevention**.
- * The discussions should be recorded on flip-charts and feedback given to the plenary.

REFERENCES

-  Cappelaere G., *International Standards Concerning the Rights of the Child: United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)*, Nigel Cantwell Defence for Children International.
-  *United Nations Guidelines for the Prevention of Juvenile Delinquency.*

THE UN RULES FOR THE PROTECTION OF JUVENILES DEPRIVED OF THEIR LIBERTY

OBJECTIVES

- * By the end of this session, participants should:
 - understand the term “deprivation of liberty”;
 - understand what the Rules propose with regard to the treatment of juveniles deprived of their liberty;
 - have answered the questions.

STRUCTURE AND TIMING

🕒	Lecture	10 minutes
🕒	Discussion	20 minutes
	TOTAL	30 minutes

SESSION FLOW

- * Begin this session with the lecture.

Lecture

What are these Rules about?

DEFINITION

“Deprivation of liberty” is defined as being **any form of detention, imprisonment or placement of a person in a custodial setting from which the person is not allowed to leave at will**. In other words, there is an aspect of involuntariness (unwillingness) associated with the term.

📄 OHT 1

IMPORTANCE AND PURPOSE

These Rules are important from the point of view of police officials because the **police have custody of detained persons**.

The purpose of the Rules is to **counteract the detrimental effects of deprivation of liberty**. This is done by **ensuring respect for the rights of the detainee or prisoner**.

GENERAL RULE

As a general rule, **detention before trial should be avoided and limited to exceptional circumstances**, but where juveniles are detained, **priority should be given to ensuring a speedy trial**.

The other **standard due process rights** are also applicable.

? Ask the participants to name a few of these due process rights.

! SPECIFICS

- To encourage **reintegration into society**, the Rules state that juveniles who are under arrest or awaiting trial should be **allowed to perform paid work and continue their education and training**, but that this should be voluntary. (This would also have to comply with what our Constitution and Labour Act say about child labour.)
- Another very important aspect of reintegration is the **provision of recreational materials** such as books, toys, newspapers, etc.
- **Education and/or vocational training should also be provided** and the rules recommend that this takes place **in the community** if possible. The Rules view this as necessary for optimum reintegration. Receiving an education in an institution often has an associated stigma, and the education offered is not of the same standard as that offered outside. It is also more difficult to arrange for educational services in institutions, in terms of both person power and finance.
- Time should also be allowed for **daily exercise in the open air** and for other **leisure activities**, such as art or music classes. By collaborating with community organisations and NGOs, arrangements could be made for free classes or for considerably reduced prices. Donors could also be approached for assistance in this regard.
- The **condition of the cells and general hygiene are vital to promote the juvenile's sense of dignity and self-worth**.
 - **Suitable conditions** would include:
 - provision of **clean bedding**;
 - enough **blankets** in winter;
 - sufficient **sanitary facilities**;
 - **clean drinking water**.

- **Detainees should not be stripped of all their rights.**
 - To **ensure** this:
 - they should be allowed to keep **personal belongings** in their cell (excluding dangerous or illegal objects);
 - **adequate medical care** should be provided;
 - **contacts with the wider community** (meaning communication with family, friends and organisations) should be allowed and are encouraged as being **essential to preparing for release**;
 - **visits** should be allowed at least once per week and not less than once per month (with the **right to privacy** upheld during visits);
 - they should be **informed if a family member becomes ill, injured or dies**; and,
 - the rules recommend that juveniles be **allowed to leave facilities to visit family members and for educational purposes**.
- The Rules severely **restrict the use of physical force and the carrying of weapons**. The carrying and use of weapons is prohibited unless explicitly authorised and specified by law. Where force is used against a juvenile, the head of the facility should immediately contact their superior as well as medical personnel.
- **Cruel, inhumane and degrading treatment or punishment is prohibited**. This includes corporal punishment, placement in a dark cell, closed or solitary confinement, reduction of diet and restriction of family contact.
- A juvenile **should not be punished twice for the same offence**.
- When a juvenile is accused of transgressing the rules of the facility, they should be accorded a **fair hearing**.



Ask the participants to brainstorm alternative ways of disciplining a juvenile.

- * These could include: writing a letter of apology, being given a particular duty to perform, studying the rules of the facility, making a public apology, writing an essay on why that particular action was wrong, etc.
- **Qualified independent professionals** should be allowed to carry out **regular inspections** of detention facilities.
- **All personnel should receive specialised training**.
- All endeavours should be **focused towards minimising the differences between life inside the facility and the outside world**.
- The rules also recommend that **personnel** receive **adequate remuneration**.
- The procedures followed upon admission are also important. Juveniles should be **interviewed upon admission** in order to decide upon the most appropriate placement.
- **Juveniles and adults must be separated**.



- It is also crucial to **separate older juveniles from younger ones**. (Remember that a juvenile is anyone under the age of 18 years, but within this category there are children of varying ages.)
- There should be **as few juveniles as possible at both open and closed facilities**. (“Open facilities” are facilities with minimal or no security restrictions.)
- Another point of importance is the stipulation in the Rules that all juvenile detainees should be given a **copy of the rules of the facility in a language which they can understand**. The names and addresses of **public and private bodies which provide legal assistance** should also be provided.

OHT 2

Small-group discussion

- * Divide the participants into small groups of no more than four persons per group.
- * Ask them to discuss their own views of the Rules.
- * Bearing in mind that these Rules are aimed at protecting juveniles in detention, the groups should focus their discussion on the possibilities of implementing the Rules, and they should consider the following in particular:
 1. Which **procedures** are currently followed upon admission? Do they comply with the Rules? If not, how could these procedures be changed to comply with the Rules?
 2. How can priority be given by the police to ensure a **speedy trial**?
 3. Are juveniles given a copy of the **facility’s rules** on admission? If not, why not?
 4. What do the rules of the facility say? Can they be **improved** upon? How?
 5. **Recreational materials, physical environment and accommodation**. Do these comply with the Rules? If not, what changes could be made to improve the situation?
 6. What is the situation in respect of **discipline**? Is there any emphasis on a **fair hearing**?
 7. Are **contacts with the wider community** encouraged? If not, what can be done to change the situation?
- * The discussions should be recorded on flip-charts and feedback given to the plenary.

REFERENCES

-  *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty.*
-  Van Bueren G., *International Standards Concerning the Rights of the Child: United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*, Nigel Cantwell Defence for Children International, 1995.

THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

OBJECTIVES

- * **By the end of this session, participants should:**
 - be familiar with the principles contained in the African Charter on the Rights and Welfare of the Child which relate to juvenile justice;
 - have been introduced to the concept of rights and duties;
 - identified similarities between the African Charter and the Convention;
 - discussed obstacles to implementing the African Charter.

STRUCTURE AND TIMING

🕒	Lecture	10 minutes
🕒	Discussion	25 minutes
	TOTAL	35 minutes

SESSION FLOW

- * Begin this session with the lecture.

Lecture

What is this Charter?

The Charter is an **African convention**. We have included it under the international section because it has direct links with the CRC and Guidelines discussed in the previous session.

The Charter preamble specifically states that it adheres to the principles of the rights and welfare of the child contained in the Convention on the Rights of the Child.

This Charter was adopted by the Organisation of African Unity (OAU) in Ethiopia in July 1990. The Namibian Government has unfortunately not yet ratified this Charter, but various lobbying groups have requested that Namibia does so, and the Government's response has been positive.

UNIQUE POSITION OF THE AFRICAN CHILD

The Charter explicitly recognises the **unique position which an African child occupies in society** and states that they **should grow up in a family environment** for the **full and harmonious development of their personality**.

African children usually occupy a position of great responsibility within the family, whether by looking after younger siblings or by the performance of essential chores such as going to fetch water, caring for elderly family members, herding livestock, etc.

It is important to realise that because African children have such responsibilities, **they should not be treated in a manner which turns them into helpless children**. The Charter recognises this unique aspect of African society, in terms of which children are **not merely passive recipients but are active participants**.

OTHER IMPORTANT PROVISIONS

Special needs

The Charter also **recognises the special needs** of the child and states that a child **requires particular care** with regard to health, physical, mental, moral and social development, and a child requires legal protection in conditions of freedom, dignity and security. (Preamble).

Rights and duties

! It is important to note that the Charter recognises that the **promotion and protection of the rights and welfare of the child requires the performance of duties on the part of everyone**.

The recognition of rights as well as duties is important since **having a right necessarily means that someone else has an equivalent duty**. For example, a child has the right to be protected from unlawful deprivation of liberty, therefore as a police officer you have a duty not to unlawfully deprive a child of their liberty.

Other examples are that a child has a right to a name from birth, and a right to an education, thus the child's parents have a corresponding duty to give their child a name, and the Government has a corresponding duty to provide educational institutions.

But this rule **applies also to children themselves**: although they have special rights which recognise their special needs and vulnerability, they **also have duties**, such as the duty to be obedient or the duty to attend school.

Best interests of the child

The Charter embodies the philosophy of the CRC by stating that, *“In all actions concerning the child, the **best interests of the child shall be of primary consideration.**”* (Article 4)

Participation

As is the case with the CRC, the Charter has also included a **right of participation** by stipulating that, “*In all judicial or administrative proceedings affecting a child, an opportunity shall be provided for him or her to be heard and those views shall be taken into account by the relevant authority.*” (Article 4.2)

OHT 1

Juvenile justice

Article 17 deals with the administration of juvenile justice and states that, “*Every child accused or found guilty of having committed a crime shall have the **right to special treatment in a manner consistent with the child’s dignity and worth and which reinforces the child’s respect for human rights and fundamental freedoms of others.***”

In particular:

- (a) *no child who is detained or imprisoned or otherwise deprived of his or her liberty may be subjected to **torture, inhuman or degrading treatment or punishment;***
- (b) *children must be **separated from adults** in their place of detention or in prison;*
- (c) *every child accused of infringing the penal law:*
 - (i) *shall be **presumed innocent;***
 - (ii) *shall be **informed promptly in a language that he or she understands** and in detail of the **charge** against him or her and shall be entitled to the assistance of an **interpreter** if he or she cannot understand the language used;*
 - (iii) *shall be afforded **legal and other appropriate assistance;***
 - (iv) *shall have the matter determined as **speedily** as possible;*
 - (v) *shall **not be compelled** to give testimony or confess guilt.*

Furthermore:

- 3. *The essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her **reformation, reintegration into his or her family and social rehabilitation.** (This would ultimately benefit not only the child but also the community.)*
- 4. *There shall be a **minimum age** below which children shall be presumed not to have the capacity to infringe the penal law.*

The Charter also provides that **parents or guardians shall be notified of their child’s arrest as soon as possible.** (Article 19)

OHT 2

Parental responsibilities

Article 20 deals with parental responsibilities. The term used is **parents or other persons responsible for the upbringing and development of the child.** These persons should ensure that the **best interests of the child are their basic concern at all times** and States Parties are obliged to assist in this regard.

Small-group discussion

- * Divide the participants into small groups of no more than four persons per group.
- * Each group should identify at least three similarities between the Charter and the CRC.
- * The groups should also discuss obstacles to implementing the Charter, should Namibia ratify it.
- * The discussions should be recorded on flip-charts and feedback given to the plenary.

The following similarities could be noted:

- Both the Charter and the CRC prohibit any form of **cruel, inhuman and degrading treatment or punishment**.
- **Separation from adults** is called for in both the Charter and the CRC.
- The **best interests of the child** are of primary consideration.
- Children are recognised as having **special needs** and must receive **treatment which promotes their dignity and self-worth and reinforces their respect for the human rights and fundamental freedoms of others**.
- The **presumption of innocence** applies.
- Children must be **informed of the charges** against them.
- An **interpreter** must be provided.
- **Legal and other appropriate assistance** must be provided.
- Children have the right to have the **case determined as speedily as possible**.
- Children are **not to be compelled** to give testimony or to admit to guilt.
- **Reintegration** into society must be promoted.
- **Parents or guardians must be informed** of their child's arrest as soon as possible.

REFERENCES

- 📖 *African Charter on the Rights and Welfare of the Child*, Organisation of African Unity (OAU), July 1990.

THE NAMIBIAN CONSTITUTION

Session 7

OBJECTIVES

- * **By the end of this session, participants should:**
 - be aware that international law is directly referred to in the Namibian Constitution;
 - be aware of the Fundamental Rights and Freedoms (especially those contained in Articles 7, 8, 10, 11, 14 and 15);
 - have discussed whether the Constitution goes far enough in protecting children's rights.

STRUCTURE AND TIMING

🕒	Lecture	10 minutes
🕒	Discussion	10 minutes
	TOTAL	20 minutes

SESSION FLOW

- * Begin this session with the lecture.

Lecture

Namibian law and international law

The Namibian Constitution **strives to actively promote the welfare of all people**, which of course includes children.

Specific reference is made to international law in Article 144 of the Constitution. In terms of this Article, the **general rules of public international law and international agreements which are binding on Namibia form part of Namibian law**.

The **CRC** is an example of an international agreement which binds Namibia. A sound legal argument exists for holding that the **Rules and Guidelines** discussed in the previous sessions form part of public international law and as such are **valuable guides in interpreting Namibian laws and practices in respect of the administration of juvenile justice**.

Most important constitutional provisions

FUNDAMENTAL RIGHTS AND FREEDOMS (Chapter 3)

Chapter 3 of our Constitution contains the provisions for **fundamental human rights and freedoms**.

- These provisions are **protections** for:
 - **life;**
 - **liberty;**
 - **respect for human dignity;**
 - **prohibition of slavery and forced labour;**
 - **equality and freedom from discrimination;**
 - **prohibition of arbitrary arrest and detention;**
 - **fair trial;**
 - **privacy;**
 - **the family;**
 - **children's rights;**
 - **property;**
 - **political activity;**
 - **administrative justice;**
 - **culture;**
 - **education.**

- **Fundamental freedoms** are the rights to freedom of/to:
 - **speech and expression;**
 - **thought, conscience and belief;**
 - **practise any religion;**
 - **assemble peaceably and without arms;**
 - **association;**
 - **withhold labour without being exposed to criminal penalties;**
 - **move freely throughout Namibia;**
 - **reside and settle in any part of Namibia;**
 - **leave and return to Namibia;**
 - **practise any profession, or carry on any occupation, trade or business.**

Articles to note well

- In terms of Article 25, Parliament or any other legislative authority may not make any law, and government agencies may not take any action, which abolishes or abridges the fundamental rights and freedoms, unless this is authorised by the Constitution. This means that **fundamental rights and freedoms are entrenched**.

- Article 7 **prohibits deprivation of liberty except according to procedures established by law.**

- Article 8 makes the principle of **respect for human dignity an inviolable right**. It prohibits torture, cruel, inhuman and degrading treatment or punishment. This article also guarantees respect for human dignity in any judicial proceedings or in any other proceedings before any organ of the State, and during the enforcement of a penalty. The respect for dignity is a common trend that runs through all international treaties (including the CRC), and it is noteworthy that this right is entrenched in our Constitution.
- Article 10 deals with **equality and freedom from discrimination** and stipulates that all persons shall be equal before the law. No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status. This is of significance if one considers the results of the prisons survey (discussed in session 1) where the majority of prisoners were poor and a definite racial bias was detected. Despite this provision in the Constitution, it appears that this right is not always upheld!
- Article 11 deals with **arrest and detention**. As in the case of international human rights treaties, this Article states that:
 - nobody shall be subjected to arbitrary arrest and detention;
 - all persons who are arrested shall be informed promptly, in a language that they understand, of the grounds for their arrest. Detaining someone without informing them of the charges is illegal.
 - Every person who is arrested or detained must be brought before a court within 48 hours after the arrest.
 - The presumption of innocence applies.
 - A trial must occur within a reasonable period of time. If this does not occur, the person must be released. Detaining someone for a year before the trial begins is not a reasonable period of time. One could argue that a “reasonable” period of time in the case of an adult is not the same as in that of a child (due to their special needs). This Article should be interpreted in accordance with the CRC and the previously discussed Rules and Guidelines.
- Article 14 is important because it **protects the family unit as a fundamental grouping** in society. (Sub-section 14(3))

OHT 1

- Article 15 **specifically protects children’s rights**:
 1. *Children shall have the right from birth to a **name**, the right to acquire a **nationality** and, subject to legislation enacted in the best interests of children, as far as possible the right to **know and be cared for by their parents**.*
 2. *Children are entitled to be **protected from economic exploitation** and shall not be employed in or required to perform work that is likely to be **hazardous** or to **interfere with their education**, or to be **harmful to their health or physical, mental, spiritual, moral or social development**. For the purposes of this sub-article, children shall be persons under the age of 16 years.*

3. *No children under the age of 14 years shall be employed to work in any factory or mine, save under conditions and circumstances regulated by Act of Parliament. Nothing in this sub-article shall be construed as derogating in any way from sub-article (2) hereof.*
4. *Any arrangement or scheme employed on any farm or other undertaking, the object or effect of which is to **compel the minor children of an employee to work** for or in the interest of the employer of such employee, shall for the purposes of Article 9 hereof be deemed to constitute an arrangement or scheme to compel the performance of forced labour.*
5. *No law authorising preventative **detention** shall permit children **under the age of 16 years** to be detained.*

OHT 2



There has been considerable **discussion and debate about whether Article 15(5) protects children under the age of 16 years from any form of detention at all.**

The issue of **what preventative detention means** has not been decided by Namibian courts. However, the dominant opinion seems to be that preventative detention is reserved for habitual criminals and involves being sentenced to an indefinite period of detention. This is clearly prohibited in the case of children under the age of 16 years. Detaining a juvenile for 48 hours in order to bring them to court to be charged is not indefinite detention.

Plenary discussion

- * Ask the plenary whether they think that the Namibian Constitution goes far enough in protecting children's rights.
- * The participants should consider this in the light of the CRC, Beijing Rules, Riyadh Guidelines and the Rules for the Protection of Juveniles Deprived of Their Liberty.
- * Write their recommendations up on flip-charts and then allow time for feedback or free discussion.

REFERENCES

-  *Constitution of the Republic of Namibia.*
-  Van Zyl Smit D. & Dunkel F. (eds), *Imprisonment Today and Tomorrow: International Perspectives on Prisoners' Rights and Prison Conditions*, Kluwer Law and Taxation Publishers, Deventer, Boston, 1991.

THE CRIMINAL PROCEDURE ACT (51 of 1977)

OBJECTIVES

- * **By the end of this session, participants should:**
 - have been informed about the alternatives to arrest which are provided for in the Criminal Procedure Act (51 of 1977);
 - understand the serious implications of arrest;
 - understand how children end up in police cells while awaiting trial;
 - have perceived the importance of tracing parents/guardians;
 - understand the importance of exercising their discretion in favour of the best interests of the child;
 - have brainstormed alternatives to detaining juveniles in police cells;
 - understand when a criminal trial can be converted into a children's court enquiry and the fact that this is a diversionary option;
 - have been introduced to the non-custodial sentencing options provided for in the Act;
 - have answered the questions.

STRUCTURE AND TIMING

🕒	Lecture	20 minutes
🕒	Questions	15 minutes
	TOTAL	35 minutes

NOTES TO FACILITATOR

- * For the purposes of easy facilitation we have **divided the lecture into three parts: Arrest and Detention; Trial; and Sentence.**
- * We have reproduced some of the relevant sections *verbatim*. Although this does not make for easy reading, we think that it is important for the trainer to at least **carefully read the sections which relate to juveniles**. We do not expect you to read them aloud during the lecture, but merely to **explain them, to enable the participants to understand and work with the Criminal Procedure Act in a child-orientated way.**
- * We have also referred to **cases**. These **cases do not have to be read aloud** and are included merely to show that the statements being made are also **legal principles.**

- * If trainees leave the course realising that there are alternatives to arrest and detention which can and should be used, then you as facilitator will have succeeded in your task!

SESSION FLOW

- * Begin the session with the lecture.

Lecture

Introductory remarks

We are referring in this session to the **Criminal Procedure Act 51 of 1977**.

Although the Criminal Procedure Act distinguishes between juvenile (under 18 years of age) and adult offenders, it should be pointed out that the **safeguards provided regarding juveniles fall far short of what is expected in terms of international standards**.

But despite the many shortcomings of the Act, there are still ways in which it **can be used creatively** in respect of juveniles who are arrested, detained and tried for criminal offences.

What the Act says

ARREST AND DETENTION

As you know, police are **authorised to hold a suspect for 48 hours**, after which time the accused must be released or brought to court and charged. This does not mean that in all cases where a crime is suspected of having been committed the police must detain the suspect for the entire 48 hours. Research has shown that this is unfortunately what occurs in practice.

! **The Criminal Procedure Act authorises detention for specific purposes. The use of detention as a form of punishment is *not* one of the purposes of detention, thus detention should not be used for the purpose of punishing an offender.** (*Tsose v Minister of Justice*, 1951(3) 11 AD SA)

! **A person who arrests a suspect in order to punish or reprimand is guilty of an unlawful arrest.**(*R v Malindisa*, 1961(3) SA 377 (T))

The purpose of a 48-hour detention is to **investigate whether the accused has in fact committed the crime**, or to **ensure the person's appearance in court**. (*Duncan v Minister of Law and Order*, 1986(2) 805 SA)

A police officer should not detain someone for the purpose of investigation and then do nothing whatsoever about investigating the matter. When a police officer detains a juvenile, they should be **very clear as to why detention is necessary!** It would also then be necessary to **inform the juvenile and their parents/guardians as to why detention is necessary.** (*S v Matlawe*, 1989(2) 883)

Arrest is a serious inroad on the liberty and freedom of the person being arrested. (*Thompson and Another v Minister of Police and Another*, 1971(1) SA 371)

Where the person is under 18 years old, the consequences of arrest can be even more serious and traumatising. Arrest of a juvenile should not be taken lightly and if at all possible police officers should thoroughly investigate the circumstances of the offence before deciding to take such action. Rather than arrest a child, police could consider issuing a summons or warning, which still entails that the suspect is brought to court.

ALTERNATIVES TO INCARCERATION

Summons (Section 54)

Section 54 deals with a **summons** as a means of securing the attendance of an accused in the Magistrate's Court. The authority to issue a summons vests in the prosecutor. Once a summons is issued it must be **properly served** on the accused person. In the case of a juvenile it would have to be served on their parent/guardian. If the accused cannot be found, the summons could be delivered to their home or place of employment and handed to a person who appears to be over the age of 16.

Written notice (Section 56)

In terms of Section 56, a **written notice** as a means of securing the accused person's attendance in court may be used **in certain circumstances**. If the police officer reasonably believes that a conviction would entail a fine of no more than N\$300, then the officer may proceed to issue a written notice.

An officer may hold such reasonable belief where, for example, a **crime is petty**, e.g. swearing at someone who then lays a charge of *crimen injuria*. In this situation it would not be unreasonable to think that a fine of no more than N\$300 would be imposed. Section 56 is typically used for traffic offences.

The **written notice** must:

- a) specify the **name, residential address and occupation or status** of the accused person;
 - b) call on them to appear at a **place** and on a **date** and at a **time** specified in the notice to answer the charge of having committed the offence in question;
 - c) contain an **endorsement** in terms of Section 57 that the accused may admit guilt and pay an **admission of guilt fine** without appearing in court;
 - d) contain a **certificate** signed by a peace officer confirming that the police officer has handed the original written notice to the accused and has explained the meaning of the notice.
-

- ! If the accused person is in custody at the time, the written notice will result in the immediate release of the accused.

Bail (Section 59)

Section 59 deals with situations in which a **police officer of or above the rank of a non-commissioned officer can grant bail** to an accused person before the expiry of the 48-hour period.

Offences referred to in Part 2, 3 or 4 of Schedule 2 are **excluded from this option**:

Schedule 2 Part 2

- *Treason*
- *Sedition*
- *Murder*
- *Rape*
- *Robbery*
- *Arson*
- *Breaking or entering any premises, whether under the common law or a statutory provision, with intent to commit an offence.*
- *Theft, whether under the common law or a statutory provision, receiving stolen property knowing it to have been stolen, fraud, forgery or uttering a forged document knowing it to have been forged, in each case if the amount or value involved in the offence exceeds N\$600.*
- *Any offence under any law relating to the illicit dealing in or possession of precious metals or stones if the value exceeds N\$600.*
- *Any offence relating to the illicit conveyance or supply of dependence-producing drugs.*
- *Any offence relating to coinage.*
- *Any conspiracy, incitement or attempt to commit any offence referred to in this part.*

Schedule 2 Part 3

- *Arson*
- *Murder*
- *Kidnapping*
- *Childstealing*
- *Housebreaking, whether under the common law or a statutory provision, with intent to commit an offence.*
- *Any conspiracy, incitement or attempt to commit any offence referred to in this part.*

Schedule 2 Part 4

- *Treason*
- *Sedition*
- *Murder*
- *Kidnapping*
- *Childstealing*
- *Rape*

- Robbery
- Arson
- Public violence
- Bribery
- Housebreaking, whether under the common law or a statutory provision, with intent to commit an offence.
- Theft, receiving stolen property knowing it to have been stolen, fraud, forgery or uttering a forged document knowing it to have been forged, in each case if the amount or value involved exceeds N\$600.
- Any offence under any law relating to the illicit dealing in or possession of precious metals or stones if the value exceeds N\$600.
- Any offence under any law relating to the illicit possession, conveyance or supply of dependence-producing drugs.
- Any offence under the Controlled Game Products Proclamation AG42 of 1980.
- Any offence under the Nature Conservation Ordinance 4 of 1975.
- Any offence under Section 22A of the Sea Fisheries Act 58 of 1973.
- Any conspiracy, incitement or attempt to commit any offence referred to in this part.

! This means that a police officer may grant police bail in a case of theft where the value of the goods stolen amounts to less than N\$ 600.

Place of safety (Section 71)

Section 71 provides the following:

A Juvenile may be placed in a place of safety in lieu of release on bail or detention in custody -

... if an accused under the age of eighteen years is in custody in respect of any offence, and a police official or a court may in respect of such offence release the accused on bail under Sections 59 or 60, as the case may be, such police official or court may, instead of releasing the accused on bail or detaining him in custody, place the accused in a place of safety as defined in Section 1 of the Children's Act (Act 33 of 1960), pending his appearance or further appearance before a court in respect of the offence in question or until he is otherwise dealt with in accordance with law.

Section 71 was probably **designed to protect the juvenile accused but in practice it has the opposite effect due to the lack of places of safety in Namibia.**

A police station is included in the definition of a place of safety in Section 1 of the Children's Act. This means that young offenders may conveniently be detained in police stations because they are regarded as places of safety. This frequently occurs when parents/guardians do not attend court proceedings, since the juvenile will then be sent to a police station or other place of safety to await trial.

There is a chronic shortage of places of safety in Namibia. The **existing places of safety focus on children who have been sexually and physically abused**, and they lack space for children who conflict with the law.

In terms of this and other sections of the Act, there is thus a greater chance that a juvenile will remain in custody for the same crimes for which an adult would be released on bail or warning.

Even if bail is granted, in most cases the child will not have the bail money. It could thus be argued that **children are discriminated against on the grounds of their status.**

Warning (Section 72)

Section 72 provides the following:

Accused may be released on warning in lieu of bail:

(1) *If an accused is in custody in respect of any offence and a police official or a court may in respect of such offence release the accused on bail under Sections 59 or 60, as the case may be, and such police official or such court, as the case may be, may, in lieu of bail and if the offence is not, in the case of such police official, an offence referred to in Part 2 or Part 3 of Schedule 2 -*

(a) *release the accused person from custody and **warn him to appear** before a specified court at a specified time on a specified date in connection with such offence or, as the case may be, to remain in attendance at the proceedings relating to the offence in question;*

(b) *in the case of an accused under the age of eighteen years who is released under paragraph (a), **place the accused in the care of a person in whose custody he is, and warn such person** to bring the accused or cause the accused to be brought before a specified court at a specified time on a specified date, and to have the accused remain in attendance at the proceedings relating to the offence in question ...*

This section is discretionary: the police may release the juvenile into the care of a person who has custody of the child, but they are not under an obligation to do so.

It is suggested that, due to the traumatic effects of incarceration, **releasing a juvenile immediately after arrest should be the norm** and, only in cases of serious crime, should this not occur.

Where the Act does give discretion to the police they should always **strive to exercise their discretion in the best interests of the child** in order to comply with the CRC.

The person in whose custody the child is placed will be committing an offence if they do not **ensure their attendance in court on the stipulated date and time.**

! **The fact that the section is discretionary and not obligatory is a serious shortcoming of the Act and this makes all the more important an awareness on the part of the police of their duties to act in the best interests of the child.**

Despite the shortcomings of the section, it does provide an alternative to detention in police cells.

Assistance (Section 73)

Section 73 provides the following:

Accused is entitled to assistance after arrest and at criminal proceedings:

- (1) *An accused who is arrested , whether with or without warrant, shall, subject to any law relating to the management of prisons, be entitled to the assistance of his **legal advisor** as from the time of arrest.*
- (2) *An accused shall be entitled to be **represented** by his legal advisor at criminal proceedings ...*
- (3) *An accused who is under the age of eighteen years may be assisted by his **parent or guardian** at criminal proceedings, and any accused who, in the opinion of the court, requires the assistance of **another person** at criminal proceedings, may, with the permission of the court, be so assisted at such proceedings.*

OHT 1

It is regrettable that section 73 **does not include the right of parental assistance during the pre-trial stage**. Parents do not have a legal right to sit in on questioning by police and at identity parades, etc. This **does not mean that the investigating officer should prohibit this**. It will usually be in the best interests of the child to have their parents present and it should not in any way hamper the investigation or questioning. The **golden rule should be transparency and finding out the truth**. A child's parents might assist in this process and the child will not feel quite as threatened if they do assist.

No matter how bad or wrong you think the child has been, remember that it is **not the role of a police officer to punish. Punishment is a function of the courts**.

Attendance at proceedings (Section 74)

Section 74 provides the following:

Parent or guardian of accused under eighteen years to attend proceedings:

- (1) *Where an accused is under the age of eighteen years, a parent or, as the case may be, the guardian of the accused shall be **warned**, in accordance with the provisions of subsection (2), to attend the relevant criminal proceedings.*
- (2) *The parent or the guardian of the accused, if such parent or guardian is **known to be within the magisterial district in question and can be traced without undue delay**, shall for the purposes of subsection (1), be warned to attend the relevant criminal proceedings in question -*
 - (a) *in any case in which the accused is arrested, by the peace officer effecting the arrest or, where the arrest is effected by a person other than a peace officer, the police official to whom the accused is handed over, and such peace officer or police official, as the case may be, shall **inform the parent or guardian**, as the case may be, of the place and **date and time** at which the accused is to appear; or*

- (b) *in the case of a summons under Section 54 or a written notice under Section 56, by the person serving the summons on or handing the written notice to the accused, and such person shall serve a copy of such summons or written notice on the parent or guardian, as well as a notice warning the parent or guardian to attend the proceedings in question at the place and on the date and at the time specified in the summons or written notice.*

Section 74 is there to **protect** the juvenile accused: it is peremptory (obligatory) in the sense that the arresting officer **has to warn the parents/guardians to attend court**, but this can also lead to delays.

! **If the police do not trace the parents/guardians, the magistrate might remand the case and the child will spend more unnecessary time in custody. It is essential to determine the whereabouts of the parents/guardians immediately after arrest. This is fundamental to the entire process, especially if the juvenile is in custody.**

In the case of *Khumbasa v State and Another*, the judge ruled that the proceedings in the Magistrate’s Court were irregular because no attempt had been made by the police to contact the child’s parents and he had not had legal assistance or been given the chance to obtain this. The judge stated that the magistrate had a particular duty in respect of those who were “very young” to ensure that they were given a fair trial. The conviction in the Magistrate’s Court was therefore set aside (ruled invalid).


A period in **detention, no matter how short it is, will have negative effects and will make any form of intervention, such as diversion, even more difficult**. The fact that the majority of juveniles interviewed during the **prisons survey** were in detention for the duration of their trials is largely due to the numerous postponements of their trials, some of which were caused by parents/guardians not attending court.

A glaring problem with Section 74 is that the absence of parent/guardians will not impede (obstruct) the trial, since the sub-section states that parents/guardians shall be warned to attend *if they are known to be in the same magisterial district and can be contacted without delay*. This means that the magistrate may proceed without their presence if the police come to court and state that they were unable to locate the child’s parents/guardians. (In the case of *Khumbasa* the police had not even attempted to assess whether the child’s parents resided in the magisterial district or whether they could be easily contacted. They had made no enquiries whatsoever!)

The importance of tracing parents/guardians cannot be stressed enough. The police cannot be expected to successfully trace all parents/guardians, but an awareness of the importance of tracing and a collaboration with community volunteers may go a long way to solving the problem.

It is vital to establish the status of the youth as soon as possible after arrest and to take the necessary steps. The fact that the parents/guardians cannot be traced does not necessarily mean that the child should be detained in a police cell. **If the child trusts you, they will probably disclose the existence of an older sibling or family friend, or responsible community member who can be contacted**. The Church could also be approached in this regard, as well as the Ministry of Health and Social Services.

OHT 2

 Ask the participants to brainstorm a few other organisations or individuals whom they could approach as an alternative to detention.

Note on definitions: “Guardian”

The Criminal Procedure Act does not define the word “guardian”, and in practice it seems that many **magistrates interpret this person to be an older relative or other responsible adult who is willing to take responsibility for ensuring the child’s attendance at court proceedings**. This is positive, since in many instances a young person is cared for by a person other than their legal guardian or parent.

TRIAL AND DIVERSION

Trial in camera (Section 153)

Section 153 provides that **where an accused is under the age of 18 years, the proceedings shall not take place in an open court**. In other words, the trial must be held **in camera** and nobody apart from the child’s legal representative, parent, guardian or person in *loco parentis* (i.e. the person who is looking after the child), is allowed to be present, unless their presence is necessary to the proceedings (e.g. a witness or the prosecutor or court orderly). This is known as an in-camera provision and **protects a juvenile’s right to privacy**.

Publication prohibition (Section 154)

Section 154 **prohibits the publication of certain information relating to criminal proceedings**. Nobody may publish any information which will or may reveal the identity of a juvenile accused or a juvenile witness. It is only the presiding officer who can authorise the publication of this information, and then only if such publication would, in the officer’s opinion, be just and equitable and in the interests of any particular person.

Although it is commendable that an accused juvenile is protected from publicity, the protection afforded by this section **does not extend to a convicted juvenile** as well.

 **Should this section should also cover convicted juveniles?**

* Ask the participants to answer this question and to explain their answers.

Children's court enquiry (Section 254)

Section 254 provides that:

Court may refer juvenile accused to children’s court:

(1) *If it appears to the court at the trial upon any charge of any accused under the age of eighteen years that he is a **child in need of care** as defined in*

Section 1 of the Children's Act (Act 33 of 1960), and that it is desirable to deal with him in terms of Sections 30 and 31 of that Act, it may stop the trial and order that the accused be brought before a children's court mentioned in Sections 4 or 5 of that Act and that he be dealt with under the said Sections 30 and 31.

- (2) *If an order under subsection (1) is made after conviction, the **verdict shall be of no force** in relation to the person in respect of whom the order is made and shall be deemed not to have been returned.*

The children's court enquiry can be used a **means to divert** a young person from the formal criminal justice system. It is important to understand that it **can also be used after conviction**, in which case the **finding of guilt is of no force and effect** and the **child does not receive a criminal record**. The concept of a "child in need of care" will be dealt with in the next session.

A form of diversion occurs when the magistrate stops the trial and converts it into a children's court enquiry.

Sentencing (Section 290)

Section 290 provides the following:

Manner of dealing with convicted juvenile:

- (1) *Any court in which a person under the age of eighteen years is convicted of any offence may, **instead of imposing punishment** upon him for that offence -*
- (a) *order that he be placed under the **supervision of a probation officer**;*
 - or*
 - (b) *order that he be placed in the **custody of any suitable person** designated in the order; or*
 - (c) *deal with him both in terms of paragraphs (a) and (b); or*
 - (d) *order that he be **sent to a reform school** as defined in Section 1 of the Children's Act (Act 33 of 1960).*
- (3) *Any court in which a person is of or over the age of eighteen years but under the age of twenty-one years is convicted of any offence, other than murder with reference to which -*
- (a) *the person concerned is **not a woman convicted of the murder of her newly born child**; or*
 - (b) *there are, in the opinion of the court, **no extenuating circumstances**, may, instead of imposing punishment upon him for that offence, order that he be placed under the supervision of a probation officer or that he be sent to a reform school as defined in Section 1 of the Children's Act, 1960.*
- (4) *A court which in terms of this section orders that any person be sent to a reform school, may direct that such person be **kept in a place of detention or a place of safety** as defined in Section 1 of the Children's Act, 1960, until such time that the order can be put into effect: Provided that any such person kept in a place of safety shall be transferred to a place of detention when it appears that the order in question cannot within three weeks be put into effect.*

It is positive that the Act does provide for some form of **non-custodial sentences** in the form of **supervision by a probation officer or placement in the custody of any suitable person**.

However, there are **no reform schools in Namibia** and their use has been largely decried by experts as being “**breeding grounds for crime**”. This fact has also been recognised by the courts: “*To send a juvenile to a reform school is a drastic measure which results in the detention of the accused for a considerable period of time and exposes the accused to the risk of the influence of other juvenile offenders whose anti-social and criminal tendencies may be far more marked than that of the accused.*” (*S v L* 1978(2)SA 75 CPD)

? Can you see a problem with the fact that both juveniles (under 18 years of age) and persons between the ages of 18 and 21 can be sent to a reform school?

* Ask the participants this question and tell them to give reasons for their answers.

Postponement, suspension, caution, reprimand (Section 297)

Section 297 provides the following:

Conditional or unconditional postponement or suspension of sentence, and caution or reprimand:

- (1) *Where a court convicts a person of any offence other than an offence in respect of which any law prescribes a **minimum punishment**, the court may in its discretion-*
- (a) *postpone for a period not exceeding five years the passing of sentence and **release** the person concerned-*
- (i) *on one or more **conditions** whether as to-*
- (aa) **compensation**;
- (bb) *the rendering to the person aggrieved of some **specific benefit or service** in lieu of compensation for damage or pecuniary loss;*
- (cc) *the **rendering of some service** for the benefit of the community;*
- (dd) *submission to **instruction or treatment**;*
- (ee) *submission to the supervision or control (including control over the earnings or other income of the person concerned) of a **probation officer** as defined in the Children’s Act (Act 33 of 1960);*
- (ff) *the **compulsory attendance or residence** at some specified centre for a specified purpose;*
- (gg) **good conduct**;
- (hh) *any other matter,*
- and order such person to **appear before the court** at the expiration of the relevant period; or*
- (ii) **unconditionally**, *and order such person to appear before the court, if called upon before the expiration of the relevant period;*

or

- (b) *pass sentence but order the operation of the whole or any part thereof to be **suspended** for a period not exceeding five years on any **condition** referred to in paragraph (a)(i) which the court may specify in the order; or*
- (c) *discharge the person concerned with a **caution or reprimand**, and such discharge shall have the effect of an **acquittal**, except that the conviction shall be recorded as a **previous conviction**.*

! **The Act specifically allows the magistrate to divert a juvenile from a prison sentence provided that the accused is not found guilty of a crime for which there is a minimum sentence. The magistrate can do this by postponing the passing of sentence subject to some condition. A suspended sentence with a further condition coupled to the suspension is also possible.**

It must be noted that **imposing a postponed or suspended sentence without any conditions is not satisfactory**, in the sense that the **juvenile is often left feeling that they have “got off”**. It also means that the juvenile is in effect **not taking responsibility** for the damage which was caused by the crime.

A community service order or an order of compensation to the victim would be more effective. In the case of *S v Machasa en Andere*, the judge stated that imposing a term of imprisonment on a young person would impair their development as an adult by the “inevitable negative effect of a long term of imprisonment,” and that it had to be guarded against.

OHT 3

Small-group exercise

- * Divide the participants into small groups of no more than four persons per group.
- * The groups should answer the following questions:
 1. What is the purpose of arrest?
 2. Which section of the Criminal Procedure Act deals with a summons as a means of securing the accused’s attendance at court?
 3. Which section deals with a written notice as a means of securing the accused’s attendance at court?
 4. What is the effect of a written notice if the person is in custody for the same offence at the time that the notice is served on them?
 5. Name five offences where police bail may *not* be granted.
 6. Who may grant police bail and in term terms of which section of the Act may this be done?
 7. Must arrest be effected in all cases involving theft?
 8. In terms of which section may the police release a juvenile into the care of the person having custody of the child, and warn that person to bring the juvenile to court?
 9. Must the parent/guardian of an accused juvenile be warned to attend court? (Motivate for your answer.)
 10. Can the case continue without their presence? (Motivate for your answer.)

- * Each group should appoint a scribe and rapporteur to record their answers on flip-charts and to give feedback to the plenary.

Answers

1. To secure the attendance of the arrested person in court.
2. Section 54.
3. Section 56.
4. Immediate release.
5. Murder, rape, robbery, kidnapping and public violence.
6. Any police officer of or above the rank of a non-commissioned officer, in terms of Section 59.
7. No, only if the value of the goods is over N\$600.
8. Section 72.
9. Yes. Section 74 is peremptory (obligatory). Not making any effort might result in a similar finding to that in the *Khumbasa* case.
10. Yes. Section 74 states that the parent/guardian must attend court if they are within the magisterial district and can be traced without delay.

REFERENCES

- 📖 Botma Lt-Col S., *Professional Police Behaviour: Police Ethics*, Pretoria, 1994.
- 📖 *Criminal Procedure Act 51 of 1977*, Republic of South Africa.
- 📖 Skelton A., *Children in Trouble With the Law: A Practical Guide*, Lawyers for Human Rights, South Africa, 1993.

CASE CITATIONS

- 📖 *Duncan v Minister of Law and Order*, 1986(2) 805 SA.
- 📖 *Khumbasa v The State and Another*, 1977(1) SA 396(NPD).
- 📖 *R v Malindisa*, 1961(3) SA 377(T).
- 📖 *S v L*, 1978(2) SA 75(CPD).
- 📖 *S v Machasa en Andere*, 1991(2) SASV 308(A).
- 📖 *S v Matlawe*, 1989(2) 833 SA.
- 📖 *Thompson and Another v Minister of Police and Another*, 1971(1) SA 371.
- 📖 *Tsose v Minister of Justice*, 1951(3) SA 175(AD).

CHILDREN'S ACT (Act 33 of 1960)

DRAFT LEGISLATION

PRISONS ACT (Act 8 of 1959)

OBJECTIVES

- * **By the end of this session, participants should:**
 - have been introduced to the definition of a place of safety and the problems associated with this;
 - have brainstormed on why children should not be kept in police cells;
 - have been introduced to the concept of a “child in need of care”;
 - be aware of their powers in terms of the Prisons Act;
 - have been introduced to the draft Childcare and Protection Act;
 - have been made aware of the differing definition of the word “juvenile” in the Prisons Act;
 - have been taken to visit the Windhoek Central and Wanaheda Police Stations;
 - have participated in the Writing Game.

STRUCTURE AND TIMING

🕒	Lecture	10 minutes
🕒	Visit	60 minutes
🕒	Writing Game	10 minutes
	TOTAL	80 minutes

PREPARATIONS

- * You will need to arrange with the Station Commanders of the Windhoek Central and Wanaheda Police Stations to take the participants to visit the cells at both stations - if possible at precisely the time relegated in this session.

SESSION FLOW

- * Begin the session with the lecture.

Lecture

The Children's Act

The Children's Act 33 of 1960 is an **outmoded** piece of legislation which was **inherited** from South Africa. It was made applicable to Namibia in 1977 and has not been amended since then.

The Act **focuses on punishing parents for not bringing up their children properly instead of concentrating on what is in the best interests of the child.**

PLACES OF SAFETY

Section 1 defines a **place of safety** as any police station, hospital or other place suitable for the reception of a child, into which the occupier is willing to receive a child. It is questionable whether a police station is a suitable place of safety, especially if one considers what the international standards of juvenile justice say in this regard. In fact the opposite is probably true, in the sense that **children are often exposed to situations of risk in police cells.** It may be convenient for children to be detained in police cells, but it is certainly not always in their best interests to be kept there.

OHT 1

Why should children not be kept in a police or prison cell?

- * Ask the participants to brainstorm this question and to give 10 reasons.
- * Possible reasons could be: negative influence from hardened criminals (even if they are also juveniles); stigmatisation (being labelled as a criminal despite being presumed innocent in terms of the law); loss of family and/or community contact; disrupted schooling; police cells are notoriously overcrowded; more work for station or prison personnel; possibility of sexual and physical abuse; greater expense; transport problems (having to take the juvenile to and from court); lack of adequate sanitary and other facilities.

CHILDREN IN NEED OF CARE

It is the magistrate, in a **children's court enquiry**, who will determine whether or not a child is "in need of care".

- According to the definition of this term in Section 1, the following children would be categorised as being in need of care:
 - ä An **abandoned** child or one without any visible means of support;
 - ä A child **without a parent/guardian** or whose **parent/guardian is unable to look after** the child;
 - ä A child who is in the custody of **someone who has deliberately injured** the child and has been **convicted** of this in court;

- ä A child who **cannot be controlled** by their parent/guardian or other custodian;
- ä A child who is a **habitual runaway**;
- ä A child who **keeps company with immoral or violent people**;
- ä A child who **begs** or is a **hawker at under 16** years old;
- ä A child who is being **looked after apart from their parents in circumstances which are counter to their interests** and whose **parents/guardians cannot be found** or are **unable to provide** for their child when called upon to do so;
- ä A child who is in a state of **physical or mental neglect**.

Once a child is determined to be “in need of care”, there are various options for dealing with the situation.

- In terms of Section 31, the **children’s court** has the power to order that:
 - ä the child remain in the **custody of the person in whose custody they were** before the children’s court proceedings started (which could be coupled with supervision by a **probation officer or social worker**);
 - ä the child be placed in the custody of any suitable **foster parent** (which could also be coupled with supervision by a probation officer or social worker) ;
 - ä the child be placed under the control of an **approved agency**;
 - ä the child be sent to a **children’s home**;
 - ä the child be sent to a **school of industries** (the only one in Namibia being the School of Industries at Klein Aub, which caters for boys only).

While there are **problems** with children’s courts, they are there to protect the young person and should be used as such.

In the case of *S v Jodwana*, a 12-year-old youth had been sentenced by the magistrate to a period in a reform school after he had been convicted of the crime of stock theft for the second time in one month. (The first time he had been sentenced to receive four cuts.) His father had died and his mother was unable to control him. A pre-sentence report stated that he had come under the influence of an older brother and that he was lacking in knowledge of acceptable standards of behaviour. A form of care other than a reform school was recommended, but the magistrate did not accept the recommendation. When the case was reviewed by a judge, he stated:

“I am certainly not satisfied that the accused has committed these two offences because of a vicious tendency. He seems to be the very type of child whom the Children’s Act is designed to assist. If proceedings are taken under this Act, he avoids at this early age having yet another conviction recorded against him and can be given the institutional care or the guidance of a suitable foster parent that he needs.”

The conviction and sentence of the magistrate was accordingly set aside.

- ! **Section 26 gives a police officer the power to remove a child if the officer is of the opinion that the child is in need of care.**

This power is limited: if the child is in a public place and is accompanied by the person having custody of them, the police officer **may only remove the child if there is reason to believe that a First Schedule offence is being committed against the child.**

Schedule 1 offences

- *Treason*
- *Sedition*
- *Murder*
- *Culpable homicide*
- *Rape*
- *Indecent assault*
- *Sodomy*
- *Bestiality*
- *Robbery*
- *Assault when a dangerous wound is inflicted*
- *Arson*
- *Breaking and entering any premises whether under the common law or a statutory provision, with intent to commit an offence.*
- *Theft, whether under the common law or a statutory provision.*
- *Receiving stolen property knowing it to have been stolen.*
- *Fraud*
- *Forgery or uttering a forged document knowing it to have been forged.*
- *Offences relating to coinage*
- *Any offence, except the offence of escaping from lawful custody in circumstances other than the circumstances referred to immediately hereunder, the punishment wherefore may be a period of imprisonment exceeding 6 months without the option of a fine.*
- *Escaping from lawful custody, where the person concerned is in such custody in respect of any offence referred to in this Schedule or is in such custody in respect of the offences of escaping from lawful custody.*
- *Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.*

To have reason to believe this, the police officer must not just rely on their own opinion, but **must have good grounds for the belief**, for example, there has already been a **preliminary investigation** or someone has given a **sworn statement** to this effect.

- ! • **As soon as possible after the removal of the child, the police officer must bring the child before a children’s court.** Police should remember this when dealing with parents who do not appear to care about the well-being of their child, or who claim to have lost control over their child’s discipline.

In terms of Section 54, **any pupil who has absconded** (run away) from a school of industries or another institution or place of safety, or from the custody of a person in whose custody they were placed under the Children's Act or the Criminal Procedure Act, **may be apprehended, without a warrant, by any policeman or probation officer and brought before a commissioner of child welfare.** (The child must be brought before a children’s court magistrate who will enquire as to why they absconded, and make a decision either to send the child back or to place them somewhere else.)

 **OHT 2**

Draft children's legislation

The Ministry of Health and Social Services started to look at replacing the Children's Act after independence, **to bring Namibian legislation into line with our Constitution and the CRC**. The new legislation has been drafted and is with the government legal drafters (* at the time of writing, i.e. December 1996). It is anticipated that this new legislation will soon be tabled in Parliament.

* We thought that it would be important to inform participants about these developments and highlight a few aspects of the draft legislation.

- The new legislation is comprised of **two Acts**:

- the (draft) **Child Care and Protection Act**; and

- the (draft) **Children's Status Act**.

! The major difference between the old and the new legislation is that the **emphasis in the new legislation is on prevention rather than treatment, and provision of services to keep families together**.

The Draft Child Care and Protection Act defines a “**child in need of care**” as a **neglected** child, or a child **without adequate supervision** or whose **needs are not being met**.

This definition has a more **child-centred approach** than that of the existing Act, because it **looks at what the child needs**.

A “**child in need of protection**” is defined as a child **at risk of abuse** (whether by their own actions or by other people).

The draft legislation also extends the meaning of the term “**family**” by including the **primary caretaker** of the child as a **family member** (i.e. a child's primary caretaker is not necessarily their parent). Thus the **extended family** has been taken into account.

- The **new legislation aims to**:

- protect and promote the **well-being** of all children;

- **improve the quality of relationships** between children and their families and communities;

- establish, promote and coordinate the use of **services and facilities** to improve the quality of children's lives;

- promote the **active involvement of families in resolving problems**;

- ensure that **families only separate as a last resort**;

- ensure that **children separated from their families are well cared for**; and

- implement the **CRC and other international standards** relevant to the protection of children.

! **In keeping with the philosophy of the CRC, the best interests of the child are of overriding importance when dealing with children.**

* It would be premature to discuss the various sections of the draft legislation in detail since it is conceivable that many changes may still be made to the original submissions.

It is suggested that once new children's legislation is passed, a one-day training session should be organised with NAMPOL to discuss the new laws and their implications for policing.

OHT 3

The Prisons Act

The Prisons Act 8 of 1959 is **also under review**, and it is expected that a new Prisons Act will soon be passed in Namibia.

Our current Prisons Act provides **scant protection to sentenced juveniles**. The Act also complicates the situation by defining a “**juvenile**” as being anyone **under the age of 21 years**. The fact that the Criminal Procedure Act and the Children's Act define a juvenile as being under the age of 18 years means that there are **conflicting definitions** of the word “juvenile” in our statutes. This creates **practical problems** where juveniles are held in prison, because juveniles of vastly differing ages are held together in the same cells.

Section 29(1) provides that an accused person of under 18 years of age **shall not be detained in a prison or police cell or lock-up before being convicted, unless their detention is necessary and no suitable place of safety is available**. Unfortunately this provision has been used in such a way that it has had a **damaging impact** on accused persons of under 18 years old. The term “*unless his detention is necessary*” is largely ignored, while the term “*... and no suitable place of safety is available*” has been used to justify holding juveniles in prison. It is of the utmost importance that careful consideration be given to whether or not detention is necessary at the earliest possible stage after arrest.

Visit

- * Arrangements should be made with the Station Commanders of the Windhoek Central and Wanaheda Police Stations to take the participants to visit the cells at both stations.
- * Immediately after visiting the cells at the second station visited, the participants should be requested to participate in the Word Game.

The Word Game

- * Ask everybody to write down one word on a piece of paper which describes his or her impression of conditions in the police cells.
- * The papers should then be brought back to the lecture venue.
- * Each person should then get up, read their own word aloud and pin it onto the board. Eventually there will be a long string of words displayed.
- * You should then ask the participants whether the overall impression created is a positive or negative one.

REFERENCES

- 📖 *Children's Act 33 of 1960*, Republic of South Africa.
- 📖 *Draft Child Care and Protection Act and Draft Children's Status Act (1995)*, Republic of Namibia.
- 📖 *Prisons Act 8 of 1959*, Republic of South Africa.
- 📖 Skelton A., *Children in Trouble with the Law: A Practical Guide*, Lawyers for Human Rights, South Africa, 1993.

CASE CITATIONS

- 📄 *S v Jodwana*, 1986(4) SA 368(ECD).

THE NAMPOL OPERATIONAL MANUAL

Session 10

OBJECTIVES

- * **By the end of this session, participants should:**
 - be aware of the importance of the NAMPOL Operation Manual;
 - be aware of the alternatives to arrest and the importance thereof;
 - be aware of the provisions pertaining to “safe custody”;
 - have been introduced to the “principle of proportionalism” (NB: different from “principle of *proportionality*”);
 - have answered the questions.

STRUCTURE AND TIMING

🕒	Lecture	10 minutes
🕒	Discussion	30 minutes
	TOTAL	40 minutes

PREPARATIONS

- * We suggest that the facilitator has the manual at this session for reference purposes.

SESSION FLOW

- * Begin the session with the lecture.

Lecture

Content of the NAMPOL manual

Although the NAMPOL Operational Manual manual does not have the same status as national legislation, it **contains valuable guidelines**, some of which underpin the aims and objectives of this training course.

IMPORTANCE OF THE CONSTITUTION (Chapter 1)

The NAMPOL manual **emphasises the importance of the Constitution** (Chapter 1). In particular, **every member of NAMPOL must know and respect the fundamental rights and freedoms** contained in the Constitution (F.3); **respect for human rights** must become part of everyday life for all people in Namibia (F.4); and police members must **support the exercising of rights by all citizens, including suspects, arrested persons, and convicted prisoners** (F.5).

ROLES AND RESPONSIBILITIES OF NAMPOL (Chapter 2)

Chapter 2 deals with the **basic roles and primary responsibilities of the Namibian Police**. The section which deals with **police powers** (H) is extremely important.

! Section H.2.1 **prescribes arrest only when an alternative process is impractical**. This is very important in a juvenile justice context, since experience has shown that juveniles are often arrested for very minor crimes and spend unnecessary time in custody. **This directive is in keeping with the CRC as well as international rules and guidelines pertaining to juvenile justice**, although it applies to everyone and is not specifically aimed at juveniles.

- The following **alternatives to arrest** are currently available:
 - ä **Oral warning to attend court** on a specific day and time.
 - ä **Warning Notice** (J127).
 - ä **Notice to Appear in Court** (J534).
 - ä **Setting bail** requiring the person's **attendance at court** on a specific date.
 - ä **Summons** issued on request by the public prosecutor to secure **attendance for summary trial**.

COMMUNICATION (Chapter 3)

The manual adopts the standpoint, in Chapter 3, that **police need to have productive communication with the community in order to succeed in their policing functions** (F.1.d.). "Productive" is defined to mean "free and relaxed exchange of views and information"(F.1.d.). This exchange of views and information also includes exchanges on the problem of **juvenile crime** in the community, and it is therefore important that the Police are active in juvenile justice fora and in Arrest and Awaiting Trial Committees.

SAFETY OF PRISONERS (Chapter 5)

! Chapter 5 deals with the **safe custody, treatment, escort and continued detention** of prisoners, and is a very important chapter in terms of the Police and young offenders.

The strictest precautionary measures should be taken to **prevent children from coming into contact with adult prisoners** (C.4). The manual specifically states that children under 16 years of age shall not be detained in police cells if it is possible to accommodate them in any other approved place, and that offenders under the age of 18 shall be detained separately from adult prisoners.

This chapter also emphasises the **humane handling of young offenders**. Young offenders often report that they were rudely treated by NAMPOL officials and some report being slapped in the charge office. Apart from the fact that a slap is an assault, it is also an affront on a person's dignity and a contravention of the following standing order:

“The Namibian Police are responsible for the well-being and protection of persons in its custody” (D.4). More particularly, *“Police may not subject a prisoner to personal abuse, indignities or inadequate protection”*(D.4.c.). Once the police effect an arrest and take a person into custody, the arrested person's **rights to be free from bodily harm** must not be infringed upon.

THE PRINCIPLE OF PROPORTIONALISM

According to another training manual, *Professional Police Behaviour: Police Ethics*, which was compiled in South Africa and which is currently being adapted to suit the Namibian Police, the **principle of proportionalism** applies.

! Meaning of “proportionalism”

The police official first has to ask him/herself **what goal** they want to achieve in a situation and **which method** they are going to apply in order to achieve that goal.

The **method which uses the least amount of force** to achieve a goal is the one that must be used. This means that **arrest should not be effected if a written notice could achieve the same goal**.

The police officer should look at **which actions contain potentially serious consequences** for the community as well as the Police. For example, Section 49 of the Criminal Procedure Act allows justifiable homicide (if a person refuses to be arrested and/or escapes), but this type of action has very serious consequences. Negotiation, on the other hand, does not have the same consequences.

These two actions are on the opposite end of the force spectrum. In-between, we find the use of warning shots, bird shot, rubber bullets, tear gas, physical force during arrests, arrests (bail J398, warning J127), subpoena, written notice (J534) or warning in pocket book (informal). According to this model, **the higher the degree of force used, the more cautious the police officer should be**.

📄 OHT 1

Small-group discussion




- * Divide the participants into small groups of no more than four persons per group.
- * Ask them how they would react in the following situation:

It is a Saturday evening at 21h00. While you are patrolling the area in your vehicle, you receive a complaint of disturbance of the peace. The complainant alleges that his neighbour's children are having a party. The music is very loud and some of the guests are drinking strong alcohol in the yard in front of the house and on the street.

- * The groups should answer the following questions:
 1. Has an offence taken place?
 2. Is there potential for a crime - a crime which must be prevented?
 3. How would you handle this situation according to the principle of the proportional use of force?

- * The discussions should be recorded on flip-charts and feedback given to the plenary.

REFERENCES

-  Botma, Lt-Col S., *Community Policing: Police-Community Relations*, 1995.
-  Botma, Lt-Col S., *Professional Police Behaviour: Police Ethics*, 1995.
-  *NAMPOL Operational Manual*, Namibian Police.

AN INTRODUCTION TO DIVERSION

Session 11

OBJECTIVES

- * **By the end of this session, participants should:**
 - have been introduced to the concept of diversion;
 - understand the aims of diversion;
 - have participated in the exercise;
 - have done the reading;
 - understand what “restorative justice” means;
 - have acted out the role-plays.

STRUCTURE AND TIMING

⌚	Lecture	15 minutes
⌚	Exercise	5 minutes
⌚	Reading	15 minutes
⌚	Role-play	30 minutes

TOTAL **65 minutes**

PREPARATIONS

- * Ensure that you have a sufficient number of handouts for the participants. Note that there are two handouts for this session: *Paul* and *Face to Face Justice*.

SESSION FLOW

- * Begin the session with the lecture.

Lecture

Definitions and concepts

“Diversion” may be defined as “the use of voluntary alternative measures to the criminal justice system.”

Looking at diversion from the **point of view of the offender**, diversion means “**a turning away from crime, towards being a productive member of the community.**” (This definition is contained in N. Fine, *Through the Walls: Working with Youth in Conflict, in Crisis, in Care, in Custody*, Community Law Centre, University of the Western Cape, 1996.)

From a juvenile justice or legal perspective, **diversion occurs at court when the prosecutor decides to withdraw the charges, or in court when the magistrate decides to impose a sentence other than imprisonment or to convert the trial into a children’s court enquiry.** (Purists would maintain that diversion has not actually occurred at this point, but rather that an **opportunity for diversion** has been created.)

Diversion is not a cosmetic concept: it is a concrete process in terms of which a **young person comes to realise that there are other options in life apart from crime and that crime will eventually destroy.** In this sense it can be said that **true diversion occurs inside the young person’s mind.**

Police may be regarded as the agents of diversion when they create an opportunity for diversion to take place. The type of diversion referred to in this statement is **diverting the young offender from arrest and/or detention.**

Diversion can occur at any stage of the criminal justice process, but the sooner it occurs the greater the chance to intervene positively in the young person’s life.

OHT 1

The system of diversion is premised on a “justice” model of juvenile criminal justice. This model **recognises the special needs and vulnerability of youth, but it also places emphasis on protection of the public.**

There is **more than one way in which diversion can occur.** Later on in the course we will look at the three diversionary options which are currently utilised at the Windhoek Magistrate’s Court. **We will focus on diversion from a legal or juvenile justice perspective.**

- * When the participants attend the life-skills programme, they will have an opportunity to see how the “turning towards” something more positive than crime is facilitated.

The aims of diversion

 The **aims of diversion** may be described as follows.

OHT 2

ä PREVENTION OF RECIDIVISM / RE-OFFENDING

A feature of most institutions holding young people (awaiting trial or serving a sentence) is that these young people are not provided with skills to be responsible

for their actions and for their lives.

Community-based programmes, on the other hand, encourage the offender to take responsibility for their actions and to act accordingly. Re-offending is thus prevented.

ä AVOIDING CONVICTION / GIVING OFFENDERS A SECOND CHANCE

This is especially the case when the offence is trivial or the offender is unlikely to re-offend. By avoiding conviction, **offenders may take responsibility for their actions and be held accountable for them without going through the entire criminal justice system.**

The offender now has an opportunity for reparation without being labelled as a criminal. Remember that **a criminal record is for life!**

ä IMPROVED RESOURCE USAGE

Minor cases which clog up the criminal justice system are avoided. The courts are freed up to deal with more serious crimes.

The problem of overcrowded police stations and prisons is universal, so this is a problem in Namibia too. Building more prisons or police stations will cost a lot of money. **Current facilities should be reserved for dangerous offenders.**

ä AVOIDING THE DELAYS, COSTS AND TRAUMAS OF TRIAL

Courtrooms are intimidating for juveniles. It is common knowledge that **lawyers are costly** and that **trials are delayed for long periods of time.**

Most young offenders cannot afford lawyers and legal aid is not always available. Victims become frustrated when cases are postponed and eventually thrown out of court. Once a criminal charge is laid, the State takes over and the victim is pushed to the side of the whole process. The victim is often told to attend court only to be told that the matter will be postponed.

ä A BETTER SERVICE TO THE VICTIM

The victim no longer needs to feel separated from the court process, because the **victim's feelings are central to the decision as to what would be the most appropriate way to handle the offender.**

The **offender will be made aware of the consequences** of their crime. The **victim will be compensated**, in a mutually acceptable way, for the harm caused by the crime.

ä IMPROVING PERCEPTIONS OF POLICE

Diversion allows the Police to demonstrate that they are interested in helping the offender, victim and community. The police will no longer be perceived as authoritarian crime control agencies, but as caring members of a community with

a vital role to play in the prevention of crime and the protection of the community.

ä PROVISION OF “HELP” TO OFFENDERS

Diversion allows the community to “help its own”, thus reducing the costs and workload of social workers.

Exercise

- * Use this exercise to introduce the perceptions and feelings of the **victim** of a crime.
- * Ask the participants to close their eyes. Tell them to think about a situation in which they were a victim, preferably of crime. Tell them to **relive** the situation and the emotions which they experienced.
- * Allow enough time for them to relive this experience.
- * Now the participants should open their eyes and share their experiences and emotions with the person sitting next to them.
- * Get feedback from the plenary at random.
- * Now continue with the lecture.

Restorative justice



Crime violates social harmony.

The concept of diversion is rooted in “restorative justice”, the chief objective of which is *not to punish or re-educate* the offender, but to *repair the harm caused by the offence*.

Crime is not only seen as an attack on the State, but also as damage done between individuals.

Repair, healing the hurt, restoring what was lost or restoring the balance, all fit into the restorative justice model.

Restorative justice is aimed at **reparation**, i.e. making amends for a wrongdoing. The offender is directly and actively involved in the restoration process and it occurs within a judicial framework.

Reading

- * Hand a copy of *Face to Face Justice* to each participant and give them an opportunity to read it.
- * Allow time for questions and discussion.
- * Then continue with the lecture.

RESTORATIVE JUSTICE AS COMPARED TO RETRIBUTIVE OR REHABILITATIVE JUSTICE

OHT 3

	RETRIBUTIVE	REHABILITATIVE	RESTORATIVE
Starting point	Offence e.g. theft	Offender Person who steals	Damage What was the loss/value of the thing stolen and what are the personal circumstances of the offender.
Reaction	Punishment Fine Prison sentence Suspended sentence Postponed sentence	Treatment Offender needs help	Obligation to repair Offender must give things back and/or apologise and/or render some service to victim, community or both.
Objectives	Deterrence Threat of punishment	Conformism Be “normal”	Making good the the losses Repairing the harm
Victim’s position	Secondary	Secondary	Central
Standard of evaluation	Punishment to satisfy society’s indignation	Conformist behaviour	Satisfaction of parties
Societal context	Authoritarian Control	Welfare	Democratic

Role-play exercise

- * Ask the participants to break up into three groups.
- * Assign each group a particular model of justice to role-play.
- * Distribute the handout among the groups.
- * The groups must then act out the following scenario from the point of view of the particular justice system which has been assigned to them:

Paul is a 15-year-old boy. He was a pupil at Augustineum up until Grade 6 when he had to drop out of school due to a lack of funds. Paul's father lives and works in Oranjemund and his mother is disabled. He has six siblings who are all younger than him. Paul helps his mother to look after his younger brother and sisters. He has been looking for a job but is finding it difficult due to his lack of education. Although Paul's father sends money from Oranjemund every month, there is not enough money to feed and clothe the household. One day, Paul is asked by his mother to walk to Shoprite and purchase food for the evening meal. He buys the food but he also steals a Bar One chocolate on his way out. Paul is apprehended by the security guards and taken to the Windhoek Central Police Station ...

- * After you have read through the scenario with the groups, ask them the following question:

What do you think will happen to Paul in terms of a retributive, rehabilitative and restorative model of justice?

- * Each group should act out a 5-minute role-play in front of the plenary.
- * Discussions of the three role-plays should then take place.
- * What the role-plays should highlight:
 - The role-play on **retributive justice** should highlight the fact that Paul has committed the crime of theft and should therefore be punished by a criminal court. His personal circumstances are not relevant.
 - The role-play on **rehabilitative justice** should highlight the fact that something is wrong with Paul because he does not conform and he should therefore be treated and made “normal”. This model also does not emphasise Paul’s personal circumstances.
 - The role-play on **restorative justice** should highlight the fact that Paul has caused a loss to Shoprite and concentrate on repairing the damage caused by the loss. Paul’s personal circumstances will be a major factor in the process of deciding what to do with him. The victim (Shoprite owner) plays a central role.

REFERENCES

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- 📖 *Sentencing Workshop Report*, Victoria Falls, Zimbabwe, 1993.

COMMUNITY SERVICE

Session 12

OBJECTIVES

- * **By the end of this session, participants should:**
 - have been introduced to community service as both a pre-trial and post-trial diversionary option;
 - have discussed the most ideal way to implement community service;
 - have understood the benefits of community service orders;
 - have discussed the video.

STRUCTURE AND TIMING

🕒	Video	10 minutes
🕒	Lecture	10 minutes
🕒	Discussion	10 minutes

TOTAL **30 minutes**

PREPARATIONS

- * Make sure that you have a video machine and a copy of the *Free Willy* video ready for screening at the start of the session.

SESSION FLOW

- * Show the first 10 minutes of the video - the scene in which a young boy is ordered to do community service after he has deliberately damaged the property of an aquarium.
- * Discuss the appropriateness of the punishment with the participants.
- * Allow time for questions and then begin with the lecture.

Lecture

Introduction as diversionary option

Community Service has not yet been introduced in Windhoek as a **pre-trial diversionary option**, but a workshop on this topic attended by magistrates and prosecutors of the Windhoek Magistrate's Court was hosted by the Juvenile Justice Project in September 1996, and the response was positive.

A **sub-committee** was established at the workshop to investigate ways of introducing this diversionary option in Windhoek.

The **first community service order** as an alternative sentencing option was recently handed down in the Mariental Magistrate's Court. The sentence was **confirmed on review by the High Court!**

What is community service?

! Community service is a way in which the **offender serves the community as reparation for their crime.**

- **The offender is required to work a certain number of hours during their free time, at a non-profit organisation for no payment.**
- When community service is used as a **pre-trial diversionary option**, the **charges are withdrawn on condition that the service is completed within a given time.** Non-compliance could mean reinstatement of the charges.
- When community service is used as an **alternative sentencing option**, the **community service order is made in conjunction with a postponed or suspended sentence.** Non-compliance would render the server liable to be returned to court.
- **The Criminal Procedure Act specifically provides for community service as an alternative sentencing option.**
- There are **no definite rules about the number of hours to be served**, since each case will be viewed individually. On average, a pre-trial server is instructed to perform 40-60 hours of service. However, 120 hours for fraud is not an exception.

Where community service is used as a **sentencing option**, the number of hours may be much higher - for some serious offences even 2 000 hours, which could take five years to complete in a server's free time.

Placements and placement agencies

A suitable placement agency could be **any non-profit organisation, agency or institution that delivers a service to the community.**

- Examples of **potential placements** include the following:
 - Homes or hospitals for the physically and mentally handicapped;
 - Public general hospitals;
 - Libraries;
 - Municipalities;
 - Police stations;

! **Community placements should be in the community in which the person normally lives. Servers should, where possible, be linked to placements which reflect their own interests and preferences and where the service will be seen to fit the crime.**

A recent case in South Africa highlighted this:

A man had been convicted of placing a firecracker in a dog's anus and letting it off. The dog died a very painful death. The court sentenced the man to do community service at the local Animal Welfare Society without discussing the suitability of the sentence with the Society. The Society refused to let him perform his community service because they said he posed a threat to the animals.

? What other type of community service would have been more suitable?

- * Ask the participants to brainstorm this question for a few minutes.
- * You could add to the discussion by giving a further example, as follows:

A teenager is caught painting graffiti on the wall of a local church. He is convicted of malicious damage to property. He could be sentenced to clean the wall. This should make him realise the consequences of his actions because he will realise how hard it is to clean spray-paint off a wall. If he is sentenced to pay a fine, in all probability it will be his parents who will pay, and he will be left with no idea as to the consequences of the spray-painting.

📄 OHT 1

Benefits of community service

- The benefits of community service are **numerous**:
 - ä The offender **remains in society**.
 - ä Their **family continues to function as a unit**.
 - ä The offender is able to **support their family**.
 - ä The offender **does not have to face the problem of reintegration** into society (as in after having served a prison sentence).
 - ä The offender **maintains their employment or education**.
 - ä The **cost to the tax-payer is minimised**.
 - ä **Overcrowding in prisons is reduced**.
 - ä The offender is **protected from the negative effects of imprisonment**.
 - ä The offender is **able to make reparation** to society for the harm done by rendering an **unpaid service**.
 - ä The server can provide **assistance to organisations which depend on volunteers**.
 - ä The server receives the **benefits of appreciation, enhancement of self-esteem and pleasure in having helped other people**.
 - ä It provides a **concrete way for the offender to make amends** for their wrongdoing.

📄 OHT 2

Discussion

- * Ask the participants to discuss which of the above-mentioned benefits they could perceive in the *Free Willy* episode.

REFERENCES

- 📖 Muntingh L.M., *Community Service Orders: A Statistical Analysis of Cases in Cape Town (1983-1994)*, NICRO, Cape Town, 1995.
- 📖 Muntingh L.M., *Perspectives on Diversion*, NICRO, Cape Town, 1995.
- 📖 Muntingh L.M. & Shapiro R., *Diversions: An Introduction to Diversion from the Criminal Justice System*, Cape Town, 1993.

VICTIM-OFFENDER MEDIATION

Session 13

OBJECTIVES

- * **By the end of this session, participants should:**
 - understand what is meant by the term “victim-offender mediation” (VOM);
 - understand what is meant by the term “consensus decision-making”;
 - have participated in the role-play;
 - have brainstormed the benefits of VOM;
 - understand the benefits of VOM.

STRUCTURE AND TIMING

🕒	Video	20 minutes
🕒	Lecture	15 minutes
🕒	Role-play	30 minutes
	TOTAL	65 minutes

PREPARATIONS

- * Make sure that you have a video machine and the copy of the VOM video ready for screening at the start of the session.
- * Make sure that you have enough copies of the case study to hand to the small groups for the role-play.

SESSION FLOW

- * Show the video on VOM to the participants. This video shows a victim-offender mediation process which took place in America after someone had killed another person due to driving under the influence of alcohol.

Lecture

What is victim-offender mediation (VOM)?

VOM aims to facilitate communication between the victim and the offender after a crime has been committed.

The **focus is on peaceful conflict resolution** and the **victim is given a participatory role** in resolving the conflict resulting from the offence.

The objective of such communication is to work out an agreement with the offender, with the aid of a mediator.

The agreement could consist of an **apology, monetary compensation and/or indirect compensation** for losses suffered by the victim.

OHT 1

Currently, victim-offender mediation is used at the Windhoek Magistrate's Court as part of the screening process, and the mediation process is termed "**consensus decision-making**".

Role-play

- * Divide the participants into small groups with no more than six people per group.
- * Hand out the case study to each group.
- * Ask each group to select a *mediator*, a *Jonah*, a *Marthinus* and a *parent*.
- * The groups must now role-play a victim-offender mediation process based on the following case study (see handout):

Marthinus (17) and Jonah (16) became casual acquaintances frequenting the same parties and friends' homes. Marthinus has a job and is financially a bit more secure than Jonah who is still a scholar.

One night they were having a few beers at a friend's home. Afterwards, Jonah went home with Marthinus to visit him. Marthinus offered Jonah a bed for the night. The next morning Marthinus had to get up early and he left Jonah sleeping. When he returned in the afternoon he saw that his leather jacket and several tapes were missing. He saw no signs of burglary and knew that it was Jonah who had taken these items. He then laid charges against Jonah.

When Jonah was arrested, he admitted to taking the jacket and tapes. He explained that he still had the tapes but had sold the leather jacket for N\$150, although he knew its value was at least N\$400. Jonah felt extremely embarrassed and sorry about the whole event because he had abused the trust and goodwill that Marthinus had extended to him.

- * At the end of the role-play, the participants should talk about the roles they played. This enables them to debrief. The reason for this debriefing is that a role-play can cause emotional responses from the actors and it is important to give them the opportunity to talk about their feelings.
- * Then ask the plenary to brainstorm the advantages that they experienced for all the parties involved, namely the victim, offender, community and criminal justice system.
- * Write up the responses on flip-charts.
- * Now continue with the lecture.

Benefits of VOM

! All parties benefit from VOM.

THE VICTIM BENEFITS

- The victim has the **opportunity to participate actively in the criminal justice process**.
- **Victims receive restitution**. The type of restitution made will depend on the agreement. Another word for restitution is **compensation**.
- The victim has the **chance to confront the offender** with his or her feelings.
- Victims often feel marginalised because they are not informed about the progress of their case. In this regard, the **VOM programme personnel can provide the victim with the information that they require**.
- The meeting between the victim and offender could **increase the victim's understanding** of crime and punishment as well as the causes of crime. The victim could end up realising that the offender is also a victim.

THE OFFENDER BENEFITS

- When the victim confronts the offender, the offender **gains insight into the impact of the crime**. Offenders are often left ignorant of this aspect, not understanding the real consequences of victimising another person. VOM brings out the fact that the victim is a real person and not just one of those faceless people out there.
- Offenders can **make things right and feel better about themselves**. The function of *confession* in the Catholic religion is similar, except in this case the offender demonstrates their repentance by undoing the damage - in as much as this is possible.
- By making restitution the offender is **enabled to reconcile with society** instead of being ostracised (pushed out) of social structures.
- VOM gives the offender the **chance to play a role in determining their own future** instead of only responding to decisions made by people who are not directly involved in the conflict, e.g. the magistrate in a criminal case.
- VOM should **increase the offender's sense of responsibility**, because they have to fulfil the agreement with the victim.

📄 OHT 2

THE COMMUNITY BENEFITS

- VOM need not be limited to crime-related conflicts. The **skills and processes can be used to resolve other forms of conflict**, such as family and interpersonal disputes.
- The **programme is cheaper than imprisonment** and the offender is given the option to **perform a useful function** within the community.



- **Recidivism rates may be reduced** in two ways: firstly, offenders avoid the damaging effects of imprisonment which often leads to further crime; and secondly, increased understanding of victims as people, and of the cost of their offences, can act as a deterrent to further crime.

THE CRIMINAL JUSTICE SYSTEM BENEFITS

- VOM offers the criminal justice system an **alternative to imprisonment and other sentences**.
- The VOM process is **less expensive than many other forms of sentencing**.
- It provides a **useful mechanism for handling first offenders in property crime**, such as theft, which is a non-violent property-related crime.
- As a pre-trial process, VOM can function as a **time-saving device** because the work load of court officials is decreased.
- VOM **creates a mechanism for restitution outside of court**, which **decreases the burden** on the formal criminal justice system.
- VOM **creates a mechanism for handling cases that are often unsolvable** in the formal criminal justice process, such as personal and family disputes.

OHT 3

REFERENCES

-  Muntingh L.M., *Perspectives on Diversion*, NICRO, Cape Town, 1995.
-  Muntingh L.M. & Shapiro R., *Diversions: An Introduction to Diversion from the Criminal Justice System*, Cape Town, 1993.

THE LIFE-SKILLS PROGRAMME

Session 14

OBJECTIVES

- * **By the end of this session, participants should:**
 - be aware of the goals of the Life-skills Programme;
 - have been introduced to the concept of life-skills;
 - have participated in the exercise;
 - understand the benefits of the programme;
 - have attended one session of the Life-skills Programme.

STRUCTURE AND TIMING

🕒	Lecture	10 minutes
🕒	Exercise	15 minutes
🕒	Outing	120 minutes
	TOTAL	2 hours and 35 minutes

PREPARATIONS

- * You will need to arrange with the Life-skills Programme coordinator for the participants to attend a session of the programme.
- * Ensure that you have enough copies of the case handout for each of the participants.

SESSION FLOW

- * Begin the session with the lecture.

Lecture

What is the Life-skills Programme?

The Life-skills Programme provides the young offender with an **opportunity to take responsibility for their actions**.

The programme can be used as a **condition for pre-trial diversion** or as a **post-trial alternative to imprisonment**.

- ! **The prosecutor can withdraw the charges on the condition that the offender attends the programme, or the magistrate can impose attendance of the programme as a sentence.**

WHO - WHERE - WHEN

The programme that is currently run in Windhoek is conducted by the **Juvenile Justice Project (JJP)** in conjunction with the **Ministry of Youth and Sport** at the **Multi-Purpose Youth Centre** in Katutura.

The programme is a **six-session course** conducted on a **weekly** basis, with **each session lasting two hours**, and a **weekend outing** to the Shalom Centre at Goreangab lasting from Friday afternoon to Saturday.

- ! **The programme is aimed at youth between the ages of 12 and 18, and it is not limited to first offenders.**

Offenders in cases of armed robbery, murder and rape are excluded from the programme.

GOALS - TOPICS - METHODS

The Windhoek programme is modelled on the **NICRO Youth Offender Programme**, and the JJP personnel are currently developing a programme specifically aimed at Namibian youth.

Each session has **specific objectives, topics and methods of presentation.**

- ! **“Life-skills” are the skills that we all need and use to cope with the demands and pressures of daily living.**

The overall goal of the programme is to encourage the juvenile offender to behave within acceptable societal norms and to develop not only life-skills, but also leadership qualities.

The programme gives participants an **opportunity to think about their behaviour and their feelings towards their families, friends and community members.**

The entire programme is based on the concept of **participatory experiences as a mode of learning.** The participants essentially take responsibility for their own learning, guided throughout by a facilitator who is extensively trained in conducting life-skills courses.

Ground rules are set at the start of a programme: **punctuality and attendance of every session are prerequisites for successful completion.** (The charges are only finally withdrawn once the juvenile has complied with the stipulated condition - in this case, once they have completed the programme.)

Parents are requested to attend the first and last sessions (but only these two sessions). This enables parents and children to discuss their feelings about the crime and its consequences, and innovative techniques are used to encourage this discussion. Some of these techniques, such as buzz-group exercises, role-play and imagination exercises, are also being utilised in this police training course.

The four sessions which are exclusively for juveniles deal with concepts such as **self-image, assertiveness, decision-making, law and morality.**

OHT 1

Exercise

- * Tell the participants that this exercise is included in the life-skills course, and is based on a real set of facts which made legal history in England in the 19th century.
- * Hand a copy of the case to each participant and ask them to read it through.
- * You should then pose the questions to the plenary.

The Case of the Shipwrecked Sailors

Three sailors were sailing in a lifeboat after their ship had sunk off the coast of Walvis Bay. They were the only people who had not drowned and were without any food, water or fishing equipment.

After 25 days one of the sailors suggested that they toss a coin and that the loser should be killed and eaten by the other two.

They tossed the coin and the sailor who lost the toss was the same person who had suggested the toss in the first place. This sailor was very weak and was about to die anyway, but he decided that he no longer wanted to participate in the gamble and he refused to be killed. The other two were desperate, and since he would die soon anyway, they killed him and ate him.

Five days later a passing ship rescued the remaining two sailors. They were brought to land and charged with murder.

Questions

1. If they are found guilty, what should their punishment be?
 2. What would be the purpose of punishing them?
 3. Was it morally wrong for the sailors to kill their compatriot?
 4. Was it illegal?
 5. Do you think that they should have been charged with murder? What alternatives are there?
- * The following information should be useful for the facilitator in guiding the discussion:
 - There are **special circumstances** in this case: the sailors had been without food or water for 25 days. Did this perhaps affect their minds and therefore their ability to distinguish between right and wrong?
 - Did the agreement to toss a coin constitute a **lawful agreement**, thereby excusing the murder?
 - Can it be said that the surviving sailors **intentionally killed** another person?
 - Would prosecuting the men fulfil a **deterrent function**? If they had not been prosecuted, would this mean that society was condoning their actions?
 - It can be argued that **punishing** the sailors for murder (retribution) would not serve a deterrent function because the case is unique.

- **Rehabilitation** would also not serve any purpose because the chances of the sailors committing a similar crime are remote.
- In the case of *R. v Dudley and Stephens (1884) 14 QBD 273*, on which this exercise is based, the court found both sailors guilty of murder and sentenced them to death. There was a public outcry at the sentences and Queen Victoria changed the sentence to six months in prison.

From McQuoid M., *Street Law: Practical Law for South African Students*,
Juta, Kenwyn, 1990.

Benefits of the Life-skills Programme




- The programme offers **crucial benefits** for offenders as well as for their families, society and the criminal justice system, as follows:
 - Offenders benefit because they are **given a second chance** and thus **avoid the drastic consequences of a criminal record**.
 - If the programme is used as an alternative sentencing option, the offender **avoids a prison sentence and the difficult process of reintegration** into society.
 - The programme **encourages offenders to take responsibility for their actions**. (Taking responsibility means not doing the same thing again.)
 - **Society** benefits because if young people take responsibility for their actions, **there will be a decrease in youth crime**.
 - **Families** benefit because **parents and children are given an opportunity to talk** to each other and to try to **repair damaged relationships**.
 - The **courts no longer have to process petty offenders** through the system.

OHT 2

Outing

- * Take the participants to a session of the Life-skills Programme. This should be arranged with the facilitator, Marthinus Hamutenya, who can be contacted at the office of the Juvenile Justice Project: 📞 (061) 262333.

REFERENCES

-  McQuoid M., *Street Law: Practical Law for South African Students*, Juta, Kenwyn, 1990.
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THE JUVENILE JUSTICE DATA COLLECTION

Session 15

OBJECTIVES

- * By the end of this session, participants should:
 - have brainstormed possible uses for the collection of juvenile justice data;
 - be aware of the importance of data collection;
 - be aware of what type of data they are being asked to collect.

STRUCTURE AND TIMING

🕒	Brainstorm	10 minutes
🕒	Discussion	25 minutes
	TOTAL	35 minutes

PREPARATIONS

- * Ensure that you have enough copies of the handouts for each of the participants.

SESSION FLOW

Brainstorm

- * Begin this session by asking the plenary to brainstorm possible reasons for collecting data on juvenile justice.
- * You should record the responses on flip-charts.
- * The material for lecture 15 is simply a listing of possible uses for this data, which the facilitator should highlight.

Lecture

- **Why collect data on juvenile justice?**
 - To ascertain the **extent of the problem** of juvenile crime in Namibia.
 - To obtain a **profile of juvenile crime in Namibia**, especially including:
 - the most frequent *types* of crime committed;
 - the *circumstances* of the offender; and

- the *areas* where crimes are most frequently committed - both locally and nationally.
- To determine the **effectiveness** of the current justice system in dealing with juvenile offenders.
- To support **advocacy** (making suggestions) with facts.
- To address existing **loopholes**.
- To use research as a basis for an **informed juvenile justice policy** (which should comply with the CRC, Constitution and other standards).
- For **mutual feedback** between research and policy.
- To ensure that **societal and judicial responses** to juvenile crime are not outdated and inadequate.
- To assist in the **planning** process around juvenile justice.
- To feed into the **National Programme of Action for Children** (since the data enables juvenile justice administrators to assist with the submission of an annual report to the UN on Women and Children in Especially Difficult Circumstances).
- To assist **UNICEF** and the **National Planning Commission** with **funding decisions**.
- To assist **Regional Councils** to ascertain the problems in their respective regions as regards juvenile crime.
- To assist **Youth Councils** in their activities and planning processes.
- To assist the **Ministry of Youth and Sport** in their programmes for **out-of-school youth**.
- To assist the **Ministry of Health and Social Services** in developing **crime prevention programmes**.
- To assist the **Ministry of Justice** in dealing with crime.
- To assist the **Ministry of Prisons and Correctional Services** in dealing with juvenile offenders.
- To assist the **Juvenile Justice Project** in planning and implementing **diversion programmes**.
- To assist the **Juvenile Justice Forum** by strengthening **networking** and the **flow of information**.

Small-group discussion

What type of data should be collected?

- Divide the participants into small groups of not more than five persons per group.
- Hand a copy of the **Police Information Form** and the **Return of Young Offenders Form** to *each participant*.
- Ask the participants to examine the forms and to discuss their content.
- The groups should consider, for example, whether the data requested on the forms is adequate to fulfil the stated purposes of a data collection, and if not, what improvements could be made?
- You should circulate among the groups and allow time for questions and recommendations about the type of data that needs to be collected.

INSTITUTIONAL PUNISHMENT

Session 16

OBJECTIVES

- * By the end of this session, participants should:
 - have obtained a greater understanding of the adverse effects of institutionalisation.

STRUCTURE AND TIMING

🕒	Videos	180 minutes
🕒	Discussion	15 minutes
	TOTAL	195 minutes

PREPARATIONS

- * Ensure that you have a video machine and the recommended videos ready for screening at the start of this session.
- * We have recommended two videos for this session: *Sleepers* and *The Shawshank Redemption*.

SESSION FLOW

- * There is no lecture in this session. Just begin with the videos.
- * We suggest that you facilitate a brief plenary discussion on the content of the videos after the screening.

About the videos



Sleepers

This film is based on fact and tells the story of four boys who grow up together in a slum area of Brooklyn, New York, and who are close friends. One day they take their mischievous activities too far, causing a fatal accident. They are sentenced to a term of imprisonment in a reformatory. The film shows what can happen when the **wrong type of interventions** are made, e.g. institutionalisation.



The Shawshank Redemption

This story takes place in a prison. It portrays the **negative effects of imprisonment**, such as exposure to sexual violence, but it also demonstrates what can happen if **hope** is retained in the human spirit.

THE PLAN OF ACTION

OBJECTIVES

- * **By the end of this session, participants should:**
 - have identified shortcomings, loopholes and problems with juvenile justice in Namibia;
 - have come up with a concrete plan for addressing the problems identified

STRUCTURE AND TIMING

🕒	Problem identification	15 minutes
🕒	Plan of action	30 minutes
	TOTAL	45 minutes

SESSION FLOW

- * There is no lecture in this session. Begin with the exercise.

Exercise

Part 1: PROBLEM IDENTIFICATION

- * Divide the participants into groups according to their **areas of operation** or **police stations**. If this is not possible, then divide them into small groups of no more than four persons per group.
- * Each group should appoint a scribe and rapporteur.
- * The groups should write down all the shortcomings, loopholes and problems regarding **juvenile justice and the police in their areas**.

Part 2: PLAN OF ACTION

- * Then, request the groups to devise a **plan of action** which will address these problems, and which will implement international standards of juvenile justice while taking account of conditions prevailing in Namibia.
- * The plan should be **as detailed as possible** in terms of **what** should be done, **who** should do it, a **date** by which it should be done and **how** the action decided upon will be implemented.
- * It is **specifics** and not general statements which are required at this point of the course.
- * Feedback should then be given to the plenary. Out of this feedback process, **develop and adopt a final plan of action**.

COURSE EVALUATION

OBJECTIVES

- * **By the end of this session, participants should:**
 - have received a copy of the network list;
 - have evaluated the training course.

STRUCTURE AND TIMING

🕒 Evaluation 20 minutes

PREPARATIONS

- * Be sure to have enough copies of the evaluation form to hand out to each of the participants.

Instructions to participants

- * The evaluation is a **fundamental part of the course**, since it will enable the developers of the course to know whether any changes are necessary, and it will provide a means to ascertain the overall usefulness of the course for current participants.
- * It is important to stress the necessity of **completing the evaluation form properly**.
- * The form should then be **handed to the facilitator** for future reference.

Special note to facilitators

- * We have not included a separate evaluation form to be completed by the facilitator regarding this training manual, but the course developers would very much appreciate your feedback, particularly if you have experienced any **difficulties** with the content or layout of the manual, or if you would like to make any **suggestions** regarding the manual. Please feel free to contact us through any of the following offices:
 - **Juvenile Justice Project: The Coordinator**
☎ (061) 262333 ☒ P.O. Box 62053 Windhoek
 - **Namibian Police Training College: The Commanding Officer**
☎ (061) 253174 ☒ Private Bag 12024 Ausspannplatz, Windhoek
 - **UNICEF: The Programme Coordinator**
☎ (061) 229220 ☒ Private Bag 13329 Windhoek