



Legal Assistance Centre

Restorative Approach to Juvenile Justice in Namibia

A guide for juvenile justice workers

ACKNOWLEDGEMENTS

The Legal Assistance Centre would like to thank Ms. Gail Super for compiling this manual. Ms. Super extends thanks to Johanna Prozesky, to Professor Julia Sloth Nielson, to Lukas Muntingh and to Ilona Goosen for providing her with some of the materials she referred to in this manual.

This publication was made possible with generous funding from the Austrian Development Cooperation.

PREFACE

This manual should be read together with the *Police Training Manual* and the handbook *Operating within the Law, A Handbook for Workers in Juvenile Justice*. Topics that are covered in the latter are not covered in depth here. The main framework of this manual is a discussion on restorative justice and how to implement it in practice, thus the title: *Restorative Approach to Juvenile Justice*. Since the concept of restorative justice is a relatively new one in Namibian child justice circles, extensive reference has been made to developments in South Africa. The idea is that you, the reader, gets an understanding of what it means to practice restorative justice in terms of conducting assessments, developing diversion options and generally dealing with children in conflict with the law. The importance of community involvement is emphasised throughout. The way that you decide to implement the principles in your place of work will depend on the particular circumstances which you face. Implementing restorative justice is not easy and there are no quick fixes. However, it is hoped that by having a basic understanding of its principles, you will be better equipped to practice it in your region and in your line of work.

- *Clement Daniels*
Director: Legal Assistance Centre

© Legal Assistance Centre
2002

CHAPTER ONE: RESTORATIVE JUSTICE AND PENAL THEORIES

Penal Theories

Penal theories (theories about punishment) try to explain what is happening when we inflict painful, harmful, damaging acts on other human beings, i.e. how are we justified in punishing people? If there was no justification for punishing a person then the punishment itself would also constitute a crime. Conventional penal theories can be broadly classified into retributive and reductive theories.

Retributive theories

These theories look back to the actual crime/deviant behaviour and aim to denounce or condemn the act. They express societies' disapproval of what went on. The deliberate infliction of harm on the offender is an attempt to right the moral balance which has been disturbed by the crime. The punishment model regards the individual lawbreaker as being responsible for his/her actions and the punishment is a way to repay the debt: it's aim is not to reduce crime or deter people from committing crime. The assumption is that the person who committed the wrong intended to do it, is fully responsible and should be punished. The biblical concept of an 'eye for an eye and a tooth for a tooth' is based on the concept of retribution. The aim is not necessarily to reduce crime but rather to punish.

Reductive theories

These theories look forward to the consequences of the punishment or sentence and their aim is to reduce crime.

There are 3 types of reductive theories

- Deterrent: the punishment must be so unpleasant and horrific that the individual wrongdoer and everyone else is also deterred. This is a very ancient way in which society imposed order and discipline: think about how you raise your own children: 'if you do this then I will not let you go out ...'
- Reformation/rehabilitation: this theory has its roots in religion, the idea being that sinners could be saved by the grace of God. In the late 19th and early 20th centuries, with the rise of the social sciences, the idea arose that human beings could be saved by experts who could intervene, fix and care for them. The assumption is that there is a 'normal' way to behave and that if someone is deviant something is wrong: the cause can be psychological, social or biological. Treatment must continue until the problem is solved.
- Incapacitation: the theory proposes that a person should be physically prevented from doing something (e.g. committing crime). An extreme example is capital punishment.

Evolution of retribution

In the 20th century retribution went out of fashion, the idea being that punishment could not be justified if it was not a person's fault, i.e. if a person was 'sick' then s/he should not be punished for committing a crime. However, in the 1970's retribution came back into fashion in direct

opposition to the treatment model. The treatment model was regarded as unfair because very different sentences were passed on different people for the same crimes. The treatment model was unaccountable because release decisions were made by secret 'expert' panels and the treatment imposed was often worse than any punishment. Thus the 'justice model' arose. The justice model sees the treatment model as being unfair because it permits indeterminate sentencing/treatment. This often results in harsher punishment. The principle underpinning the justice model is proportionality: the harm inflicted by the criminal law must be proportional to the harm caused by the offence.¹

Some criticisms of retributive/just deserts theories

- It supposes people to have completely free will, which they don't.
- The poor get penalised the most, so, it is in fact unequally applied.

Some criticisms of deterrence or reductive theories

- The deterrence or reduction is not always effective: the conditions have to be right.
- The application of conventional criminal law penalties (such as imprisonment) are ineffective and also have a marginalising and labelling effect.
- The preservation of the victim's rights is not central to the process.
- Treatment is a restriction of liberty because although the voluntary co-operation of the offender might be sought, the final decision lies with the court and, in this sense, treatment is imposed.
- Victims might perceive the process as being unfair in that it is the offender and not the victim who is being 'helped'.

Restorative justice

Origins

In the 1970's, in the USA and Canada, and later in Europe, people started to campaign for 'informal justice'. Alternatives to the formal justice system (such as small claims courts and neighbourhood justice centres) started in certain places.² In the 1990's various programmes which had been running since the 1970's became known as 'restorative justice' programmes.³

What is restorative justice?

- Although restorative justice has become a popular term, and many diversion programmes claim to be based on its principles, it is not easy to define, or to pinpoint these principles.
- Some have described restorative justice as a form of criminal justice based on **reparation**. The focus is on addressing the act of victimisation so that the effects of the crime and its consequences for the victim can be rectified.⁴ Reparation is in turn described as
- *'actions to repair the damage caused by the crime, either materially or symbolically. Usually performed by the offender, in the form of payment or service to the victim, if there is one and the victim wishes it, or to the community, but it can include the offender's co-operation in training, counseling or therapy. Reparative actions can also be undertaken by the community.'*⁵

- According to the theory of ‘**reintegrative shaming**’,(developed by the Australian criminologist, John Braithwaite), reoffending will be reduced if offenders are shamed in ‘reintegrative’ ways. The focus is on the offender and his/her **reintegration** back into the ‘law-abiding community’⁶.
- Reintegrative shaming is carried out by people who respect and care for the offender, who can give a clear indication that what the offender did was wrong, but that as a person they are okay. This model concentrates on creating consensus(agreement) – between the offender, victim and others, regarding a shared set of morals and what can be done to act this out in a practical and meaningful manner.⁷
- Stigmatisation is shaming which creates outcasts, where being a criminal becomes a master status/trait/characteristic.⁸
- Reintegrative shaming, on the other hand, is shaming which focuses on the ‘bad’ deed rather than the ‘bad’ offender. Forgiveness, apology and repentance are important.

What is the value of reintegrative shaming?

- In New Zealand research has shown that offenders can be held accountable for their actions in meaningful ways; that victims can feel better about their participation and that both offenders’ and victims’ needs can be satisfied. There has also been evidence that restorative processes can lessen the chances of reoffending.⁹
- *The real power of reintegrative shaming is at the level of prevention: conscience building. With the very worst case of deep-seated violence, reintegrative shaming is quite likely to fail but then so is everything else.*¹⁰
- Nils Christie, a leading criminologist of the 20th century, sees the criminal law as converting the conflict between 2 parties into a conflict between 1 party (the accused) and the state.¹¹ The state ‘steals’ the conflict. The victim is excluded and has no chance to get to know the offender. The offender has lost an opportunity to explain him/herself to the victim and has lost the possibility for forgiveness. By losing the opportunity to be confronted by the victim the offender ‘*has lost the opportunity to receive a type of blame that it would be very difficult to neutralise.*’¹²

The offenders’ inclusion in the process, and in determining the result, is of the utmost importance

Restorative justice not only involves restoring responsibility to offenders for their offending and its consequences, but, is also about the offender taking charge of the need to ‘right the wrongs’ and ‘*restoring a belief in them that the process they are involved in and the outcomes reached are fair and just.*’¹³

Additional points on the inclusion of the offender

- It is crucial to include the offender in speaking about his/her offending directly, rather than through some third party, such as a lawyer.

- If possible the offender should interact directly with the victim, express remorse, apologise and try to make amends.
- It is vital that the offender contributes to and agrees with the decisions about eventual outcomes, rather than having decisions imposed by others.
- By having a better understanding of his/her offending and its consequences, the assumption is that the offender will be less likely to offend.
- At the same time it is also accepted that some steps will need to be taken to address the circumstances which led to the offending in the first place (e.g. addressing drug/alcohol abuse; looking into skills training and employment opportunities.)¹⁴

The importance of including the victim

- The inclusion of victims is a core value. They should be able to participate directly or through a representative. Victims should be given the chance to speak about the effects of the crime on them, their family and/or on their community. They can talk to the offender, get an explanation for what happened, ask him/her questions, contribute to decisions about outcomes and accept an apology. The idea is that victims will have a better understanding of their experience of the crime.
- Restoration is not just about reparation but about ‘*seeking to restore the victim’s security, safety, self-respect, dignity and, most importantly, sense of control.*’¹⁵ Where possible some steps should be taken to rectify (right) the wrong (e.g. by providing a service to the victim) and to include the victim in future social life (by, for example, offering counseling services).¹⁶

The importance of conscience

Punishment which is imposed by relatives, friends or those that the wrongdoer personally respects has more effect than that which is imposed by the formal criminal justice system.

*Conscience is a much more powerful weapon to control misbehaviour than punishment...for most of us punishment by our own conscience is therefore a much more potent threat than punishment by the criminal justice system.*¹⁷

Risks

There is a lot of confusion about the idea of ‘alternative sanctions’. Lifeskills programmes, outwardbound programmes and learning of skills are not necessarily part of a restorative justice framework, but rather, are part of rehabilitative justice¹⁸ because they are just alternative forms of treatment. Their end aim is to rehabilitate the young offender. Care must be taken to see that mediation and community service do not also become alternative treatments: this occurs when the emphasis switches from restoring loss to reeducating the offender.¹⁹ Additional risks are the threat that legal guarantees for the offender are lessened, the victim is marginalised and netwidening takes place.²⁰

What is netwidening?

This refers to widening of the net of social control. It occurs where previously nothing would have been done in relation to a petty offence (i.e. the charge would have been eventually withdrawn), but now the charge will be withdrawn on some condition, for example attendance of the life skills programme. Where the child claims innocence but is nonetheless diverted, netwidening is also taking place²¹.

Advantages of a restorative justice approach

- It is easier to gauge losses than needs: i.e. sanctions (punishments/sentences) are more proportionate than in the case of a rehabilitative model.
- It is less excluding and more constructive than both rehabilitative and retributive theories.²²

Walgrave's table

This table has been included here so as to aid your understanding of the differences between various theories:

<i>Three models of judicial response to delinquency²³</i>			
	<i>Retributive</i>	<i>Rehabilitative</i>	<i>Restorative</i>
<i>Reference</i>	<i>Offence</i>	<i>Offender</i>	<i>Loss caused</i>
<i>Means</i>	<i>Inflicting harm</i>	<i>Treatment</i>	<i>Obligation to repair</i>
<i>Objectives</i>	<i>Moral balance</i>	<i>Conformism</i>	<i>Elimination of losses</i>
<i>Victim's position</i>	<i>Secondary</i>	<i>Secondary</i>	<i>Central</i>
<i>Criteria evaluated</i>	<i>Just desert</i>	<i>Conform behaviour</i>	<i>Parties satisfied</i>
<i>Societal context</i>	<i>State of power</i>	<i>Welfare state</i>	<i>Empowering state</i>

SUMMARY

- Penal theories try to justify punishment. There are 2 main groups: retributive and reductive/deterrent theories.
- A retributive theory of punishment looks back to the actual crime with the aim being to denounce or condemn the act. It is a way of expressing societies' disapproval at what happened.
- Reductive theories look forward to the consequences of the punishment or sentence and their aim is to reduce crime
- Restorative justice involves restoring responsibility to offenders for the consequences of their offending and is also about the offender taking charge of the need to 'right the wrongs'.
- Reintegrative shaming is shaming which focuses on the 'bad' deed rather than the 'bad' offender. Forgiveness, apology and repentance are important.
- The assumption is that the offender will be less likely to offend if s/he has a better understanding of his/her offending and its consequences.
- The inclusion of victims is very important. They should be able to participate directly, or through a representative.
- Victims should be given the chance to speak about the effects of the crime on them, their family and/or on their community.
- There are some risks associated with restorative justice:
 - ✓ Care must be taken to see that diversion programmes do not become alternative treatments. This may happen when the emphasis switches from restoring loss to reeducating the offender;
 - ✓ Legal guarantees for the offender may be lessened;
 - ✓ The victim may be marginalised and
 - ✓ Netwidening may take place.

CHAPTER 2: RESTORATIVE JUSTICE AND INTERNATIONAL LEGAL INSTRUMENTS

The United Nations Convention on the Rights of the Child (CRC)

Ratification of the CRC by the Namibian government

The CRC is an international human rights treaty which was signed and ratified by the Government in 1990. By ratifying the CRC the Namibian government formally indicated its agreement to respect the rights and obligations set out therein.

A convention for children

The principle idea behind the convention is that children, because of their vulnerability, need special care and protection. The CRC is based on what is in the best interests of the child and it aims to promote greater respect for the child than was previously the case.

The link with restorative justice

- The general principles which underpin the convention are relevant from a restorative justice point of view.
- The best interests of the child are a primary consideration in all actions concerning children²⁴.
- The child's own views (where s/he is able to express them) must be taken into account in all matters affecting him/her²⁵.
- Every child has the right to life and the government has an obligation to ensure the child's survival and development²⁶.
- The government is obliged to protect children from any form of discrimination.²⁷

Article 40 is particularly important from a restorative justice point of view

The article states that a child in conflict with the law has the right to:

- Treatment which promotes his/her sense of dignity and worth, takes his/her age into account and aims at his/her reintegration into society.
- Basic guarantees as well as legal or other assistance for his/her defence. Judicial proceedings and institutional placements must be avoided wherever possible.
- Be informed promptly and directly of the charges.

Reasons why children in conflict with the law should be treated differently to adults

- Children are vulnerable to influence since they have not completed their emotional and physical development.
- A child is more vulnerable to the brutalisation that arises from contact with the criminal justice system, including arrest, detention, formalised court procedures and imprisonment, than is an adult.
- Being an accused in criminal proceedings may result in a child being stigmatised for life.

- The CRC itself requires states parties to establish ‘*separate laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law*’.²⁸
- The fact that a child has committed a crime does not mean that s/he will inevitably continue to commit crimes as an adult since children often grow out of crime as part of the natural maturation process.
- Children should be kept away from the negative influence of adult criminals.

Can you think of any more reasons? What about special treatment for other groups of children (e.g. refugee children who conflict with the law; children with HIV/AIDS who conflict with the law; children with other physical, mental or social disadvantages?)

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing rules)

Why the need for the Beijing Rules?

Delegates to the sixth UN Congress on the Prevention of Crime and the Treatment of Offenders felt that a set of rules should be developed for the administration of child justice in order to protect the fundamental human rights of children in trouble with the law.

The significance of the rules

These rules are the internationally accepted minimum conditions which are accepted as suitable by the UN for the handling of alleged offenders.

General principles

The rules must always be applied impartially without discrimination of any kind, for example on the grounds of race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.

How is an offence defined in the rules?

An offence is defined as any behaviour that is punishable by law.

The aims of child justice as contained in the rules

Two of the most important aims are the promotion of the well-being of the child and the principle of proportionality. This means that the response to young offenders should be based on considerations not only of the gravity of the offence but also of the personal circumstances of the child.

What the rules say about arrest

- When a child is arrested, his or her parents or guardian must be immediately notified of the arrest: where such immediate notification is not possible, the parents or guardian must be notified within the shortest possible time after the arrest.
- A judge or magistrate must, without delay, consider the issue of release.

- The police must treat the child in such a way as to respect his/her legal status, and avoid harm to him or her.
- Placing children in police cells with adults or violent criminals is but one aspect of the harm referred to since involvement in the criminal justice processes can in and of itself be harmful to a child.
- This concept of avoiding harm is extremely important in the initial contact with police since the treatment at this stage might profoundly influence the child's attitude towards the state and society.

The rules state that in many case non-intervention i.e. not exercising the powers of arrest may be the best response. This is especially the case where the offence is of a non-serious nature and where the family, the school or other social control institutions have already reacted, or are likely to react in an appropriate and constructive manner.

What about diversion?

The rules state that diversion may be used at any point of the decision-making- by the police, the prosecution or the courts. They recommend the provision of alternatives to processing through the criminal justice system in the form of community based diversion.

The rules emphasise the need to minimise the potential for coercion and intimidation at all levels since a child will be more profoundly influenced by an overly enthusiastic use of authoritarianism than will an adult.

What the rules say about detention

- Detention pending trial may be used only as a measure of last resort and for the shortest possible period of time.
- While in custody, children must receive care, protection and all necessary individual assistance- social, educational, vocational, psychological, medical and physical- that they may require in view of their age, sex and personality.
- The danger of “ criminal contamination” while in detention awaiting trial must not be underestimated.
- Varying physical and psychological characteristics of young detainees may require classification measures by which some are kept separate from others while in pre-trial detention.
- No minors should be held in a facility where they are vulnerable to the negative influences of adult detainees.

What about institutionalisation?

The placement of a child in an institution must always be a last resort and for a minimum possible period. This is because the many negative influences in an institution cannot be outbalanced by treatment efforts. This is especially the case for children, who are vulnerable to negative influences. The negative effects, not only of loss of liberty, but also of separation from the usual

social environment, are worse for children than for adults because of their early stage of development.

The United Nations Guidelines for the Prevention of Juvenile Delinquency

Incorporation of restorative justice

The guidelines stress that the institutionalisation of young persons 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.

The UN Congress on the Prevention of Crime and the Treatment of Offenders

Although this is a congress and not a convention or set of standards the deliberations of this congress, which was held in 1995, are relevant to restorative justice.

- The congress emphasised that the protection of human rights is significant in criminal justice processes, particularly with regard to children.
- It recommended that states should enable children to participate in criminal justice proceedings, including the investigative stage and throughout the trial and post-trial period, to be heard and given information about their status and any proceedings that might subsequently take place.
- It recommended that states ensure that all structures, procedures and programmes in the administration of child justice should promote assistance to allow children to take responsibility for their actions and to encourage reparation, mediation and restitution, especially for the direct victims of the crime.

The Namibian Constitution

Although this is a local instrument it is mentioned in this chapter not only because it is the supreme law of Namibia but also because it makes direct reference to international law.

Article 144 states that the general rules of public international law and international agreements which are binding on Namibia form part of our law.

Article 15 specifically protects children's rights:

- children have the right to a name;
- to be protected from economic exploitation;
- not to be required to perform work which is dangerous or likely to interfere with their education;
- not to be detained in terms of any law authorising preventative detention, if they are under the age of 16.

Article 20, amongst other things, makes express reference to the right of children below the age of 16 years to education.

SUMMARY

- The CRC is an international human rights treaty which was signed and ratified by the Government in 1990.
- The CRC has definite links with restorative justice and article 40 is particularly important from a restorative justice point of view.
- The Beijing Rules are a set of rules which were developed in order to protect the fundamental human rights of children in trouble with the law. These rules are the internationally accepted minimum conditions which are accepted as suitable by the UN for the handling of alleged offenders.
- The rules state that diversion may be used at any point of the decision-making- by the police, the prosecution or the courts. They recommend the provision of viable alternatives to processing through the criminal justice system in the form of community based diversion. Detention pending trial may be used only as a measure of last resort and for the shortest possible period of time.
- The United Nations Guidelines for the Prevention of Juvenile Delinquency and the guidelines laid down by the UN Congress on the Prevention of Crime and the Treatment of Offenders are also relevant from a restorative justice point of view.
- Articles 15 and 20 of the Namibian Constitution specifically protect children's rights.

CHAPTER 3: PRACTICAL SUGGESTIONS FOR THE ARREST AND AWAITING TRIAL PHASE

International Minimum Standards

Applicable international minimum standards

The CRC includes the principle that deprivation of liberty must be a last resort option and for the shortest possible period of time. Rule 13.2 of the Beijing Rules and Rule 30 of the *Standard Minimum Rules for the Protection of Juveniles Deprived of their Liberty* recommend the use of alternative measures to pre-trial detention by establishing open detention facilities with very few security measures.²⁹

What does 'last resort' option imply?

Making detention a last resort option means that alternatives to detention should be considered, such as bail, supervision in the community, release on own recognisance and placement with a family.

*In applying the last resort test a court must be convinced, on the basis of clear and substantial evidence to this effect, that non-custodial methods would be unsuccessful.*³⁰

<i>Try to find out which custodial alternatives are available in your community</i>

Ideal conditions at detention facilities (The United Nations Rules for the Protection of Juveniles Deprived of their Liberty)

- The conditions of the cells should be suitable and this includes clean bedding;
- There should be sufficient blankets in winter;
- There should be sufficient sanitary facilities and clean drinking water;
- Detainees should be allowed to keep personal belongings in the cell;
- Adequate medical care should be provided;
- Contacts with the wider community (including friends, family and organisations) should be allowed;
- Visits should be allowed (at least once per week and not less than once per month), with the right to privacy upheld during visits;
- Detainees should be informed if a family member becomes injured, falls ill or dies and detainees should be allowed to leave facilities to visit family members and for educational purposes;

- Cruel inhuman 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;
- Where a detainee is accused of breaking the rules of the facility s/he should be given a fair hearing;
- Qualified, independent professionals should be allowed to carry out regular inspections of detention facilities;
- Personnel should receive specialised training;
- Proper admission procedures should be followed to ensure that the child is properly placed;
- Children and adults must be separated and older children should also be separated from younger ones;
- There should be as few children as possible in detention facilities;
- All detainees should be given copies of the rules of the facility in a language that they can understand;
- The names and addresses of public and private bodies which provide legal assistance should be provided.

Cell visits

Suggestions for keeping track of arrested children and monitoring the conditions under which children are detained

- Visit the cells on a regular basis: e.g. every Monday morning;
- Obtain written permission from the Regional Commander prior to making the visit;
- Carry a clear form of identification when you visit the cells;
- Telephone police stations in your jurisdiction on a daily basis: ask for the numbers of children who were arrested and detained the previous evening; check whether assessment has taken place and if not arrange for assessment to take place;
- Find out what the charges are and the possibilities of release into the custody of parents/guardians;
- Find out whether parents/guardians/significant others have been informed of the arrest.

When you visit the cell:

- Find out how many children are in detention;
- Check that they are separated from adults: this does not just refer to sharing a cell but also to whether they come into contact with adults in any other way;
- Check whether assessment has taken place;
- Check the conditions in the cells : look at cleanliness; the provision of sufficient bedding; the adequacy of sanitary facilities; whether there is enough light for reading purposes; whether the food is sufficient; whether detainees are being taken outside to exercise for at least one hour per day; whether they receive visits in private;
- Ask individuals whether they have any problems: if necessary talk privately to complainants;
- Get a list of the charges: check whether parents have been contacted and why children have not been released: i.e. check whether it is really necessary to detain them;
- Speak to the officer in charge and find out whether there are any particular problems;
- Find out the holding capacity of the cell: it may be regarded as a form of cruel, unusual and degrading punishment if there are seriously overcrowded conditions and it is not really necessary for the child to be there;
- Investigate release possibilities: get enough information from the child;

- Make a written report after every cell visit (in some instances it may also be necessary to ask for a meeting): give a copy to the station commander: if problems raised in the report are not addressed take it up to another level, e.g. to the district commissioner and/or the Inspector General. In some instances it may be necessary to instruct a lawyer to act on the child's behalf.

Tracing of Parents and Victims

What does the law state about the tracing of parents and victims?

The law states that the police should warn a child's parents/guardians to appear in court if they are in the same magisterial district and can be traced without undue delay. In fact, in terms of an internal police directive, the arresting officers are expected to complete a form which must be included in every case docket against a child. One of the questions is the '*steps taken to trace and inform the relatives before taking the child for detention....*'³¹

Can we rely on the police to do the tracing?

In an ideal world the answer would be yes, however because of severe transport and staff shortages within NAMPOL the parents of children are often not traced. This problem is particularly apparent over weekends.

Tracing of victims

Victims should be actively involved in restorative justice processes and they will need to be informed of what is going on. Their presence may be necessary in a victim offender mediation process, a family group conference, to give information about the offence or to give information about the harm suffered.

Using the services of other people

In Windhoek the Legal Assistance Centre (LAC) utilises community volunteers to trace parents/guardians/significant others and victims. The volunteers visit the cells early on a Sunday morning and find out whose parents/guardians have not been traced. Sometimes detainees will open up more easily to the volunteers than to the police.

Suggestions for utilising volunteers

- Using the services of volunteers or any other community members to assist the police in tracing will first need to be arranged with the police;
- Issues such as getting permission to enter the cells should be sorted out from the start;
- When volunteers visit the cells they should carry clear forms of identification
- Volunteers should ideally be selected from both genders since girls will sometimes not wish to open up to male volunteers;
- Volunteers should be selected for their commitment to serving the community and be trained in the basic principles of child justice;
- Volunteers should come from the local community: this is important from a trust point of view, from the point of view of knowing their way around, being able to speak local languages and from a networking point of view;

- Volunteers should be paid: if possible per parent/guardian traced and, at the very least, for transport costs;
- Volunteers do not necessarily have to be unemployed, for example, they could consist of ministers, youth officers, NGO workers and the like;
- A contract should be entered into between your organisation and the volunteers;
- Volunteers should be given forms for parents/guardians/significant others and victims to sign confirming that they have been informed of the arrest and detention and that they are prepared to attend assessment and/or court on a certain date;
- Volunteers should be asked to attend Juvenile Justice Forum (JJF) meetings as well as Arrest and Awaiting Trial sub-committee meetings (if these committees exist in your area.)
- If JJF's do not exist volunteers could be the ideal people to promote their establishment

Suggestions for the volunteers

- You should go through the pol. 8 (cell register) prior to entering the cells to see who is new in the cells;
- Arrange to speak to new intakes in private so that you can explain that you are here to help them: if they don't want to inform their parents or if their parents are not around, see whether you can get them to reveal the details of any other significant adult in their lives. ***Remember that these children are probably quite traumatised by the fact of their arrest and detention;***
- The parents of the children may be shocked when you arrive at their homes/telephone them to inform them that their child has been arrested so be duly sensitive and explain why they should go to assessment or to court;
- Only ask parents/guardians to sign forms once you have finished your explanations;
- Make sure that you know who you are talking to because sometimes the child will give you an address which is that of his/her cousin/sister or some other relative: don't assume that you are talking to the right person;
- You may have to do some 'detective work' before you find out where the child's parent or closest relative or significant other resides;
- If the person that you visit refuses to sign the form, spend some time with him/her finding out what his/her feelings are and why s/he does not wish to support the child: ask if s/he would like to come and talk to the person who does the assessment;
- If you are tracing a victim take care to explain why his/her presence is necessary at court (you should get this information from the person who requested you to do the tracing).

SUMMARY

- Making detention a last resort option means that alternatives to detention should be considered, such as bail, supervision in the community, release on own recognisance and placement with a family.
- The United Nations Rules for the Protection of Juveniles Deprived of their Liberty give suggestions for the ideal conditions where children are detained.
- Regular visits to cells and telephone calls to police stations are vital for monitoring purposes.
- In Windhoek the LAC makes use of community based volunteers to trace parents/guardians/significant others and victims. The volunteers visit the cells early on a Sunday morning and find out whose parents/guardians have not been traced. They then try to trace them.

CHAPTER 4: ASSESSMENT ³²

This chapter refers to the model of developmental assessment, (used in South Africa), and makes suggestions for an assessment process, which involves child, family, victim and community in a participatory and holistic way.

Most of the information in the chapter comes from a training manual developed in South Africa (*Developmental Assessment of Children, Youth and Families, An Integrated Course for the Child and Youth Care System*) and is reproduced with the kind permission of the South African Department of Social Development.

Some suggested definitions for assessment

- *‘Assessment is a process of evaluation of the child, his or her home circumstances and the circumstances surrounding the commission of the offence.’³³*
- *‘Assessment is the tool to appropriately connect developmental needs and challenges to resources’.³⁴*

Suggested overall goal of assessment

A suggested overall goal is to determine *‘the least restrictive, most empowering environment and programme which is suitable to the child and/or family and/community’s needs.’³⁵*

Developmental assessment

Developmental assessment is a tool to focus on the child’s strengths, rather than on making a diagnosis based on problems. It is community based and encourages the participation of children, families and communities.³⁶

Primary purpose of pre-trial assessment

A suggested primary purpose is the *‘collection of important background information about the child and the case, and the synthesis of that information into motivated recommendations about how the case should proceed.’³⁷*

Some specific duties in the process of pre-trial assessment

Specific duties could include the following:

- estimating the probable age of the child;
- establishing the prospects for diversion;
- determining whether the child is in need of care and whether the case should be transferred to the children’s court;
- making recommendations regarding the placement of the child (if s/he is still in detention at the time of the assessment).

Due process and the presumption of innocence

- Diversion is voluntary and the child must give free and informed consent to it;
- Diversion is based on acceptance of responsibility for the harm caused by the offence. The person conducting assessment must assess whether or not the child accepts responsibility for the offence;
- If the social worker (or other person doing the assessment) obtains additional information, after consultation with someone who was not present at the assessment, the child must be informed of such additional information;
- Assessment should be carried out with respect to a child's privacy;
- Assessment must be conducted in the child's presence;
- The social worker (or other person conducting the assessment) must encourage the active participation of the child during the assessment process;
- The child must be informed of the contents of the assessment report;
- The child must never be compelled into admitting guilt;
- There should be enough evidence to prosecute (if in doubt ask the prosecutor or a lawyer from the LAC).

Multi-disciplinary assessments

Conducting a multi-disciplinary assessment does not mean that the child should be subjected to a cross interrogation by a panel of 'experts'. The challenge is to be flexible and ensure that information is checked with colleagues, elders in the community, teachers, ministers or others who are relevant to the particular child and who could give constructive input into the process. Since no-one is viewed as an expert, one person alone should never make a decision about what should happen: rather the plan should be created with input from other relevant people.

Suggestions for starting to gather information

Find out who is important in the child's day to day life. This can include teachers; community elders; parents; siblings; social workers and child or youth care workers.

Judging or labeling

This is not a purpose of assessment. Labelling can destroy an individual, especially a child who is already vulnerable.

Suggestions for what you should be trying to find out

- You should aim to find out what the child's strengths are.
- Find out whether the child has any particular skills.
- What does the child need to do/know in order to be able to 'experience him/herself as a whole person?'
- What life experiences lead him/her to the current situation?
- Which appropriate resources are available to meet the child's needs?

Assessing without providing resources to meet assessed needs will have a negative effect on the child.

Important participants

A restorative justice approach gives the child and his/her family a central place in the assessment process and in making decisions about the proposed plan of action. Children, families and communities should participate fully in the assessment process, decisions and programmes: they must make the main decisions and must be empowered to do this.

Suggestions for gaining the child's trust

- The preliminary focus should be on enabling him/her to feel safe and comfortable with you, on both an emotional and physical level;
- After an arrest the child and his/her family will usually be in crisis and you should try to be sensitive towards this;³⁸
- If at all possible don't assess a child who is handcuffed;
- Don't make the child stand throughout the assessment process;
- Make sure that the child is not hungry or thirsty during assessment;
- Make sure that s/he is not too cold or too hot;
- Ensure that there is a comfortable and safe place to wait for the assessment to take place;
- Respect the child's fundamental rights to information, privacy and dignity.

What else can you think of? What would make you comfortable? Try to put yourself in the position of the child.

What happens after assessment?

Assessment should always be followed by, or result in, a plan which is implemented and regularly evaluated.³⁹ Remember that the assessment process will have an impact on the child: try to make it a positive rather than negative impact. Recommendations to the court and/or placement recommendations will have consequences for the child.

What criteria should you take into account in making a recommendation about the level of restriction to be imposed on a child?

- Safety (of the child and the community);
- The caring capacity of the child, family and caregivers;
- What the law says;
- The child's needs;
- Risk factors⁴⁰: the risk to the child of staying in the police cells; the risk to the community if s/he is released; the risk to the child if s/he is not diverted etc.

Developmental assessment: a new framework

Different Levels of Assessment

South African experts have identified 4 different types of intervention in their child and youth care system: prevention; early intervention; intervention in terms of the statutory process and intervention in terms of the 'continuum of care services' (i.e. once a child has been placed somewhere away from home).⁴¹ Depending on which level is being addressed by the assessment the focus is slightly different. Early intervention; intervention in terms of the statutory process

and intervention in terms of the ‘continuum of care services’ are described here in the hope that they will assist you in creating a framework for conducting assessments. The intention is not to be prescriptive since different places will have different circumstances, differing needs and differing capacities.

‘Early intervention’ assessment

The objectives of assessment at this level can include an understanding of the strengths and issues that are facing the family; making an effective recommendation in regard to diversion; planning and facilitating an appropriate programme. (This list is not exhaustive). The way that assessment is conducted at this level depends on the time and personnel available but the best interests of the child should be of paramount consideration.

Think of creative ways to involve other people in the assessment process: e.g. volunteers from the community; elders; church ministers; child and youth care workers and school councillors.

‘Statutory assessment’

In this situation the child faces some sort of statutory proceeding for example a criminal trial or a children’s court inquiry. Assessment at this level should take into account any earlier level assessments that have been conducted so that the child does not have to go through unnecessary repetitive procedures. In depth communication between roleplayers is vital. The multi-disciplinary nature of assessment is important at this level.

Assessment in terms of ‘continuum of care services’

Assessment at this level must include a plan for the care of the child while in the placement, regular evaluation of the plan and recommendations regarding the least restrictive and most empowering options in terms of sentence, transfer and /or programmes. The principle of preserving families and reintegration should always be central. There should always be justifiable reasons, based on regular recorded assessments which state why the child should remain in a particular placement (i.e. one that is away from his/her family).

Assessment Guidelines

Suggested guidelines

Obviously you will have your own personal style of conducting an assessment process but in general you could:

- Decide on what you are trying to achieve from the assessment;
- Try to listen to and understand what the child and family is telling you;
- Not sit in judgement;
- Listen to the child’s story (this may be a long process, depending on the level);
- Get the necessary information, using a team approach;
- Make a plan together with the child and his/her family;
- Find out whether the action, decision or programme (i.e. the recommendation that you make); makes sense to the child;
- Report to the courts if necessary;

- Implement the plan and conduct regular reviews and follow up;
- Try to gain the child's trust: remember that s/he is vulnerable.

Are there any questions I could ask or comments I should make?

Nothing is set in stone but you could say:

- 'Tell me about your experiences?';
- 'I don't really understand what you mean?';
- 'Is that what you mean?';
- 'That must have been terrible?';
- 'Shame, what an experience to go through?';
- 'That must have been hurtful, scary, frightening etc. etc.';
- 'Is this what happened?';
- 'Do I understand you correctly?';
- 'So this is what happened....?';
- 'Could you give me more information about how you felt, about what he did?'

Don't threaten, shout, judge, moralise or lecture.

Try to find the child's strong points as well as the areas where there are specific needs.

Making the child feel comfortable

- The physical environment of the place where the assessment is being carried out should be comfortable and non threatening, i.e. 'child friendly';
- Offer the child a snack or drink (you should have some on hand);
- Tell the child where the bathroom is if s/he needs it;
- The room where the assessment is carried out should be neither too hot nor too cold;
- The waiting room must be comfortable;
- Unnecessary waiting should be avoided;
- The child and his/her family should be given information about the assessment process;
- The child's dignity and privacy should be respected.

Ideas for developing a plan for the individual child

- Be aware of which resources are available and how they work;
- Make the information available to the child and the family and facilitate their access to the service;
- The child and/or family should make the decision to engage in the programme based on **informed consent**;
- If no suitable programme is available try to design and implement a programme which is appropriate for the child and/or family.

Some important questions for you to consider before you develop an intervention programme: <i>which organisations, relatives, community members and the like have been consulted during the assessment process and in drawing up the plan? How has the child and/or his/her family been involved in the assessment process and in drawing up the plan?</i>

When does assessment end?

Assessment does not end when you have finished filling in the forms or when the child leaves your office but when ‘*a developmental plan to address the assessed needs has been implemented and evaluated*’.⁴² This means that assessment continues after the child has left your office, until such time as s/he has completed the diversion programme and you have followed up with him/her at a later stage to check that everything is still okay. Assessment should always be followed by a plan which is implemented: even if the plan just involves a simple apology.

If the child says that s/he is not guilty and is sent for normal trial is my role over?

No, your role is not over. When a child is sent for normal trial s/he is entering another level of the system in terms of which s/he faces a court proceeding which may result in imprisonment or some other sentence, if found guilty. The court should make sentencing decisions based on a pre-sentence report which should also contain a recommendation. ***This report should be the outcome of a proper in depth assessment with the child.***⁴³ ***Assessment in terms of level 2 and 3 (i.e. early intervention and statutory process) should be viewed as part of the same process.***

SUMMARY

- Specific duties in the process of pre-trial assessment could include the following:
 - ✓ estimating the probable age of the child;
 - ✓ establishing the prospects for diversion;
 - ✓ determining whether the child is in need of care and whether the case should be transferred to the children’s court;
 - ✓ making recommendations regarding the placement of the child (if s/he is still in detention at the time of the assessment).
- It is very important to ensure due process and the presumption of innocence when assessing whether a child is eligible for diversion .
- The challenge of carrying out a multi-disciplinary assessment is to be flexible and ensure that information is checked with other people who are relevant to the particular child and who can give constructive input into the process.
- A restorative justice approach gives the child and his/her family a central place in the assessment process and in making decisions about the proposed plan of action.
- Assessment should always be followed by, or result in, a plan which is implemented and regularly evaluated.
- Developmental assessment is a new framework for assessing children. It is strengths based. South African experts have identified 4 different types of intervention in their child and youth care system: prevention; early intervention; intervention in terms of the statutory process and intervention in terms of the ‘continuum of care services’ (i.e. once a child has been placed somewhere away from home). Depending on which level is being addressed by the assessment the focus will be slightly different. This framework may be of use to you when conducting assessments.

- Before you develop an intervention programme you could consider which organisations, relatives, community members and the like have been consulted during the assessment process and in drawing up the plan. Another question to consider is how the child and/or his/her family been involved in the assessment process and in drawing up the plan.
- Assessment should continue after the child has left your office, until such time as s/he has completed the diversion programme and you have followed up with him/her at a later stage to check that everything is still okay. Assessment should always be followed by a plan, which is implemented: even if the plan just involves a simple apology.

CHAPTER 5: PRE-TRIAL DIVERSION

General points about pre-trial diversion programmes

Aim of diversion

Diversion aims to keep children out of the criminal justice system, whether at pre-trial/post trial stage. If at all possible children should be ‘*channelled away from the formal court system and into reintegrative programmes*’.⁴⁴

Does there need to be a formal programme?

Pre-trial diversion is generally regarded as referral away from formal court procedures⁴⁵: it does not necessarily entail the establishment of a formal programme since it may include cautioning, counseling; supervision, compulsory school attendance and many other options.⁴⁶

What is a diversion programme?

Any programme which strengthens and supports a child’s needs so as to effectively divert him/her from the criminal justice system is a diversion programme. If possible a diversion programme should aim to do some or all of the following:

- Impart skills;
- Aim to heal relationships especially the relationship with the victim;
- Aim to ensure that the child understands the impact of his/her behaviour on others;
- Be accessible to children in terms of location;

Corporal punishment and public humiliation should be banned from diversion programmes.

Problems to bear in mind

- There is a risk that a child will be sent to a programme because it is a convenient option i.e. because a particular programme is running a child will be sent to it.
- Children and their families are not always given enough detail about the proposed diversion option: they need to be able to give **informed consent** to participate in the programme.

Some criteria to take into account when making a referral to a particular programme

- Programmes should meet a child’s needs and the needs of the individual child must be taken into account when making a referral;
- The dignity and well being of the child should be promoted;
- The diversion option should be appropriate to the child’s age and maturity; develop his/her self worth and if possible, impart useful skills;⁴⁷
- Diversion options should not interfere with a child’s schooling;
- Remember to always take into account the application of the *least restrictive principle*.

Try to find out about the programmes and resources in your area

Life skills programme

Pioneered by NICRO

This programme is based on the work of a South African organisation called NICRO (National Institute for Crime Prevention and the Reintegration of Offenders). NICRO has produced various manuals on the content of the programme and the most recent is called '*Mapping the future. Empowering the youth.*'

Aims of the LSP

The programme aims to assist children in making the correct choices, even in a difficult situation.⁴⁸

Principles of the programme

- Parents and/or guardians and/or significant others attend the first and last sessions of the programme;
- The programme is an interactive and participatory process, involving all participants;
- The programme is held in a non threatening environment;
- The programme does not aim to blame or judge but rather to create something positive about past events;
- The programme is based on reality i.e. it takes into account the socio-economic and cultural circumstances within which the participants find themselves: this means that it may need to be adapted depending on who is participating;
- The detail and content of the programme are flexible and based on the needs of participants.

The programme is aimed at children who are at risk and who have broken a rule or law. ⁴⁹

Content of the programme

The programme contents are contained in the NICRO manual: *Mapping the future. Empowering the youth.* You can however modify the programme to suit the participants' needs. The LAC has added a weekend component to the programme in terms of which young people are taken to a venue outside Windhoek for the weekend.

Guidelines for facilitation⁵⁰

- It would help if you had workshop experience but this is not essential. What is essential is that you must have the **ability to listen and not lecture**;
- Realise that some of the participants may be on the defensive because they feel threatened: don't make their situation worse;
- Be sensitive to what the participants are telling you about their needs and adapt the programme to meet their needs: **be flexible**;
- Ask for regular feedback from participants and co-facilitators as regards your facilitation.⁵¹
- You should always be on time;
- Ensure that you plan the sessions in accordance with a timeframe which should be adhered to;
- Go for depth: rather discuss fewer things in depth than many things in a superficial way;
- If you use role-plays you should 'de-role' people afterwards;⁵²

- Be warm to the participants, show your humanness and don't be aloof from the group;
- Tell participants how well they are doing: don't be negative;
- Discourage competitiveness amongst group members;
- Ensure that the physical environment is comfortable, e.g. chairs should be in a circle or participants should sit on cushions;⁵³
- The group's needs and the formally agreed on programme should guide the proceedings, not your needs as facilitator;⁵⁴
- Rules should be set at the start and these rules should be negotiated with the group. Some examples are: giving everyone an equal opportunity to talk; listening to others when they talk; adhering to punctuality; not allowing absence from all or part of the sessions and confidentiality;⁵⁵
- Encourage feedback and inward thinking: this can be done by asking participants to keep a journal or complete an evaluation form;
- Facilitators need to be clear and concise when giving instructions and need to understand the material that they are using;
- If you decide to use co-facilitators then they should also be involved in the planning of the workshops: giving different messages is counterproductive;
- If you are departing from the original plan this should be done by agreement with the group since unmet expectations can lead to disappointment;⁵⁶
- Participants should do most of the talking and the facilitator should be a good listener;
- As a facilitator you need to be organised;
- Be sensitive to the needs of the participants and be non-judgemental;
- Don't react negatively or take things personally if participants state that they are dissatisfied with something that you are doing;
- If conflict arises you should keep calm and discuss ways of resolving the conflict with the group;⁵⁷
- Debrief and relax after facilitation since it is very draining;
- Don't rush towards the end of the workshop: give participants a chance to ask questions and give feedback;
- Don't be sarcastic or insulting to any group member – no matter how irritated you might get;
- Always give 100% of your attention to the group - even when they are engaged in activities;
- As a facilitator you should keep your own journal so that each session is a learning experience for you as well.

*'Shoddy presentation is a sign of disrespect for the group, and reflects disorganisation on the part of the facilitator. If a workshop starts late, or if facilitators waste valuable time and energy looking for equipment or make last minute handouts and get the pages all mixed up, they could lose the group's trust and attention.'*⁵⁸

Pre-trial community service⁵⁹

What is pre-trial community service?

It is a pre-trial diversion option in terms of which the offender works a number of hours at a non-profit organisation in his/her free time without payment.⁶⁰

Primary function

The primary function of pre-trial community service is '*punishment by taking away leisure time*'.⁶¹ Pre-trial community service and the life skills programme serve different purposes and are not mutually exchangeable. **Pre-trial community service is not a treatment programme.**

What type of institutions should serve as placement agencies?

The placement agency should be in the community where the proposed server resides so as to avoid unnecessary transport problems; it should be a non profit organisation; a government agency or department.

What do you want from the placement agency?

- Adequate supervising of the child;
- The designation of a service supervisor;
- A non-authoritarian but firm approach from the supervisor;
- An agreement to return forms containing time-sheets once the service is completed;
- The ability to praise;
- The idea is not that the child's free labour should replace paid positions.

Suggested criteria for referring someone to pre-trial community service

- The child should be 14 years or older (so as to avoid conflicting with the provisions of the Labour Act);
- The child must freely admit to having committed the offence with which s/he is charged and be willing to perform the unpaid work (see under assessment);
- The child should be able to make arrangements in respect of transport to and from the place where s/he is required to perform the service;
- The child should have no physical or mental disabilities which prevent him/her from carrying out the service although the decision should be made in conjunction with the child: e.g. it should not be unilaterally assumed that just because the child has a physical disability that s/he is totally unsuitable for community service;
- Try to find out what the child's interests are so that s/he can be linked to a placement which suits personal preferences;
- You should know exactly what type of work the child will be performing at the agency and inform the child accordingly (remember that pre trial community service is voluntary and this involves informed consent on the child and parents' part).

Some factors to take into account when making a placement

- Look at the day and time which suits the server (i.e. if the child is schoolgoing the service should not interfere with his/her schooling and should possibly be performed over weekends);
- Look at the server's hobbies, special interests or skills;
- Find out about the availability of transport;
- Find out about the child's preferred type of work and the type of work that s/he would prefer not to do;
- Find out about the child's health (physical condition and/or drug or alcohol use);
- Find out about previous convictions;
- Find out about the child's previous experience with community service;

- Find out whether the child has a fixed residential address (it is pointless to refer someone who lives in Rundu to community service in Windhoek);
- Find out whether the child has ever had counseling or wants any;
- Find out about the support structures that s/he has i.e. family, church and significant others;
- The placement agency will need to be notified in advance so as to avoid the situation where a server just ‘rocks up’ without any advance preparation having been made.

How many hours should be served?

It is not easy to determine the number of hours that should be served because there is no policy or law on this. According to the NICRO guidelines the average amount is between 40 –60 hours but see also Chapter 6 in this regard.

The need for a contract with the server

The contract should stipulate:

- the number of hours that the server will work;
- the name of the placement agency;
- the date and time that the work will start;
- what will happen if the server does not fulfil the conditions (i.e. that the matter will be referred back to the prosecutor).

The contract should be signed in triplicate (3 times): 1 copy to the server; 1 to the placement agency and 1 to be kept by the person/organisation doing the referral. The child’s parent or guardian will need to sign an indemnity form indemnifying the placement agency from any claims arising out of injuries sustained during community service.

What to give the placement agency

The placement agency will need a copy of the contract and time sheets so that the supervisor can record the number of hours worked and report back to the referral agency when the contract is completed.

What happens when the service is completed?

The placement agency should return the time sheets to you and you should inform the prosecutor that the child has complied with the diversion option.

‘Repeat offender’ programmes

There are presently no programmes which are specifically aimed at ‘repeat offenders’ in Namibia but the Legal Assistance Centre is in the process of piloting a programme which was developed by NICRO, which aims to fill this gap. The programme is called the ‘Journey programme’.

Selection criteria

The Journey programme is targeted at ‘high risk’ youth who are not younger than 14 years.

What is a 'high risk' youth?

It is hard to pinpoint a definition but where the youth in question has more than 1 problem and has committed offences on more than one occasion s/he could be classified as 'high risk'. Most participants in the South African programmes come from poor areas where they are exposed to drugs and violence: some of them even use drugs themselves. They have dropped out of school at an early age, have low literacy levels, have no skills, are unemployed and have committed relatively serious offences (e.g. assault GBH; housebreaking; robbery; dealing in drugs etc.⁶²

Programme structure

There are distinct phases to the programme. There is a life skills phase; an outdoor adventure phase; a reintegration phase (e.g. vocational skills training) and a restorative phase (e.g. pre-trial community service or family group conference or victim offender mediation). All the phases are integrated into each other, for example the content of the life skills phase should also aim to prepare participants for the outdoor adventure phase. You could also include a mentoring phase in terms of which the person is mentored by someone after the programme for an agreed upon period of time. (Mentors should receive ongoing training and supervision).

SUMMARY

- Diversion aims to keep children out of the criminal justice system, whether at pre-trial/post trial stage. It does not necessarily entail the establishment of a formal programme.
- Children should be given enough detail about the proposed diversion option: they need to be able to give informed consent to participate in the programme.
- Diversion options should not interfere with a child's schooling and should if possible address the child's needs.
- The life skills programme is based on a programme developed by NICRO. It aims to assist children in making the correct choices, even in a difficult situation.
- Pre-trial community service is a pre-trial diversion option in terms of which the offender works a number of hours at a non-profit organisation in his/her free time without payment.⁶³ It is not a treatment programme. It's primary function is 'punishment by taking away leisure time'.
- Pre-trial community service and the life skills programme serve different purposes and are not mutually exchangeable.
- There are presently no programmes which are specifically aimed at 'repeat offenders' in Namibia but the Legal Assistance Centre is in the process of piloting the 'Journey programme' which aims to fill this gap.

CHAPTER 6: REFERRAL CRITERIA FOR PRE-TRIAL DIVERSION PROGRAMMES

Different Levels

The lack of fixed criteria

Unfortunately there are no fixed criteria for making a referral to a specific diversion programme. The South African Child Justice Bill⁶⁴ and the first draft of the Namibian draft Juvenile Justice Bill have classified diversion options in terms of the level of restriction imposed by the particular option. This chapter discusses these levels.

Level 1

This is the least intrusive option and is 0 – 3 months in duration. It can include:

- an apology;
- a family time order;
- a compulsory school attendance order;
- a positive peer association order;
- a good behaviour order;
- an order prohibiting a child from visiting a certain place;
- a referral to counseling or therapy for up to 3 months;
- referral to a programme (such as the life skills programme) for up to 5 hours per week for 3 months;
- restitution.

Level 2

This is 3 – 6 months long. It includes:

- attending a programme for 8 hours per week for up to 6 months;
- up to 50 hours of pre-trial community service;
- payment of compensation of up to N\$ 500.00;
- a family group conference;
- victim offender mediation;
- a combination of any of the above options.

Level 3

This is 6 months - 12 months long. It includes:

- a programme with periodic (not continuous) residence requirements (a maximum of 35 nights) for up to 6 months;
- up to 250 hours of community service;
- compulsory attendance of a programme for up to 35 hours per week for a maximum of 6 months;
- referral to counseling or therapy in conjunction with any of the above.

What is a family time order?

This is an order which requires the child to spend a certain number of hours with his/her family.

What is a positive peer association order?

This order requires a child to associate (spend time) with people who can act as a positive influence.

What is a compulsory school attendance order?

This order requires a child to go to school every day for a specified period of time.

What is a good behaviour order?

This order requires a child to comply with certain standards of behaviour set out in terms of an agreement between the child and his/her family.

Factors to consider when making a recommendation

- Don't 'up-tariff' the child by selecting a diversion option from level 2 or 3 when s/he is a first time offender accused of a non-serious offence;
- Consider whether the option is appropriate in terms of the child's culture, religion; language; educational level and domestic circumstances;
- Consider whether the option is proportional: e.g. it is not proportional to send the child to a 6 months programme if s/he is a first time offender who has stolen a T shirt from Edgars;
- In deciding on proportionality you should take into account the nature of the offence, the child's personal circumstances and the interests of society;
- Assess the child's willingness to co-operate;
- Find out about the impact of the crime on the victim and the community;
- Does the child have previous offences;
- Does the child has a family and how strong is the family?

Monitoring of orders

If possible someone should be selected (either a social worker, community volunteer, youth officer etc) to ensure that the child carries out the order. This person should serve not so much a policing, as a supportive role to the child, in ensuring that s/he complies with the order.

How to Develop a Diversion Option⁶⁵

The most important thing is to think creatively especially when you are looking at level 1 options. Ask yourself how you can involve parents and families; what role can be played by schools and teachers; what about community groups; what about the church?

Where do I start?⁶⁶

First find out what is the situation in regard to children who are accused of crimes in your area (types of crimes; how often; ages; recidivism rates (i.e. how often do children reoffend?))

Secondly, identify potential stakeholders and involve them in the planning process; obtain support from local businesses; the prosecutor; magistrate; police; give them information about diversion, about why children should be treated differently from adults; establish which resources, skills and opportunities are available within the community; find out which programmes are already available.

Thirdly, decide who you are aiming the programme at (e.g. ages); decide how many participants you need to get started; be clear about the goals of the programme; decide on eligibility and referral criteria; what type of programme are you offering (e.g. life skills based; adventure based; community service; peer group based; mentor based; counseling based etc.); how long will the programme last; will parents and guardians be included; are you going to provide educational materials; will the programme be accessible in terms of culture, language and educational levels?

Fourthly, decide who will administer the programme; what skills do they have and what skills should they develop; provide training if necessary; plan for ongoing monitoring and support; prepare contracts, reporting schedules and other accountability documents.

Fifthly, include an evaluation component; decide on short term and long term assessment strategies.

Sixthly, decide what support will be available to participants; how long will support be available; what support will be offered to families, parents and guardians; who will offer this support; how will the support be monitored.

SUMMARY

- The South African Child Justice Bill and the first draft of the Namibian draft Juvenile Justice Bill classify diversion options in terms of the level of restriction imposed.
- Level 1 is the least intrusive option and is 0 – 3 months in duration. It includes a family time order; a compulsory school attendance order; a positive peer association order; a good behaviour order; an order prohibiting a child from visiting a certain place; referral to counseling or therapy for up to 3 months; referral to a programme (such as the life skills programme) for up to 5 hours per week for 3 months and restitution.
- Level 2 is 3 – 6 months long. It includes attending a programme for 8 hours per week for up to 6 months; up to 50 hours of pre-trial community service; payment of compensation of up to N\$ 500.00; a family group conference; victim offender mediation or a combination of any of the above options.
- Level 3 is 6 months - 12 months long. It includes a programme with periodic (not continuous) residence requirements (a maximum of 35 nights) for up to 6 months; up to 250 hours of community service; compulsory attendance of a programme for up to 35 hours per week for a maximum of 6 months; referral to counseling or therapy in conjunction with any of the above.
- It is important not to up-tarrif the child.
- Orders should be monitored so as to play a supportive role to the child.

- When developing a diversion option the most important thing is to think creatively especially in regard to level 1 options. How can you involve parents and families; what role can be played by schools and teachers; what about community groups; what about the church?

CHAPTER 7: VICTIM OFFENDER MEDIATION AND FAMILY GROUP CONFERENCES

Victim offender mediation (VOM)⁶⁷

What is victim offender mediation?

Victim offender mediation is the process of facilitating dialogue (talk) between the victim and the offender after a crime has been committed.⁶⁸ It is one of the central planks of restorative justice theory.⁶⁹

What is the objective of the dialogue?

The objective is to work out, with the assistance of a mediator, an agreement between the victim and the offender.⁷⁰

What type of agreement are we referring to?

The agreement could consist of a simple apology; monetary compensation; indirect compensation (e.g. performing some service for the victim); pre-trial community service and the like.

Preparation

You cannot simply conduct a VOM session by just telling the victim and offender to meet on a certain date.

- You should conduct separate preliminary meetings with the offender and victim in order to obtain consent for the joint meeting (if this is not possible then it is advisable to telephone the victim and explain the process);
- If the mediator is a different person to the person who conducts the assessment and makes the referral then s/he will need to introduce him/herself to the offender and the victim and explain what VOM is all about and what it aims to achieve;
- It is important to listen to the offender's story to get a better idea about what happened and to assess whether in fact the offender is accepting responsibility;
- Make sure that both parties agree to the VOM;
- Start to explore the possibilities of restitution (prior to the actual session).

Suggestions for facilitation of the meeting between the victim and offender

The meeting should take place in a comfortable place: there should be enough seating and the venue should be neither too cold nor too hot. The facilitator should first explain the groundrules, procedure and roles of each participant.

What are the groundrules?

- It should be emphasised that the proceedings are confidential and that none of the discussion is admissible in any subsequent court case;

- Each participant should allow the other person to speak openly and honestly about his/her feelings;
- The facilitator should facilitate and not dominate;
- The aim is to reach agreement, not to deepen the conflict by blaming or recrimination, and this should be emphasised from the start;
- The victim should have the first opportunity to speak and then the offender. After that each party can talk about their emotional feelings and experiences around the offence. Each party can then ask the other one questions about the crime;
- The victim should understand why the offender committed the crime, the effect of arrest and detention (if this took place) on the offender and the offender's reaction to the victim's story;
- The offender should understand the consequences of his/her actions on the victim: this includes material loss, physical loss; emotional damage; fear; anxiety; anger and other feelings which were engendered by the crime;
- The victim's response to the offender's story should be established. Reconciliation should then be able to take place and there should be consensus about the agreement.
- The mediator should ask the offender what type of reparation s/he is prepared to offer and the victim should have a chance to respond to this. If necessary a bargaining process can take place. Once there is consensus about the agreement then it can be reduced to writing.
- You could also consider giving both parties an evaluation form to evaluate your mediation skills.

Reparation need not be monetary
--

The written agreement

If the reparation is monetary then the details of payment need to be documented, for example will payment be made in installments or in 1 lump sum? The date on which the final payment (or interim payments) are to be made should be included in the agreement. If pre-trial community service or a service to the victim is to be rendered then the type of service should be stipulated together with a date for completion. Any other specifications should also be included. There should be at least 3 copies of the agreement: 1 for the mediator; 1 for the victim and 1 for the offender.

Monitoring of the agreement

The mediator (or some other person) should monitor the agreement, to see that both parties keep to their side of the bargain. If any problems occur follow-up work may need to be done. Once the agreement has been discharged the prosecutor and/or referral agency should be informed.

Don'ts

- You should not just telephone the victim and tell him/her to come to court on a certain day without explaining what VOM is all about;
- You should not force either the offender or the victim to agree to something;
- You should not keep either the offender or the victim waiting for the VOM session to start;
- You should not be judgemental towards any party;
- You should not interrupt people when they are speaking;
- You should not belittle any of the participants;
- You should never show disrespect.

Why is VOM also sometimes referred to as consensus decision making?

The aim is to reach an agreement: agreements are based on a 'meeting of minds' which is also known as consensus.

Selection guidelines for referral to VOM

- Criminal charges resulting from family conflict should be avoided since they are usually of complex origin and will need some other type of intervention (for example a family group conference, counseling or some other therapeutic service);
- Violent offenders are also not suitable (this includes crimes of sexual violence such as rape);
- The offender must have accepted responsibility for the offence (i.e. s/he is planning to plead guilty);
- There should be enough evidence to secure a conviction (if you are unsure of this you can always discuss this with a prosecutor);
- There must be an identifiable victim (i.e. not a shop);
- The losses/damages should be capable of easy identification;
- The conflict levels should not be too high.

Family Group Conferences⁷¹

What is a family group conference (FGC)?

A family group conference, like the VOM process, puts victims and offenders in a central place in trying to right the wrong which has been caused by the offence. Unlike VOM, which involves the victim and offender only, the FGC involves the victim and offenders' families and relevant community members as well, i.e. it is bigger than the VOM.

The FGC is an example of 'reintegrative shaming'

The FGC serves as a 'reintegration ceremony'⁷². Disapproval of the offence is communicated but the identity of the actor is preserved as good. Shame is transmitted (communicated) but within a framework of respect for the offender. Repair work is engaged in.⁷³

The preparation phase

This is a vital phase. It serves 2 purposes: the giving of information about the FGC and the obtaining of information for the FGC. The organiser should speak to both the offender and victim, preferably at their homes so that they feel comfortable. A detailed description of what can be expected should be given. Find out from both parties who they would like to be present at the conference: supporters can include immediate and extended family members; church ministers; teachers; youth leaders and social workers. You should invite these people yourself to ensure that they attend. The organiser could also ask both the victim and the offender whether there is any cultural or religious ceremony that they would like to be acted out during the FGC, e.g. starting the FGC with a hymn.

The offender

- Find out what happened;

- Why did s/he commit the offence?
- Was anyone else was involved?
- What are the family dynamics?
- How is his/her school performance?
- Find out about the his/her social relationships (e.g. friends?)
- What is his/her attitude is towards reparation?
- Ask about his/her support networks?
- Find out what s/he enjoys doing;
- Start building a relationship of trust before the FGC takes place.

The offender's family

- The procedures and principles should be explained and you should also talk about family issues and stress the importance of being at the FGC to support the child;
- Find out from the family when the child's behaviour began to change;
- Find out when the offending started;
- Find out whether there have been previous problems with the child getting into trouble with the law;
- Find out whether the family has had any contact with social services or any other welfare agency;
- Find out whether the family has any support networks and if so, what they are;
- Find out about any unsuccessful previous interventions in order to avoid repeating the same mistakes.

Preparing the victim

- The victim should be thoroughly prepared;
- Give an explanation of what an FGC is all about;
- Find out about the victims' feeling about the crime;
- Find out which losses s/he suffered;
- Explain that s/he may bring as many supporters as s/he wishes;
- Find out what the victim's expectations are and make sure that they are not unrealistic (i.e. the victim should not attend the FGC solely in the expectation of getting monetary compensation);
- Remember that the victim should be treated with care and respect.

Preparing outside supporters

Outside supporters also need to be thoroughly prepared and the importance of outside support for both victim and offender should be stressed. It may well be the community members outside of the families who can give concrete input into the final plan.

Involvement of the police

There are various FGC models: in Australia the police and prosecuting authorities play central roles in the organisation and facilitation of the FGC. In South Africa the police also attend the conference. If you decide to include the police then they will also need to be thoroughly prepared. The ideal person to attend is the investigating officer. His/her role could include reading out the charge and giving input as to the impact of the crime.

If the victim does not want to attend the FGC

It is very important for the victim to be present, however if the victim refuses to attend you cannot compel this. In such a situation you should ask whether s/he will be willing to give a statement (known as a victim impact statement) telling about the effects of the crime and what s/he would like to see happen (e.g. reparation).

Preparation of the facilitator

If the organiser and facilitator are different people then the facilitator should be thoroughly briefed by the organiser. The facilitator will need to know about the details of the meetings with both the victim and the offender, e.g. issues such as feelings about the offence and family dynamics.

Timing

Generally the court case will be remanded for the FGC to take place. If possible do not hold the FGC on the day before the case since this will place too much pressure on you to reach an agreement/plan. There also needs to be time to have a report drawn up and given to the court and to all the parties. The FGC should take place at least a week before the court date. The FGC should also take place at a time that is convenient for all the participants: this often means over the weekends or after-hours during the week.

Location

The venue is important and should never be too small. There may also need to be smaller rooms where private discussions between family members can take place, if necessary. As such, it is important for the organiser to find out how many people will be attending. The availability of transport to participants needs to be taken into account in selecting a venue. The venue should be neutral and unthreatening: e.g. having a FGC at a police station or at the court may not meet this requirement. The decision about the venue should be made together with the intended participants.

Language

The organisers and facilitators need to be proficient in the languages of the participants: if they are not the services of an interpreter should be engaged but the interpreter will also need to be thoroughly briefed. If an interpreter is going to be used then s/he could come from the local community: it is important that every single word gets translated so that everyone knows what is being said and by whom.

How long is the average FGC?

This depends on various factors, e.g. the number of offenders; the complexity of the issues and the like. In general you should set aside 4 hours per FGC and the participants should be aware of this. Refreshments should be served.

More than 1 offender

Often in cases involving children, where peer pressure plays a significant role, there will be more than 1 offender. In such a case the FGC's can be held separately or together, depending on whether the victim feels like attending more than one process. The organiser also needs to ascertain whether 1 of the offenders may be scared of the other offenders: if this is the case then separate FGC's should be held. It may be useful to have co-facilitators if there is a large group but then the facilitators must prepare very well among themselves so that they know who is going to play which role during the FGC.

What is addressed at the FGC?

- Telling the story from the perspective of all parties;
- Healing relationships (between the victim and offender; between the offender and his/her family and between the offender and the community);
- Developing a plan to prevent reoffending.

What type of plan should result?

Ideally the plan should aim to:

- address the consequences of the offence for the victim (try to right the wrong);
- address the consequences of the offence for the offenders' family;
- address the consequences of the offence for the community and;
- prevent re-offending.

Whose responsibility is it develop the plan?

The whole idea of an FGC is that it is a mode of empowering the family and community: they work out the plan thereby enhancing their own creativity by building on strengths. The facilitator should not inhibit this process by giving too much help.

Monitoring the plan

The plan should be monitored - ideally by a responsible family member who should report to the organiser- but if this is a problem, due to the family lacking a telephone or finding it difficult to write a report, then the organiser can also be the monitor (by phoning or visiting the family on a weekly basis). The facilitator can also be the monitor. The monitoring plan should be clear. Monitoring involves a strong supportive element. Reports will also need to be given to the court as regards the implementation of the plan.

Guidelines for good practice

Some suggestions

- Ensure that the professionals involved are committed to and understand the goals and philosophy of the FGC;
- Ensure that the professionals are trained in a way that is appropriate to local culture: i.e. the culture of the participants;

- Ensure the attendance of those who are important in the child's life and who can contribute towards his/her future;
- Brief participants thoroughly before the process: tell them about their roles and give them information;
- Hold the conference in a neutral venue where all participants feel comfortable;
- Allow participants to really participate, to have a real say and to have control over what is happening;
- Flexibility of process is crucial;
- Provide support for participants before, during, and after the conference;
- Allow families to have private time together;
- Ensure that outcomes are adequately reviewed and monitored;
- Make sure that there are adequate resources to implement agreed on plans;⁷⁴
- Avoid degrading language and focus on 'reintegrative dialogue'⁷⁵.

*'Stigma cannot be rooted out of confrontations between people who are angry and affronted by acts of rulebreaking. But the ratio of stigmatisation to reintegration can be shifted substantially by story-based training methods that focus on a few core principles – **empower the victim, respect and support the offender while condemning his act, engage the offender's supporters.** Just by having a process that is more victim-centred, problem-centred, and community orientated, rather than centred on the offender and his pathologies, we institute a logic that produces less stigmatisation and more reintegration.'*⁷⁶

More than 1FGC

When a single FGC fails you should schedule another one: the aim should be to not give up until success is achieved.

*'It would be naïve to expect that a one or two hour conference will change lives in an instant and irreversible way – a conference is a social activity, not a genie from a bottle. Rather the hope for the conference is that it will be a catalyst for community problem solving.'*⁷⁷

SUMMARY

- Victim offender mediation (also known as consensus decision making) is the process of facilitating dialogue between the victim and the offender after a crime has been committed.
- You cannot simply conduct a VOM session by just telling the victim and offender to come together on a certain date. You need to be prepared and to have talked to both victim and offender prior to their meeting.
- Groundrules should be laid at the start of the meeting.
- Reparation need not be monetary.
- The eventual agreement will need to be monitored.
- A family group conference is an example of 'reintegrative shaming' with the conference itself serving as a 'reintegration ceremony'. Like the VOM it puts victims and offenders in a central place in trying to right the wrong which has been caused by the offence. It involves the victim and offenders' families and relevant community members as well, i.e. it is bigger than the VOM.
- The preparation phase is very important, e.g. the offender, his/her family, the victim, his/her family, supporters of the victim and offender and the facilitator will all need to be thoroughly prepared.
- The size and location of the venue are also important.
- The FGC should aim to ensure that the story is told from the perspective of all parties; that relationships are healed and that a plan to prevent reoffending is produced.
- The plan should aim to address the consequences of the offence for the victim; the offenders' family; the community and prevent re-offending.
- When a single FGC fails you should schedule another one: the aim should be to not give up until success is achieved.

ENDNOTES

- ¹ Walgrave, L, 'Restorative Justice for Juveniles: Just a Technique or a Fully Fledged Alternative?', *Howard Journal Vol 34 No.3 Aug 1995*, 228.
- ² Messmer, H and Otto, H, 'Restorative Justice: Steps on the way to a good idea' in Messmer and Otto (eds), *Restorative Justice on Trial- Pitfalls and Potentials of Victim-Offender Mediation- International Research Perspectives*, 1.
- ³ Braithwaite, J, 'Restorative Justice', in Tonry (ed), *Crime and Justice- A Review of Research*, 3.
- ⁴ Haines, K and Drakeford, M, *Young People and Youth Justice*, 229.
- ⁵ Wright, M. *Justice for Victims and Offenders: A Restorative Response to Crime*, iv.
- ⁶ Haines and Drakeford, op cit, 230.
- ⁷ Haines and Drakeford, ibid.
- ⁸ Braithwaite, J., 'Shame and Modernity', *British Journal of Criminology*, Vol 33, No.1, 1.
- ⁹ Morris A, 'Something Old, Something Borrowed, Something Blue, but Something New? A comment on the prospects for restorative justice under the Crime and Disorder Act 1998', in *Criminal Law Review*, 21.
- ¹⁰ Braithwaite, J, 'Inequality and Republican Criminology', in Hagan, J & Peterson, D (eds), *Crime and Inequality*, 302.
- ¹¹ Christie, N. 'Conflicts as Property', *British Journal of Criminology*, 8, Vol 17, No.1, 1977.
- ¹² Christie, op cit, 9.
- ¹³ Morris, op cit, 19.
- ¹⁴ Morris, op cit, 19-20
- ¹⁵ Morris, op cit, 20.
- ¹⁶ Morris, op cit, 20.
- ¹⁷ Braithwaite, J 'Reintegrative Shaming' in Muncie J, McLaughlin, E and Langan, M (eds), *Criminological Perspectives, A Reader*, 433.
- ¹⁸ Walgrave, op cit, 239.
- ¹⁹ Walgrave, op cit, 240.
- ²⁰ Walgrave, ibid.
- ²¹ Super, G, *Mid-Term Review of The Bridge Projects A and B in Respect of Child Justice in the Hardap Region of Namibia*, 30.
- ²² Walgrave, op cit, 234.
- ²³ Walgrave, op cit, 233.
- ²⁴ Article 3.
- ²⁵ Article 12.
- ²⁶ Article 6.
- ²⁷ Article 2.
- ²⁸ Article 40(3).
- ²⁹ Sloth Nielson, 'Child Justice and Law Reform', in Davel (ed), *Introduction to Child Law in South Africa*, 404.
- ³⁰ Sloth Nielson, op cit, 404.
- ³¹ 9/3/49/3:9/6/2/8/2.
- ³² Most of the information in this chapter was taken from the South African Inter-Ministerial Committee on Young People at Risk, *Developmental Assessment of Children, Youth and Families, An Integrated Course for the Child and Youth Care System*.
- ³³ Sloth Nielson, op cit, 413.
- ³⁴ Inter-Ministerial Committee on Young People at Risk, op cit, 25.
- ³⁵ Inter-Ministerial Committee on Young People at Risk , op cit, 33.
- ³⁶ Inter-Ministerial Committee on Young People at Risk, op cit, 21.

-
- ³⁷ Inter-Ministerial Committee on Young People at Risk , op cit, 417.
- ³⁸ Inter-Ministerial Committee on Young People at Risk, participant notes , 1.
- ³⁹ Inter-Ministerial Committee on Young People at Risk, op cit, 32.
- ⁴⁰ Inter-Ministerial Committee on Young People at Risk, op cit, 1.
- ⁴¹ Inter-Ministerial Committee on Young People at Risk, op cit, 40 –45.
- ⁴² Inter-Ministerial Committee on Young People at Risk, op cit, 3.
- ⁴³ Inter-Ministerial Committee on Young People at Risk, op cit, 2.
- ⁴⁴ Children Social Justice cc, *Training for Arrest, Reception & Referral Centres*, Activity Three: Day 1 Documentation Pack.
- ⁴⁵ Inter-Ministerial Committee on Young People at Risk, op cit, 420.
- ⁴⁶ Inter-Ministerial Committee on Young People at Risk, *ibid*.
- ⁴⁷ Sloth Nielson op cit, 427.
- ⁴⁸ NICRO, *Mapping the Future, Empowering the youth*, 5.
- ⁴⁹ NICRO , *ibid*.
- ⁵⁰ NICRO, op cit, 9-19.
- ⁵¹ NICRO, op cit, 9.
- ⁵² NICRO, op cit, 10.
- ⁵³ NICRO, op cit, 10.
- ⁵⁴ NICRO, op cit, 11.
- ⁵⁵ NICRO, op cit, 11.
- ⁵⁶ NICRO, op cit, 12.
- ⁵⁷ NICRO, op cit, 14.
- ⁵⁸ NICRO, op cit, 13.
- ⁵⁹ Most of the information on pre-trial community service came from Muntingh, ‘Pre-trial community service’ in Muntingh and Shapiro (eds), *Diversions: An introduction to diversion from the criminal justice system*.
- ⁶⁰ Muntingh, op cit, 29.
- ⁶¹ Muntingh, *Community Service Orders: An evaluation of cases supervised in Cape Town between 1993 and 1994*, 51.
- ⁶² A. Ryklief , *Training of Facilitators in The Journey Programme*, NICRO, selection criteria.
- ⁶³ Muntingh in Muntingh and Shapiro (eds), op cit, 29.
- ⁶⁴ The information on the South African bill has been taken from Children Social Justice cc, *Training for Arrest Reception and Referral Centres*.
- ⁶⁵ Taken from Children Social Justice cc, *ibid*.
- ⁶⁶ Taken from Children Social Justice cc, *ibid*.
- ⁶⁷ The information on VOM was taken from Muntingh and Shapiro (eds), *Diversions, An Introduction To Diversion From The Criminal Justice System*.
- ⁶⁸ Muntingh and Shapiro (eds), op cit, 40.
- ⁶⁹ Marshall, T, ‘Grassroots initiatives towards restorative justice: the new paradigm?’, 252.
- ⁷⁰ Marshall, *ibid*.
- ⁷¹ Most of the information on Family Group Conferences was taken from Branken and Batley, *Family Group Conferences, Putting the wrong right, A Practice Research Study and Implementation Manual*.
- ⁷² Braithwaite and Mugford, ‘Conditions of successful reintegration ceremonies’, *British Journal of Criminology*, 1994, 142.
- ⁷³ Braithwaite and Mugford , *ibid*.
- ⁷⁴ Hudson J, Morris A, Maxwell, G and Galloway, B, ‘Concluding Thoughts’, *Family Group Conferences – Perspectives on Policy and Practice*, 233.
- ⁷⁵ Braithwaite and Mugford, op cit, 161.
- ⁷⁶ Braithwaite and Mugford, op cit, 167.

⁷⁷ Braithwaite and Mugford, op cit, 162.

REFERENCES

Braithwaite, J. (1993), 'Shame and Modernity', *British Journal of Criminology*, Volume 33, No.1, Winter,.

Braithwaite J and Mugford S, (1994) 'Conditions of successful reintegration ceremonies, Dealing with Juvenile Offenders', *British Journal of Criminology*, Volume 54, No. 2, Spring.

Branken N and Batley M (undated), *Family Group Conferences, Putting the wrong right, A Practice Research Study and Implementation Manual*, Pretoria: The Family Group Conference Pilot Project of the Inter-Ministerial Committee on Young People at Risk.

Children Social Justice cc (undated), *Training for Arrest, Reception & Referral Centres*, Department of Social Services, Arts, Culture and Sports of the North West Province, Republic of South Africa.

Christie, N., (1977), *British Journal of Criminology*, Volume 17, No.1.

Davel (ed) (2000), *Introduction to Child Law in South Africa*, Juta.

Hagan, J & Peterson, D (eds) (1995), *Crime and Inequality*, Stanford: Stanford University Press.

Haines, K and Drakeford, M (1998), *Young People and Youth Justice*, Houndmills, Basingstoke, Hampshire, London: Macmillan Press Ltd..

Hudson J, Morris A, Maxwell, G and Galloway, B (eds) (1996), *Family Group Conferences – Perspectives on Policy and Practice*, Annandale, Australia, Monesey, USA: The Federation Press, Criminal Justice Press, Willow Free Press.

Inter-Ministerial Committee on Young People at Risk (undated), *Developmental Assessment of Children, Youth and Families, An Integrated Course for the Child and Youth Care System*, mimeograph.

Marshall T, (undated) 'Grassroots initiatives towards restorative justice: the new paradigm?', mimeograph.

Messmer, H. and Otto, H. (eds) (1992), *Restorative Justice on Trial- Pitfalls and Potentials of Victim-Offender Mediation- International Research Perspectives*, Dordrecht, Boston, London: Kluwer Academic Publishers.

Morris, A. 'Something Old, Something Borrowed, Something Blue, but Something New? A comment on the prospects for restorative justice under the Crime and Disorder Act 1998' (2000), *Criminal Law Review- Restorative Justice under the CDA 1998*.

Muncie J, McLaughlin, E and Langan, M (eds) (1998), *Criminological Perspectives, A Reader*, London, Thousand Oaks, New Delhi: Sage in association with the Open University.

Muntingh L (1997), *Community Service Orders: An evaluation of cases supervised in Cape Town between 1993 and 1994*, Pretoria: HSRC.

Muntingh L and Shapiro R (eds) (1997), *Diversions: An introduction to diversion from the criminal justice system*, Cape Town: National Institute for Crime Prevention and the Rehabilitation of Offenders.

NICRO (2000), *Mapping the Future, Empowering the youth*, Cape Town: Juta and Co.

Ryklied A (2001), *Training of facilitators in The Journey Programme*, Cape Town: NICRO.

Super, G (2001), *Mid-Term Review of The Bridge Projects A and B in Respect of Child Justice in the Hardap Region of Namibia*, Mariental and Vienna: Austrian Development Corporation.

Tonry, M. (ed) (1999), *Crime and Justice- A Review of Research*, volume 25, Chicago, London: University of Chicago Press.

Walgrave, L, 'Restorative Justice for Juveniles: Just a Technique or a Fully Fledged Alternative?', *Howard Journal*, Volume 34 No.3 Aug 1995.

Wright, M. (1996), *Justice for Victims and Offenders: A Restorative Response to Crime*, Winchester: Waterside Press.