

THESIS

**TRANSFORMATION OF THE JUVENILE JUSTICE
SYSTEM:**

**A PARADIGM SHIFT FROM A PUNITIVE JUSTICE
SYSTEM OF THE OLD ORDER TO A RESTORATIVE
JUSTICE SYSTEM OF THE NEW DISPENSATION**

STUDENT: Lezelda Raymond (néé
Jacquire)

STUDENT NO:



SUPERVISOR:

Prof J J WILLIAMS

DATE:

15 October 2004

**RESEARCH REPORT PREPARED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE
DEGREE OF MASTERS PUBLICAE ADMINISTRATIONIS**

SCHOOL OF GOVERNMENT

UNIVERSITY OF THE WESTERN CAPE

TABLE OF CONTENTS

DEDICATION	VI
DECLARATION	VII
ACKNOWLEDGEMENTS	VIII
ABSTRACT	IX
CHAPTER ONE	1
The Problem of Restorative Justice	
Introduction	1
Background	1
Problem statement	4
Research methodology	5
Literature review	5
Methodology	7
Hypothesis	8
Definitions:	8
Transformation	8
Juvenile Justice System	8
Punishment	9
Restorative Justice	9
Diversion	9
Child	10
Age of Criminal Responsibility	10
Chapter outline	10
CHAPTER TWO	12
Legislative and Policy Framework Pertaining To Juvenile Justice: Shifting From A Punitive Paradigm to A Restorative System	
Introduction	12
Understanding Youth related crime	12



Legislative and policy framework	14
The Inter-Ministerial Committee Policy Framework:	17
Arrest	19
Reception and Referral	19
Secure Care	20
The Child Justice Bill	21
Diversion	22
Theoretical Models of Juvenile Justice:	24
Juvenile Justice Model	24
Welfare Administration Approach	24
The Community Corporist Model	25
Punitive and Restorative Justice:	26
Punishment	26
Theories of punishment:	28
Utilitarian Theory	28
Retributive Theory	28
Development Theory	29
Rehabilitation Theory	29
Penal options:	30
Imprisonment and Prisons	30
Whipping	34
Deterrence is a Myth	35
Punishment as a deterrence	35
Restorative justice	36
Origin and Youth Justice in New Zealand	36
South African Experience	38
Principles of restorative justice	41
Sentence with a restorative justice element	41
Contrasting restorative and retributive justice	42
Advantages of Restorative Justice	46
Disadvantages of Restorative Justice	47
Conclusion	48
CHAPTER THREE	49
The One Stop Youth Justice Centre “Stepping Stones Project”	
Introduction	49



Research Method	49
Sample Design	50
Background to the Project	50
Stepping Stones Centre	51
Operational Review	51
Aims and Objectives	52
Target Groups	52
Service Delivery Programmes	53
Incorporation of Paradigm Principles	53
Intervention Strategies	55
Post Sentence Intervention Strategies	56
Community Service	57
Presentation of a Case	57
Schematic Illustration of the Process	59
Benefits/Outcomes for children and families	60
Multi Sectoral Teamwork	60
Community Involvement	61
Statistics	62
Offences Committed from January 2003 to September 2003	63
Diversion for the period January 2003 to September 2003	68
Strengths and Challenges	69
Mangaung One Stop Youth Justice Centre	70
Scars to Stars Project	71
Conclusion	72
CHAPTER FOUR	73
Towards A Policy Framework of Restorative Juvenile Justice In South Africa	
Introduction	73
Restorative Justice in Action	74
Restorative Justice: A Multi-sectoral Approach	75
South African Police Services	75
Probation Officer	75
Restorative Justice in Practice	76
Transformation towards Restorative Justice	78
Conclusion	78

CHAPTER FIVE	80
Findings and Recommendations: The Challenges of Restorative Justice	
Introduction	80
Findings	80
Recommendations	87
Conclusion	88
Bibliography	89
Books	89
Magazines	90
Newspapers	91
Legislation	91



DEDICATION

This research thesis is dedicated to the professionals working with children in trouble with law, the especially those working in the One Stop Youth Justice Centres dealing with troubled youths. It was a learning and enriching experience to reach the end result of this research method.



DECLARATION

I declare that:

The study, outcomes, and proposals contained in this research study are my own. All sources that I have used and quoted have been indicated and acknowledged by means of references. The research report has not been submitted for a degree at another tertiary institution.

.....

L. RAYMOND



ACKNOWLEDGEMENTS

To my lecturer, Prof J.J. Williams for his guidance and support and patience, who guided me in achieving my goal of completing this research paper.

To my husband for his encouragement, support and understanding throughout my studies especially with my research.

To my supervisor at work, Vola Benjamin for her encouragement and guidance in completion of this research project. Michelle Palmer my friend, for her assistance and support throughout my Masters Studies.

To my parents and all family members, as well as my friends for their constant support during this research.

Last but not least, my typist, who had the daunting task of assisting me to finalize the research by way of technical support. Without her help I would not have had the courage to complete this work.



ABSTRACT

This research contains the findings of a case study of the One Stop Youth Justice Centre in Port Elizabeth, which illustrate how restorative justice is a better option to retributive/punitive justice. A literature review describes the transformation of the Juvenile Justice system. It contrasts juvenile justice professional's shift from a punitive/retributive approach towards a restorative juvenile justice system.

This research recognises that youth during the apartheid era were treated in the same manner as their adult counterparts. Children under 18 years suffered a great deal under the apartheid regime because the court procedures did not make special arrangements for them. Youth who were charged with committing offences received similar sentences and were not kept in separate holding cells from adult offenders. After several serious incidents, such as sexual harassment and violent deaths, the need arose to transform the juvenile justice system. The focus is currently on youth and their families and how to "develop" them constructively. This research can be regarded as an eye-opener to practitioners in the field of Juvenile Justice.

CHAPTER ONE

The Problem of Restorative Justice

Introduction

This chapter introduces the problem of restorative justice and defines the research question of this thesis.

The Constitution of South Africa states that “every child has the right not to be detained except as a measure of last resort, in which case, in addition to the right a child enjoys under section 12 and 35, the child may be detained only for the shortest appropriate period of time, and has a right to be treated in a manner, and kept in conditions that take account of the child’s age” (South African Constitution, Section 28).

This thesis discusses the process of how the Juvenile Justice System was transformed. No definite legislation as yet has set specific regulations in terms of dealing with youth in trouble with the law. Before the 1994 democratic elections youth have been treated in the same manner as adult offenders. They did not receive special treatment and the government of the day did not realise that children’s rights have been infringed. This study aims to address the process of how children’s rights were ratified. The Government of National Unity together with Children’s Rights Activists realised that a shift from the Punitive System to a more Restorative System needs to be developed.

Background

The impetus for juvenile justice law reform originally stemmed from concern for the plight of child detainees in the apartheid regime, which characterized the 1980's. During the era of political struggle children who were at the forefront were likely to be detained without a trial under the infamous security legislation of the time. In the early 1990's, after the release of President Nelson Mandela, the political climate changed. Detention without trial abated and a moratorium was placed on the execution of the death penalty.

Arrests of children have increased over the recent years. Arrested children have often faced months in jail or holding cells, awaiting trials. For too long the youth have been arrested, sometimes beaten by police and detained without any watchdog to assess their treatment. In most cases in the past, they had no representation in court. Hundreds of children passed through the Juvenile Justice System annually and the recidivism rate shows that this did little other than dehumanize and criminalize them. Within the criminal justice system of South Africa, children emerged hardened by the experience, and they become more prepared to re-offend, due to the fact that a comprehensive juvenile justice system is not in place.

Historically, children charged with criminal offences were treated in the same manner as their adult counterparts, with limited concessions being made in the course of criminal proceedings to account for their youth and immaturity. After the abolishment of whipping as a deterrent for committing offences, incarceration as a sentence option increased. According to Midge (2000:p9), the deprivation of liberty, with regard to arrest and detention, it was very clear that the holding of children in police cells, particularly when they are not separated from adults, placed them in physical danger and deprives them of their basic rights as outlined in the Constitution.

A tragic example is that of a 13-year old boy child who was charged with shoplifting and brutally murdered by his cellmates in the small town of Robertson. In May 1997, five years later, another 13 year old was murdered in a holding cell in Butterworth. He was held in custody, also on a charge of shoplifting and was murdered by his 21-year-old cellmate, who was being held after viciously assaulting his sister.

The tragedies mentioned above sparked an outcry and resulted in the launching of a national campaign, led by a consortium of NGO's and children's rights advocates. The "No Child Should Be Caged" campaign demanded the release of children from detention facilities (prisons and police cells).

The campaign called for an immediate assessment of all correctional facilities and urged that a national consultative process be initiated. The conceptualization of a new juvenile justice system, based on enhancing family life and taking responsibility for wrongdoing was subsequently initiated. However, new legislation as outlined in the New Child Justice Bill (2000), was to curtail this practice, thereby protecting children held in custody awaiting trial. The subsequent response of removing children from all forms of detention, such as police cells, places of safety, or in prison, endorses the position of the Child Justice Bill, that children should only be detained as a measure of last resort.

In 1993 the government demonstrated its commitment to the United Nations Convention on the Rights of the Child with the launch of a national programme of action to improve the welfare of children in South Africa. The release of the 1994 proposal by the Juvenile Justice Drafting Consultancy represented a victory for youth advocates and a turning point in the struggle for a new juvenile justice system. Following the 1994 elections, the issue of youth awaiting trial in prison was firmly placed on the political agenda. A year later, in May 1995, the Correctional Services Act 8 of 1959 especially Section 29 was amended, rendering it unlawful for the state to detain any child under the age of 14 years in a prison or police cell. Children between 14 years and 18 years could only be detained as a last resort and only when committing a scheduled offence.

In June 1995 the government established an Inter-Ministerial Committee (IMC) on Youth at Risk to intervene in the crisis and facilitate the transformation of the child and youth care system over a two-year interim period. Temporary legislation was enacted to allow the state to continue to detain certain juveniles under specific conditions until May 1998.

Since 1996 the term Restorative Justice came up in debates relating to young people and human rights sectors. A conference titled "Appropriate Justice for Young People Exploring Alternatives to Retribution" was held in February 1996, to explore the concept of Restorative Justice for young people. Restorative justice is brought about by attempts to respond to crime and to seek appropriate

justice for juvenile offenders. Due to this notion of restorative justice and its rapid growth in communities, the Truth and Reconciliation process also attempted to

look at the atrocities of the past and finding ways to restore the damage done to victims. This study raises the question of whether Restorative Justice is an appropriate alternative of justice in South Africa, and attempts to look at the differences between Retributive / Punitive and Restorative Justice.

A Project Committee, appointed in December 1996, premised their drafting of legislation for a Child Justice System on the idea that the problems in the field of child justice must be addressed. The draft system encompasses processes and procedures that chart a plan of action from a juvenile's first contact with the authorities (arrest) to the end of the system procedure (review of sentences). Included in the system are mechanisms for monitoring, gathering and producing the research and statistical information base, necessary to ensure the continued development of the juvenile system as a whole.

Problem Statement

This research examines the question: Does the current South African Juvenile Justice System transformation programme, observe the Children's Right Charter of South Africa? It specifically examines the principles of restorative justice in contrast with the conventional justice system that promotes punishment. This study recognized that previously children's rights did not receive a lot of attention and there were no set legislation, which protected the rights of children. However, after the new government came to being, children's rights were ratified along the lines with the United Nations Convention on the Rights of the Child.

The research focus is on restorative juvenile justice, in contrast with the retributive justice system where children under 18 years and younger, whom were charged with a criminal offence, were treated the same as adult offenders. Children in trouble with the law were not given a second chance and receive harsh sentences without taking cognizance of their future. In other words a child would be given a suspended sentence and would have a criminal record. If the child still attended school it would mean that he would not be able to study at a tertiary institution. They were not given the choice or opportunity to realize that

their wrongdoing caused hurt and they should make amends for their wrongdoing.

Aim

The aim of this study is to critically examine the juvenile justice system with regard to the theory of restorative justice as a better alternative to the punitive system that recognizes the rights of children as human rights is in line with the convention on the Rights of the Child.

Objectives

The objectives of this research project is to give an overview of the international instrument such as the Convention on the Rights of the Child, legislative and policy developments in the field of juvenile justice. This research will look at punishment as a penal option, which the court imposes on a person for committing a crime. Furthermore the study will argue that restorative justice can be considered a better alternative to punishment. By contrasting restorative and punitive justice theories to determine how youth are dealt with in a more developmental manner in South Africa. By means of a case study with regards to the One Stop Youth Justice Centre in Port Elizabeth, we will argue that the restorative method of dealing with youth offenders is a better alternative in contrast to the punitive system.

Research Methodology

Literature Review

Internationally, human rights activists are engaged in a relentless struggle to promote the basic rights of the youth who are in conflict with the law through the creation of acceptable standards in the event of their detention.

Research in the area of juvenile justice has been both controversial and political, often used to spearhead powerful lobby campaigns, led by youth advocates and non-governmental organizations. Many studies done by the community law centre have contributed to raising awareness about the problems inherent in commitment to research, documentation and policy formulation in the juvenile justice field. This in turn culminated in the release of the Inter-Ministerial Policy

Document and recent legislative proposals for a new juvenile justice system. (Inter-Ministerial Committee, IMC 1997, p1)

This study attempts to trace the progression of juvenile justice in South Africa in line with national and international standards for juvenile justice. This study acknowledges the Bill of Rights as a way to restore faith in the justice system. Restorative Justice is not calling for the abolition of the criminal justice system but rather points out that the state has a role to play in resolving criminal acts against communities in a developmental manner. This role is best found in the state being the facilitator of the process of justice, ensuring community safety as it investigates the facts. If the outcome of justice is however mere retributive and to seek vengeance, then justice will be counter productive to healing and restoring the social breach caused by crime and violence. This means that South Africa must take up the challenge to exercise a fresh understanding of the Constitutional values of understanding forgiveness and reconciliation so as to redefine and enrich the present justice system as one, which enhances the dignity of common life together. Introducing the restorative justice approach as an alternative to punishment will contribute working towards a healing process whereby all parties will be considered. (Vermeulen A: 2000, p 5)

Restorative justice can be argued for by focusing on the strategies that retributive justice is penance by the offender for his/her crime. Furthermore that retribution is society's condemnation or censure for the offence. The community insists that offenders be punished for their wrongdoing. Retribution also entails moral blame. This means that the perpetrator gets what he/she deserves therefore the punishment imposed is just deserved in the retributive paradigm. Punishment is meted out to offenders who play a passive role. Imprisonment has been criticized in terms of its effectiveness in the areas of punishment, prevention and rehabilitation (Consedine J: 1997, p 15).

The new Child Justice Bill was developed to establish a criminal justice process for children accused of committing offences. This Bill aims to protect the rights of children entrenched in the constitution and provided for in international instruments. The Bill provides for the minimum age of criminal capacity for

children. Delineate the powers and responsibilities of members of the South African Police Services and probation officers in relation to children involved in offences. Provides for the detention of such children and their release from detention and provide clauses whereby a child must be assessed and entrenched

restorative justice. As was previously mentioned, the Child Justice Bill is firmly based on the principles of restorative justice, which entails the objectives of reconciliation and the restoration of peace and harmony in the community and therefore seeks to restore human dignity (Child Justice Bill: 2000)

Restorative justice seeks to promote a normative system that stresses on individual duties and not just rights. It further considers all offences as human and personal wrongs against another person (s) or communities at large. This paradigm constitutes procedures that are simple and informal, yet powerful and carefully prepared and meetings between victims and offenders are facilitated. Restorative justice encourages community participation and ownership of the process and therefore those who have offended are more likely to accept responsibility, apologize and offer reparation/restitution for their offences. This practice makes use of an integrated sharing of cleansing rituals and termination in order to bring about a change and healing in the offender and the victim, in order to incorporate them back into the community as functional members (Child Justice Alliance, Restorative Justice 1995).

Methodology

In chapter 4 a case study will illustrate how restorative justice is being put in practice with regards to the Stepping Stones One Stop Youth Justice Centre in Port Elizabeth. This will be contrasted with case studies where punitive measures were used. The purpose of illustrating the restorative justice paradigm in practice is to ascertain the critical features of this approach.

The decision to use the One Stop Youth Justice Centre in Port Elizabeth was based on the fact that the centre is the first youth justice centre in the country. Service delivery is based on the development approach, which embraces restorative justice principles. This case study is utilized due to the fact that a One Stop Youth Justice Centre has not been established in the Western Cape

Region. Probation officers and senior prosecutors, include the restorative justice principles in their approaches, but are very fragmented in the Western Cape.

Information for the case study was obtained through conducting a literature review. Permission had to be obtained to use the Stepping Stones Centre as

part of a research study. This was done through electronic mail and telephone calls to heads of departments of the Department of Social Services in the Port Elizabeth magisterial area. Telephone calls was also made to the head of the centre to obtain the statistics that will be used in this research study.

Hypothesis

The hypothesis underlying this research is that restorative justice provides a more developmental approach to juvenile justice than the punitive/ retributive justice system. The transformation of the juvenile justice system is imperative to incorporate a system based on restorative justice.

Definitions

Transformation

Huntington (in Van der Walt: 1995, p28) defines transformation as a change in the direction of greater social, economic or political equality, a broadening of participation in society. Two arguments for transformation were distinguished, namely, the moral and tactic-strategic category. The moral category is based on the assumption that South Africa is a land with different values and norms e.g. discrimination are unacceptable. Discriminating laws were scrapped and every citizen's human dignity was acknowledged.

The tactic-strategic category is based on the assumption that conflicts between the different race groups will jeopardize state security, law and order and stability. Transformation generates peace, safety and prosperity for all South African citizens (Van der Walt et al: 1995, p28).

Juvenile Justice System

Juvenile justice pertains to legislation that was developed for a country in dealing with youth related issues. No specific legislation or regulations have been developed in terms of dealing with youth in trouble with the law. Before the 1994

democratic elections youth have been treated in the same manner as adult offenders. Young offenders did not receive special treatment and the government of the day did not acknowledge the fact that children's rights were infringed. Therefore after the Convention on the Rights of the Child, certain steps were taken to address this specific issue of youth involved in crime.

Punishment

The term punishment, as described by Wright (1996, p40) can be justified as retribution and denunciation regardless whether it reduces crime. The main purpose of imprisonment is to punish an offender. In the 1990's in the South African political arena, punishment serves the purpose of deterrence and containment. Punishment as described by Wright implies the deliberate imposition of pain on offenders, other than court order, which are not deliberately painful, although this may be a side-effect, are referred to as measures or sanctions. Punishment is furthermore only effective in controlling behavior only under limited conditions (Wright M: 1996, p 139).

Punishment according to Garland (1990, p23) is not simply about the punishment of wrongdoers. Punishment and its practice is addressed as a social institution that expresses social sentiments and social urges in response to social problems associated with crime.

Restorative Justice

According to Solomon at the Family Group Conference (1998, p38) as cited by Monahang (1997, p5), restorative justice perspective suggests that the objective of the criminal justice system is not to affix guilt and to punish. This conference helps to store a sense of community by resolving the injury that the offender has caused the victim. Both are to be reintegrated into the community.

The Restorative Criminal Justice System has a function of problem solving without overemphasis on the punishment of the offenders. Restorative Justice therefore, encourages the offender to acknowledge responsibility for his behaviour, to empathise with the victim and make an effort to restore the damage done to the victim in a concrete way (Monahang A, 1997, p38).

Diversion

Diversion, according to Solomon (1998) can be described as channeling of cases away from the criminal justice system on certain conditions to extra judicial programs, at the discretion of the prosecution. Diversion in no way intends to make offenders less accountable or responsible for their actions, but rather to provide offenders with the opportunity to re-shape their lives without getting a

criminal record. Shapiro in Solomon (1995, p5) suggests that the primary aim of diversion is to provide an opportunity for reparations. Further identifying the underlying problems motivating the offender's behavior. Diversion aims to prevent most first offenders and petty offenders from receiving a criminal record and being labeled as criminals as this may become a self-fulfilling prophecy. Providing educational and rehabilitative programs to the benefit of all parties concerned. With this option the load of the formal justice system is also lessened in terms of sentences being delayed.

Child

According to the South African Constitution "child" means a person under the age of 18 years (South African Constitution). The Convention defines a child as every human being less than 18 years, unless national laws recognize the age of majority earlier (Convention On The Right Of The Child, 1989 as ratified by South Africa in 1995). United Nations Rules "(A)" a juvenile is every person under the age of 18 (United Nations Rules: 1990, p8).

Age Of Criminal Responsibility

This entails that a child below the age of ten years may not be prosecuted for a criminal offence. It is presumed that a child between the ages of seven (or ten) and below fourteen years lack the capacity to appreciate the difference between right and wrong and to act accordingly (Child Justice Bill 2002).

Chapter Outline

The research project will consist of 5 chapters.

Chapter one sets out the scope and approach of the work, and draws together the themes and key findings of the research.

Chapter two deals with the literature review regarding the transformation, legislation and contrasting the punitive justice system with the restorative justice system as a better option.

Chapter three deals with the case studies of restorative justice practices, the transformation process and how the new child justice framework based on restorative justice principle is put in practice within an institutional framework, and illustrates how restorative justice and retributive justice is being implemented. Statistics will illustrate the recidivism rate of re-offenders and which measures is in place after restorative methods have been exhausted.

Chapter four will discuss the results that were brought about as a result of the case study.

Chapter five will discuss the recommendations of which practices will be helpful for practitioners and other professionals working with youth in trouble with the law.

CHAPTER 2

Legislative And Policy Framework Pertaining To Juvenile Justice: Shifting From A Punitive Paradigm To A Restorative System.

Introduction

This chapter conceptualizes the legal framework. It will attempt to trace the progression of juvenile justice in South Africa from the early 1990's to the present endeavor of passing the New Child Justice Bill in Parliament. Furthermore, this chapter will look in detail into how the punitive system served as a deterrent in the criminal justice system regarding youth offenders. In this system the offender was punished for a crime committed but is not forced to take full responsibility. In contrast with the punitive system this study will attempt to promote restorative justice and how it relates to the South African situation.

Internationally, human rights activists are engaged in a relentless struggle to promote the basic rights of youth in conflict with the law. The new dispensation has witnessed a commitment to research policy formulation in the juvenile justice field. In 1995 this commitment culminated in the release of the Inter-Ministerial Committee Policy Document for a new juvenile justice system.

The end result of colonial policies created generations of poor socially stressed families, which have been the cause of the breakdown of social structuring. It was argued that criminal justice is not about punishment but the restoration of social harm, in other words seeking to mend the harm that was caused by the offender in terms of material, psychological and relationships while giving the parties involved real responsibilities and opportunities for participation in all decisions that affected them (Pinnock: 1995, p 2).

Youth and Crime

In order to critically examine juvenile justice policy and practice, it requires an understanding of the notion of a juvenile, and the etiology underlying youth involvement in crime. According to the law age for criminal capacity of juveniles is set between the ages of 14-18 years and hence only juveniles between the ages of 14-18 years can be formally prosecuted. Youth-related crimes have escalated since 1995.

The average age of youth committing offences dropped from 22 years in 1998 to 17 years in 2000. Most crimes committed by the youth are driven by socio-economic factors (48%) rather than aggressive (32%), while an estimated 15% of the youth are arrested for sexual crimes, and 7% for drug related offences (National Crime Prevention Strategy 1996:62).

From the aforementioned information it is clear that in spite of the growing recognition of children's rights, an increasing number of youth in South Africa seem to be turning to crime in response to poverty, unemployment, overcrowding, early school-dropouts, gangsterism or due to peer pressure, drug abuse, etc. The National Crime Prevention Strategy (NCPS) thus identifies youth marginalization as a key factor contributing to the escalation of crime in the country. The absence of real government engagement with the youth and the lack of a national youth development strategy have created a situation where the youth have easily turned away from politics to crime (National Crime Prevention Strategy 1996).

Gangsterism plays a major role in perpetuating crime in South Africa. Official estimates are that between 80 000 and 100 000 youth are active members of over 137 gangs in the Western Cape alone. Most gang groupings are organized in syndicates or networks involved in the sale and distribution of illicit drugs as well as illegal weapons. An increasing number of youth have become involved in organized crime, which has flourished with the opening of South African borders and the globalization of illicit markets (National Crime Prevention Strategy 1996).

The National Crime Prevention Strategy suggests that these syndicates have exploited lenient shifts in juvenile justice policy and legislation. Youth are attracted to the materialistic rewards/gains of gangsterism and crime and are easily recruited to do the dirty work for an individual or group. A perfect example of this is where children who came from poorer households are forced to leave school and are used by adults to sell fruit and vegetables on the street and in return being rewarded with drugs and little money.

The absence of secure childcare facilities has exacerbated recidivism and the ease with which adults exploit youth. It is difficult to investigate these cases according to the NCPS (1996, p63) and in most cases to trace the origin behind the crime. Additional contributing factors include anti-social behavior, disintegration of family life and lack of positive role models, early school leaving, lack of opportunities, poverty and milieu where violence became the norm.

Legislations and Policies

The impetus for juvenile law reform sprang from the concern of child detainees in the dark days of apartheid in the 1980's. Children or youth that were at the forefront of the struggle against apartheid were often detained for long periods and held in prison cells without trial. It was after this period that attention turned from children as political detainees to securing procedure rights for children caught up in the conventional criminal justice system. The transition of the South African political arena and worsening economic situation has resulted in youth becoming involved in criminal offences. Studies conducted by organizations in the youth justice field, began to expose the brutal and exploitative conditions inside holding cells and prisons in particular (Midge: 1995, p14).

In 1995 the community law centre headed by Dullah Omar, who became Minister of Justice, contributed to two prominent initiatives in the sphere of juvenile justice, which led to the release of children from prison and advocating for a comprehensive juvenile justice law reform. After the establishment of the Inter-Ministerial Committee on youth in trouble with the law in 1996, the Department of Welfare was tasked with the transformation of the juvenile justice system into one centralized system. Legislation was also imposed for the establishment of special courts where children or youth involved in crime were heard separately from adults.

The United Nations Convention on the Rights of the Child, which was ratified by South Africa in June 1995, was used as the premise and foundation document for the framing of policy recommendation of the transformation of the child and youth care system. This includes the development of a formal youth justice system in South Africa (IMC: 1996, p9).

The United Nations Convention On the Rights of the Child stipulates four general principles constituting the basic value system of an effective child and youth care system namely; that the best interest of the child are a primary consideration in all actions which concern children (Article 3); In all matters affecting a child, the child's own views must be considered where the child is able to express them (Article 12); Every child has the inherent right to life and the state has an obligation to ensure the child's survival and development (Article 6); It is the State's obligation to protect children from any form of discrimination (Article 2).

As a result a series of fundamental rights afforded to every sentenced or unsentenced youth, was listed in Section 28 of the Constitution of South Africa and is set out as follows: According to the above-mentioned section every child has the right not to be detained, except as a measure of last resort in which case, in addition to the right's a child enjoys under section 12 and 35, the child must be detained for the shortest period. Furthermore this section states that the child has a right, to be kept separately from detained persons over the age of 18 years; and that the circumstances or conditions and also the manner under which the child is kept, must be determined by his age.

The Constitution in terms of Section 35, pertaining to arrest, detained and accused persons, states that everyone who is arrested for allegedly committing an offence has the right to be informed of his/her rights and to be informed promptly of the reason for being detained. The child can further consult with a legal practitioner of his or her own choice. The conditions of detention must be consistent with human dignity. This must include exercise and at the states expense adequate accommodation, nutrition, reading materials and medical treatment. Also taken into consideration the accused person must have the right to communicate to and be visited by next of kin, chosen religious counsellors and medical practitioner. Any additional rights as stipulated in the Constitution must also be adhered to.

Section 50 (4&5) as added in 1991 of the Criminal Procedures Act 51 of 1977 stipulates that the parent or guardian of a person under the age of 18 years must be traced or informed of the arrest of their children by the police official who investigates the case. The probation officer or correctional officer should also be

notified of the young person's arrest in order to assess the child's home circumstances in order for him/ her to be returned in the custody of the parents or guardian.

In terms of the above-mentioned section, if the guardian or parents of the arrested children, were not informed of their arrest and did not arrive at the court, a family finder, appointed by the Department of Social Services should be informed to trace and collect the parents at their residences. The probation officer is obliged to inform the family finder in order to comply with section 28 of the Constitution regarding the detention of children. The Reconstruction and Development Program, implemented in 1994, has also recognized the need for a separate youth system and made provision that any law dealing with children must be reformed. (RDP: 1994, p3)

The Correctional Legislation and the promulgation of the Correctional Services Amendment Act (51 of 1995) provide that, no children under the age of 14 years must be detained. Provisions are made in this legislation that juveniles between 14-18 years of age may be detained in police cells only for 24-48 hours before their first court appearance. The minister designated specific prisons to accommodate youth under 18 years of age, who committed serious schedule offences i.e. rape, murder, robbery, armed robbery, attempted murder, assault with intent to do grievous bodily harm and possession of a firearm. Youth who have been referred to prisons should appear before court every 14 days to have their case reviewed and those detained longer than 3 months must be brought to the attention of the magistrate.

With regards to the release of a younger offender, Section 29(1) of the Correctional Service Act (1995, p45) states that if the detention period expired after hours, the child can still be brought before court on the following date in terms of the Criminal Act.

In terms of Section 72 of the Criminal Procedure Act (1995, p76) if the time has expired and a court hearing for release cannot be arranged, the child must be released, no matter what the charges may be. The Correctional Service

Amendment Act of May (1998, p85), also places limits on the detention between arrest and the first court appearance.

New legislation was drafted and the Department of Welfare was mandated to offer services to those youth remaining in prisons until placement or finalization of court hearings has taken place. As a result of the above-mentioned, legislation was built on the following principles: the interest of the child should wherever possible, be taken into consideration. The restorative justice principle must always be considered and children should, where possible be diverted from the formal criminal system. A competent authority in a specialized, child friendly court must try children. The involvement of family and the participation of the community in the judicial processes are important and the cultural diversities should also be taken into consideration. Sentencing should be governed by the principle of victim empowerment/reparation (where feasible). When a magistrate finds the child in need of care (according to Section 14 of the Child Care Act 74 of 1983, p12), the case should be converted to a children's court inquiry.

According to the above-mentioned legislation, it was exclaimed that youth offenders would have special protection (e.g. court held in camera and media censorship, greater onus are also placed on police and probation officer's to trace parents and investigate the circumstances of the child). In spite of the Amendments to Correctional Services Act, however the number of youth, awaiting trial fluctuates (National Crime Prevention Strategy: 1996, p50).

The Inter-Ministerial Committee Policy Framework

The Inter-Ministerial Committee was established in 1996 to steer the transformation process of the child and youth care system. They release their multi-sectoral policy as the framework for the transformation process. The notion of Restorative justice has emerged as a key driving force behind youth justice, in line with a global rights culture.

The Inter-Ministerial Committee was connected to and complemented by other national processes, most importantly, the National Crime Prevention Strategy, National Plan of Action on Children and National Youth Policy. These youth

development strategies were acknowledged as integral to youth legislation and development (Inter-Ministerial Committee Policy Framework: 1997, p65).

The Inter-Ministerial Committee Policy Document and the new legislative proposals are firmly located within a corporist and restorative framework, which in practice will depend on the transformation and successful integration of both the justice and care functions currently shared between government departments. The Inter-Ministerial Committee Policy Framework seeks to move away from a clinical or punitive model of intervention to a developmental and strengths-based approach, which entails that the strengths of youth should be acknowledge and developed. It seeks to build the resilience and capacity of the child and their family to take control of their own lives.

The Inter-Ministerial Committee policy document has set the tone for the development and implementation of the New Child Justice Bill (2002, p17). There has also been a concerted effort by non-governmental organisations committed to children's rights issues, to bring about appropriate law reform in this sphere (Midge: 2001, p10).

The Inter-Ministerial Committee document integrates the previous justice and care system into one corporist framework. Youth who were historically categorized and segregated by two distinct processes will now be treated equally within the same system. The document condemns the labeling and segregation of youth and thus seeks to provide a continuum of services for all children, whether they come from the juvenile or the children's court. The policy was divided into 4 levels namely: Prevention; Early Intervention; Statutory Processes and lastly, Continuum of Care. It is recommended that youth and children be assessed through a reception process to determine at which level they should enter the system. The process of least restrictive and most empowering options should guide decision – making. It is emphasized that children and less serious criminal offences should where possible be redirected away from formal criminal procedures as well as reintegration with families and communities.

The IMC document in its initial processes was drawn up taking into account the different levels of intervention, which will be discussed below.

Arrest

In line with the Beijing rules (10, p3) the Inter-Ministerial Committee supports that initial contact between the young person and the arresting officer should respect the legal status of the juvenile; his/her well being and avoid harm to him/her with due regard for the circumstances of the case (IMC 1996, p28).

The Inter-Ministerial Committee document advocates for increased police training; a more accessible and effective complaint procedure; due process protection and national guidelines on the powers of the police (such as issuing caution and diverting cases to a prosecutor). The policy requires that following arrest, the young person's parents or guardian should be contacted immediately and the accused should be charged at the police station or reception centre. The police are responsible for tracing families and obtaining documentary proof for the young person's age (IMC 1996, p29).

Reception and Referral

Reception, according to the Inter-Ministerial Committee, refers to a process of multi-disciplinary assessment and referral is the process between arrest and the first court appearance.

It is envisaged that child friendly reception centres be established where assessment could take place and a decision can be made regarding the most appropriate way of handling the case (with emphasis on diversion wherever possible). Referral is deemed to occur as soon as possible, and is enabled by statutory and non-statutory processes. The general principle adopted by the Inter-Ministerial Committee document is that in the period following arrest, the child should, wherever possible be placed into the custody of his/her parent/guardian. If this is not possible, the least restrictive and most empowering option must be followed, taking into account the age of the young person, their particular needs and seriousness of the alleged offence (IMC 1996, p40).

Referral is envisaged to be a multi-disciplinary process and options for juveniles would include; withdrawal of charges; formal caution; children's court inquiry; criminal court procedures and diversion programmes. The Inter-Ministerial Committee advocates that detention in prison be used as a measure of last

resort and phased out once secure care structures are in place. The policy further suggests that a monitoring mechanism be instated to periodically assess and evaluate outcomes of any referral decisions.

Secure Care

In the absence of alternatives, youth awaiting trial continue to be detained in correctional institutions and facilities. Correctional legislation, as well as the White Paper of the Department of Correctional Services, influences their treatment while in detention. According to the White Paper, prisons should be suitable to ensure the safety, care and protection of youth. This should include the provision of organized activities for unsentenced children and older juveniles, as well as access to education, physical and religious activity, social work services and psychological intervention (Correctional Services White Paper 1994). Currently children awaiting trial in Pollsmoor Prison receive no education. No school programmes are provided at the Pollsmoor Admission Centre on the grounds that children here are waiting placement in other parts of the prison or other prisons. Children at the admission centre, however, wait from nine months to a year before they are transferred. A family finder, employed on a contract basis by the Department of Social Services, brings children in contact with their families; otherwise children are not engaged into any programme (Children in Prison: Community Law Centre: 1998, p38).

The Inter-Ministerial Committee proposed that secure care facilities had to be built in each province to accommodate juveniles accused or convicted of more serious offences. Secure care facilities had to provide differentiated programmes or units according to the ages and gravity of the offence committed by the juvenile. The IMC also proposed that staff have specialized skills and training in order to work more developmentally with this children.

In addition secure care facilities provide access to schools, education and a wide range of development programmes which are offered within each facility in partnership with non-governmental and community-based structures (IMC 1996:54)

The Child Justice Bill

There has been a concerted effort by non-governmental organizations committed to children's rights issues, to bring about appropriate law reform. The IMC policy document has set the tone for the development and implementation of the Child Justice Bill. Despite unsuccessful attempts at amending existing legislation to improve the situation relating to a juvenile offender, the reform process progressed. (Mdambo D: 2001, p5).

The Bill has sought to address the problems encountered in the field of child justice, as it exists within the framework of current legislation. The Bill is aimed at protecting the rights of children accused of committing crimes, as well as at regulating the system that deals with accused children. It also aims to ensure that the roles and responsibilities of all who are involved in the process are clearly defined in order to support effective implementation of legislation as set out in the Child Justice Bill. The new legislation envisaged revolutionising the criminal justice system in South Africa in so far as it affects children in conflict with the law.

It was of paramount importance that there is an accurate understanding of the manner with which children must be handled as set out in the Child Justice Bill, to ensure effective implementation. In November 2000 a workshop was held in Pretoria to promote an accurate perspective on child justice. The need for an action plan to implement emerged from the workshop and ensured that civil society becomes familiar with the issues relating to child justice. A Child Justice Alliance was also formed to ensure that as the Bill progresses through parliament, various key issues, such as diversion and criminal capacity are dealt with. This alliance comprised of Lawyers for Human Rights, NICRO, Community Law Centre, and Restorative. The main objective of the project was to assist government with the implementation of new laws dealing with children accused of crimes, which is to be put into operation in the near future.

The Child Justice Bill aims to deal with children accused of crime in a number of ways such as, the enhancement of the capacity and use of programs for diversion and appropriate sentencing of children. The Child Justice Project will work with NGO's, CBO's and government to ensure that there are sufficient

effective diversion programmes to which children can be referred to instead of going to trial.

A further aim is to find ways to protect children in detention. The Bill proposes that a collaboration of all government departments and NGO's working with children who are deprived of their liberty, needs to take place. The aim is to seek alternatives to detention and to set minimum standards regarding how children should be cared for when they are detained. The new law needs to be supported and therefore information should be provided to all government and non-governmental role-players about the new law. For this purpose the Child Justice Project needs to lobby and increase awareness amongst the general public about children accused of crimes and new ways of dealing with them should also be advocated.

Monitoring is seen as a very important process. The Child Justice Bill (2002, p8) proposes that a monitoring procedure must be put in place to protect children and to help maintain an efficient and effective system of justice for children accused of committing a crime. Monitoring committees thus need to be established in every province, which will assist in developing a monitoring procedure at a national level.

Diversion

One of the premises, on which the Child Justice Bill (2000, p20) is built, is diversion. Diversion is an alternative to imprisonment whereby programmes is developed based on community base sentencing. Diversion further entails any community alternative to prosecution when children admit to their crime. When a child has been diverted, measures, restricting him from wrongdoing can assist the child at home with his education and problems or any difficulties such as warnings, caution, home base supervision, etc. Members of the community are to be involved in conferences to safeguard and protect the well being of the child.

The Child Justice Bill has set out certain rules about referral of children for diversion. These rules, as set out in Section 51 of the Bill, entails that a child suspected of having committed an offence, might only be considered for diversion if such a child voluntary acknowledges responsibility for the offence.

The young person understands his or her right to remain silent and has not been unduly influenced in acknowledging responsibility. A child cannot be diverted from the criminal system if there is sufficient evidence to prosecute. Diversion can be considered if the child and his parents are available and consent to diversion and the type of diversion option (Skelton A: 2001, p9).

The Bill also sets out minimum standards applicable to diversion options as set out in Section 49. According to this section, no child may be excluded from a diversion programme, due to an inability to pay any fee required for such programme. A child of ten years or over may only be required to perform community service as an element of diversion, with due consideration for the child's age and development. Diversion options must promote the dignity and well being of the child and the development of his or her sense of self - worth and ability to contribute to society. Diversion programmes should therefore not be exploitative, harmful or hazardous for a child's physical or mental health. The diversion programme should be appropriate to the child's age and maturity, and the programme should not interfere with the child's schooling.

Diversion options should also have an impact on useful skills and most of all, should include a restorative justice element, which aims to heal relationships with the victim. These programs thus have to include an element, which seeks to ensure that the child understands the impact of his or her behavior on others; including victims of the offence and may include compensation or restitution. The programme must be presented in a location reasonably accessible to children; and children who cannot afford transport in order to attend a selected diversion programme should, as far as possible, be provided with the means to attend the specific programme. Diversion is in no way intended to make offenders less accountable for their actions, but rather offers an opportunity to offenders to re-think their lives without getting a criminal record.

The Bill marks a move away from retribution, punishment, correction or reform to a developmental and strengths-based paradigm. It attempts to address the needs of all youth in one system, effectively abolishing segregation and categorization of youth at risk and young offenders. Restorative justice is one of the underlying principles informing the development of the Bill, and diversion

forms a major part of the proposed new legislation. The Child Justice Bill marks a significant shift from a juvenile justice to a corporatist system. The Child Justice Bill was submitted to Cabinet and approved for introduction to Parliament during 2002.

Theoretical Models of Juvenile Justice

Models of Juvenile Justice and the underlying theoretical debates in the juvenile justice field have also played an important role in shaping our interpretation of legislation and its translation into practice. The three dominant juvenile justice models within a South African context, (as cited in Morris: 1992, p67) are examined below:

Juvenile Justice Model

Historically, the Juvenile Justice Model has dominated the treatment of youth in conflict with the law. In terms of this model, the young offender is treated as a young adult and is fully responsible for their action. The offender is subject to most of the same formal rules of criminal procedure assumed to uphold the rule of law and protect legal rights. Frank in Cosidene stated that differential treatment comes into play with regards to sentencing; whereby welfare principles and social work intervention may be incorporated (Cosidene: 1999, p8)

Welfare Administration Approach

Since the adoption of the Child Care Act (1983, p15) South Africa has attempted to follow a welfare approach to Juvenile Justice. The Act empowers the state to transfer a case from the juvenile court to the children's court through the opening of a Children's Court Inquiry. According to this approach, crime is an indicator of dysfunctional behavior and must be addressed through an assessment and treatment plan, which has rehabilitation as its primary aim.

Advocates of this model supported non-judicial means of approaching the problems underlying the offending behavior. Issues of childcare and protection compete with issues of due process and thus over the past two decades, social workers/probation officers have begun to play an increasingly more important role in the courtroom.

While the Welfare Administration model seeks to avoid the stigmatization imposed by a justice system, it may impose its own labels and even greater forms of social control. Social workers and probation officers exert increasing influence over the young person within the framework of a welfare mandate. In addition to broadening the net of social control, the model also poses a danger of undermining the Due Process rights of juveniles in the absence of formal legal procedures (IMC 1996, p6).

The Community Corporist Model

The community corporist model offers a centralised approach to government and civil stakeholders (Frank 1997, p19). The model combines both aspects of welfare and justice and places value on alternative programs for young people, which divert them from the formal justice system. The model stresses accountability for behavior, the repairing of social harmony and reintegration of the offender back into the community (IMC 1996, p16).

The corporate model requires that all agents from government and civil society become involved. Every effort is thus made to reintegrate youth back into society (Frank et al 1997, p19). This notion of Restorative justice has emerged as a key driving force behind youth justice in the past few years. Restorative principles complement a global human rights culture and have begun to replace earlier retributive notions of prosecution and punishment and seek to repair the harm done to the victim or society.

Morris (1992, p36) advocates that a corporatist model offers a refreshing and a very promising approach to the juvenile justice system in South Africa. Due to the fact that crime is essentially a socio-economic problem, it requires a coordinated and integrated approach from all sectors of society. A corporatist framework may reduce recidivism through elements such as respect for the young person and a realistic evaluation of the nature of the offence. The focus is on the crime (as a symptom of a deeper social problem) and its impact on the victim. The life conditions of the young person are taken seriously and reconciliation is emphasized over punishment.

Punishment and Restorative Justice

Punishment

Punishment according to Primoratz (1990, p1) is defined *'as an evil on an offender by a human agency, which is authorised by the legal order whose laws the offender has violated'*. *The word 'punishment' is taken from the word 'terror' and implies frightening people into good behavior through fear of painful consequences. However, Punishment is a major form of legal sanction and institutional functions makes punishment a necessary part of any legal system"*

Hirst et al (1994, p26) views punishment as a necessary part of any legal system. He suggests further that punishment is an institution that can never be abolished. It is a last resort necessity, which renders it indispensable to social organization.

According to Considine (1999, p78), "the aim of punishment is to build a strong, safe, healthy and just society". In dealing with crime, punishment must be in proportion to the community and reparation to the victim. Considine further sees punishment as the deliberate infliction of suffering, in other words, legal violence. He describes punishment as counterproductive and needs to be examined, in conjunction with the system that perpetuates it. In essence this entails that punishment in its pure form is not enough to rehabilitate a person from wrongdoing due to social structures being inherently unjust and therefore needs to be transformed. Another primary factor lies in the fact that the current criminal justice system focus primarily on punishment. This point was illustrated through an example where a person committed a white-collar crime and received previrential treatment.

A person whom committed a fraudulent crime will be given bail until his sentencing date or given automatic minimum-security status within the prison system and are released after serving one third of his sentence. On the other hand a person whom is addicted to drugs and commits a crime for instance burglary or housebreaking and has done less social harm, are remanded in custody until sentencing will take place. The second offender will have to serve two thirds of his sentence. Punishment in the above-mentioned examples fails to achieve positive changes.

Punishment, according to Considine(1999, p21), further became something the dominant group in society imposes on those of little status and power who are not in a position to challenge its fairness or its usefulness. Berzins in Considine, 1999, says punishment *“is actually destructive and some of justice’s most cherished objectives: the affirming of the importance of the rights of the person injured, the sense of proportionality to the gravity of the misconduct, and the prevention of further harm”*.

A former prison inmate Mike Martin wrote: *“Prisons cater for a public need: a need based on fear and ignorance; a desire to punish through retribution. It doesn’t have to be that way, in fact such an attitude is little more than a mass cop out. What we have developed after 100 years of penal policy is a vast and costly delaying mechanism. Imprisonment is used to delay confronting the real problems facing the community: it stops (for a while) an offender indulging in more crime; it delays social progress. For ‘justice’ to mean anything, it must extend beyond a punitive reaction to an unacceptable action. Justice must mean much more than simply transferring a criminal from general society to a hidden society. The present method of justice is compounding the alienation of each individual. It is bonding people together within the source of their alienation”* (Considine: 1999, p21)

According to Monaheng (1997, p5) the offender does not take responsibility for his actions. In other words the court decides how much the offender should be punished. The offender has thus no understanding of how his activities have impacted on the victim, including the community. Retributive/punitive justice is synonymous with imprisonment. It is argued by Considine that punishment does not only fail to achieve positive change in the offender, but guarantees a high chance of re-offending.

As Zehr in Considine (1999, p23) stated: *‘retributive justice defines justice the Roman way, as right rules, measuring justice by the intention and the process. All action is hierarchical, from the top down. The state acts on the offender, with the victim on the sidelines.’* Retributive justice as we know it views everything in purely legal terms. Another fact about imprisonment that came to light is that young offenders who have been sent to serve prison sentences were

unemployed and whilst serving their sentence they receive skills training. However, after their release the unemployment rates are high due to society's perception of ex-prisoners.

Theories Of Punishments

Utilitarian Theory

This theory rests on the belief that human acts or individual acts and different types of acts, rules for action and systems of such rules, are to be judged by their consequences. Our actions are thus the sole criterion of their morality. According to Primoratz (1990, p10), this theory promotes that punishment is morally justified by its good consequences. The evil therefore inflicted on the person punished, is morally justified because punishment has consequences, which are good to such a degree that they outweigh both. The most important consequences of punishment are its preventative effects, its contribution to the prevention of offences. The main characteristic of the utilitarian theory is its orientation towards the future.

Three varieties of utilitarian's views of punishment can be distinguished:

The theory of deterrence: This theory sways the offender not to repeat the offence and serves as a frightening example, which checks the inclination of potential offenders to violate the law. The theory of reformation views punishment as a measure of reforming the offender. This theory is a vehicle of moral betterment, liberating the offender from his social and criminal habits and therefore forces him to return to a law-abiding community and constructive social life. The educative theory demonstrates that moral wrongs can help to prevent offences(Primoratz: 1990, p10).

Retributive Theory

The retributive theory, as opposed to the utilitarian theory, looks at the past. It sees the moral basis of punishment in the offence committed. According to the theory punishment, the moral criterion is the criterion of justice and therefore punishment is morally justified because it is just. Justice is executed when a person is punished for his/her action. Retributive justice focuses on the punishment of the offender. The focus therefore is a punishment without according him the emotional responsibility of his action. The offender does not

take responsibility for his offence but the court decides how the person must be punished. The offender thus is not encouraged to acknowledge their responsibilities in a concrete way. The offender has no absolute understanding of how his activities have impacted on the victim, including the community (Zehr: 1995, p6).

According to this theory punishment is an evil the offender has deserved by his offence, an evil by which the state or society pays him back for what he has done. The offence is seen as the sole moral basis of punishment, it does not imply that consequences are not important. Thus, any act of breaking a criminal law, whatever the contents, nature, or moral status might be, the moral justification of punishment is in the offence committed (Zehr: 1995, p7)

Developmental Theory:

In later years the emphasis shifted away from rehabilitation to development of the offender. This theory stems from the belief that many crimes are committed as a result of the socio-economic circumstances in society and if one is able to address some of those causes, then there is some chance of reducing the risk of an offender recommitting an offence. An institution operating under the developmental model would focus on making opportunities available for offenders to learn new skills, such as a marketable trade. The developmental model focuses on reconstruction and development of the individual and society. A developmental form of punishment can be used inside of prison, as well as an offender serving a community-based sentence.

Rehabilitation Theory:

One School of thought, which became popular in the twenty first century, is the theory of rehabilitation. The idea of rehabilitation presupposes that all human action is predetermined by preconditions, which, if they can be identified, can be altered through treatment. Rehabilitative models were developed in the early part of the twenty first century, but have had a disappointing lack of success. Other theorists have concluded that imprisonment does not provide the ideal forum for rehabilitation. In fact many institutions are unable to provide the resources and time needed to run successful rehabilitation programmes. (Dissel et al: 1995, p2)

Although prison sentences are imposed on people who commit offenses, the ideal for them is to rehabilitate from their wrong actions. However imprisonment does more harm than good. A person would only rehabilitate from his wrongdoing if he has the inner motivation to change his lifestyle and if he/she are truly remorseful. Factors that are being considered by the court in imposing a sentence is the interest of society that needs to be protected; what the nature of the offence is and the personal circumstances of the offender. Different penal options as part of sentencing will be discussed beneath in order to illustrate which sentences are available.

Penal Options

The competent penalties that can be imposed by a court, on conviction of a crime, are prescribed in the Criminal Procedure Act, No. 51 of 1977. However, since the establishment of the Constitutional Court, two of the penalties namely, the death sentence and whipping/ corporal punishment, has in terms of the Criminal Procedure Act, been declared as unconstitutional. Other punishment options include the following:

Imprisonment and Prisons

In the Correctional Services Act No.8 of 1959, clauses stipulate when a person is to be imprisoned, and when the person can be released. Imprisonment is the most serious punishment the court can impose upon a person. Consedine (1995, p18) as discussed in the definition describes the process of imprisonment as *“a condemnation of people to periods of years by depriving them of freedom and surrounding them with a culture of violence and abuse of their human dignity. Consequently a court should first consider other forms of punishment before imposing one of imprisonment”*.

This sentence option is mostly handed down when a serious offence have been committed, or if the offender has previous convictions or is a danger to society. Imprisonment was often viewed as the primary sentencing option because it was viewed as the only competent punishment.

A shortage of prison accommodation results in the overcrowding of prisons. The general perception is that the poor people due to their poor socio- economic

status and their high crime involvement goes to prison easily. This fact is argued on the basis of the escalating crime rate in poorer communities. A study that was conducted by the University of South Australia concluded that there is a significant link between poverty and crime. The poor, dispossessed, vulnerable and addicted are those who are being sent to prison. Imprisonment increases crime rates and in most instances prisons has been referred to as 'universities of crime'. William in Consedine (1999, p31) argued that inmates recruit new friends and new gang members, learn new criminal skills, and plan new crimes. He argues further that many major crimes are performed by groups of ex-prison inmates who combine their various skills to perform the crime.

He adds that prison hardens prisoners in their attitudes, make them more bitter against society, and set them up emotionally and socially to perform horrendous acts of violence. Imprisonment also wrecks family relationships and brings about socially dependant families. It is also stigmatizing and in most instances brings about divorce (Consedine: 1999, p35).

Imprisonment as sentence option is not only considered for adult's but also for youth involved in serious offences trail awaiting or sentenced. In prison horrific crimes are committed against youth and became known at a probation forum meeting that youth involved in crime would rather make themselves older in order to be sent to the adult section of the prison. It became known from interviews conducted with trail awaiting youth during assessment that in most instances they are used to smuggle in the drugs. Sexual offences are committed with youth to smuggle in the drugs. If they refuse then they are murdered on the way to and from court. From the aforementioned it can thus be concluded that imprisonment hardens youth against life and does not provide them the opportunity to be youngsters and to lead a carefree life.

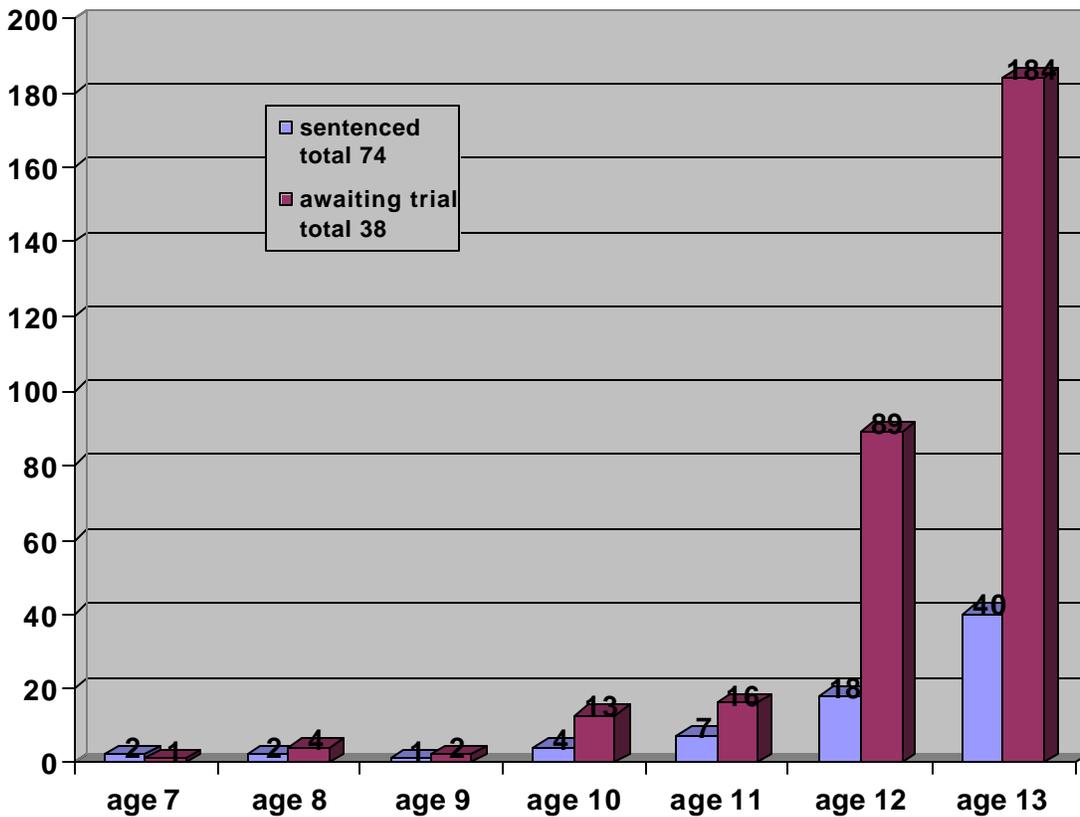
Another detrimental factor is that their release from prison is generally characterized by unemployment due to the fact that they are labelled negatively. Although there are drug rehabilitation programs being offered in prison, it is difficult for drug addicts to rehabilitate from their drug habits unless they are truly

motivated. In South Africa the government and different state departments always want to save and cut back on costs especially on the internal costs of

running prisons. However, more cells and prisons are being built. In light of the above- mentioned fact it is not suggested that people and specifically youth offenders should not be sentenced to imprisonment, but with revision of the new juvenile justice system it is suggested that youth be kept out of prison by expanding the range of community sentences and diversion programs. Under these circumstances, alternatives to imprisonment became important considerations for South Africa.

Children Age 7 To 13 In Pollsmoor Prison in December 2000

(Source: Article 40, February, 2003)



Abovementioned statistics illustrates that for the above-mentioned period children from the ages of seven and thirteen years were kept in custody awaiting trial in prison. The red illustrates the trial-awaiting children, which amount to 309 children for that period. The blue illustrates an amount of 74 children were sentenced to imprisonment. This is also an indication that there was a crisis due to the fact that children of seven years may not be kept in prison and are deemed as *doli incapax*. The conclusion can be drawn that there is a dire need for the provision of alternative secure care facilities, such as One Stop youth Justice centres and other Restorative interventions. This will definitely decrease the number of awaiting trial and sentenced juveniles in prisons.

Julia Sloth-Nielson of the Faculty of Law, at the University of the Western Cape and members of the National Council on Correctional Services presented statistics to the Justice and Constitutional Development Portfolio Committee during the public hearings on the Child Justice Bill:

Over a five- year period from 1998 to 2003, a total of 74 children between ages of seven and 14 were sentenced to prison. Of these children were 40, 13 years of age at the time of sentencing, 18 were 12 years old and 16 were between the ages of seven and 11 years old. In 2001, a 12 year old was and a nine-year-old was sentenced to imprisonment for 0-6 months for malicious damage to property. The statistics according to Professor Sloth-Nielson's findings indicated that two girls 11 years of age were sentenced to imprisonment during the time where a transition is taking place, one in 1998 and one 2001.

These shocking statistics showed children under the age of 14 years were awaiting trial in prison. This is in contravention of section 29 of the Amended Correctional Services Act (1998,p4) which states that only children above the age of 14 may be held in prison awaiting trial. Over the same period, 89 children aged 12 according to the study were kept in prison awaiting trial, while 36 children between the ages of seven and 11 years were detained in prison awaiting trial.

During a presentation to the Portfolio Committee certain points were emphasized in terms of children awaiting trial in prison, over four times more children under 14 years spend time in prison awaiting trial than serving a sentence. Pre-trial detention in prisons of children age under 14 years is currently unlawful, and therefore constitutes wrongful detention. Data, as will be showed, provides strong evidence supporting raising the minimum age of criminal responsibility. Comparison between the figures of children awaiting trial and sentenced children shows that where convictions are recorded, alternative sentences to imprisonment are employed in the majority of cases (Nielson 2003, p5)

Whipping:

This sentence option in terms of the Criminal Procedure Act was imposed on male juveniles whom have committed crimes. Many juveniles in the past had been sentenced to whipping as this was considered to be a quick and "effective" sentence and a good alternative to imprisonment. There were, at the time, several non-custodial measures available to the courts, which could adequately serve the purpose of punishment.

The Constitutional Court held that juvenile whipping was unconstitutional on the grounds that it was cruel, inhuman, and degrading. The court also held that it could not be argued that juvenile whipping was reasonable, justifiable or necessary. This is no longer a sentence option. Between 32 000 and 36 000 young people were beaten annually through the 1990's, until a moratorium was placed on whipping in 1995 (NCPS: 1997, p 8).

Deterrence Is A Myth

According to William in Primoratz (1999, p7), the most frequent phrases heard from sentencing judges are that the sentence that they impose will help to deter other offenders. Although penalties for certain serious offences have increased, however, an increase in the crime in the specific areas such as burglaries, thefts, has taken place. The recidivism rate and ex-prisoners return to prison after their release is also an indication.

Punishment As A Deterrent

According to Betham in Primoratz (1990, p156), capital punishment does deter, but in the wrong direction. It deters people who have reason enough to fear death, because they have reason enough to appreciate life. Those people are not likely to commit crime and thus there is no reason to deter them. The "criminal class" on the other hand are those whose social position and way of life are as such that they set no great store by life, and are not terribly afraid of losing it. Punishment in this sense incapacitates an offender not to commit a further offence (Primoratz 1990, p12).

It is being argued that punishment may prevent the occurrence of offences in three ways: by making it impossible or difficult for an offender to break the law again; by deterring both offenders and others; by providing an opportunity for the "reforming" of offenders. Some, but not all punishments prevent offences, by incapacitation. Imprisonment tends to rule out the possibility of more offences by an offender for a time.

Punishing a person may make him less likely to offend again because of fear or increased prudence and may act in the same ways to deter others. Punishment is seen as a way of changing a man's character or personality so that out of

motivation like consideration for others he obeys the law. Society and government thus uses punishment with the intention to deter. In this regard punishment causes pain to those who suffer it and it also limits their freedom. If the evil of the punishment exceed the evil of the offence, the punishment will be unprofitable. Kant in Honderich says that “to punish a man simply because this will deter him and others from offences in the future is to treat him only as a means and not as an end”. According to Kant deterrence does not give sufficient attention to the interests of the offender (Honderich 1992, p 48).

In other words punishment is used to prevent people to commit further crimes. Therefore one can say that it serves as a rehabilitative tool whereby an offender should learn from and not involve himself in further crimes. The threat of imprisonment and exposure should deter other offenders from offending.

Restorative Justice

Origin & Youth Justice in New Zealand

Restorative justice is derived from the New Zealand’s Children Young Persons and Their Families Act 1998. This act has shown that a restorative rather than a retributive philosophy, embraces a wide range of human emotions, including healing, forgiveness, mercy and reconciliation. Restorative justice is however not new. In most indigenous cultures they made use of the restorative approach. For instance in pre-colonial New Zealand the Maori had a fully integrated system of restorative justice. Restorative justice/ Marae is set up to meet victims needs. In that sense it is not about to derail the offender but in essence who got hurt. The responsibility is taken away from the victim and placed with the offender(Stern: 1993, p66).

Maori thus had a custom and practice that ensured the protection of individuals, the stability of custom and the integrity of the group. The system of governess within the Maori system was based on fairness in customary practice. The relationship of people therefore played a big role in this type of justice. Protocol was the method by which these relationships were established and maintained.

The purpose of the Maori justice system, which took the form of a hearing on a central meeting ground was to investigate the matter and tried to restore the balance in the community that was disturbed and redressing the harm done to the victim. The quantity of redress, as stated by Considine (1995, p87) would depend on the degree of the offence, a form of compensation and with mediation remove the causes of the tension (Considine: 1995, p87).

Restorative justice in New Zealand as a method of dealing with youth involved in crime was born out of the frustration of their juvenile justice system. The former justice system had two major negative effects, namely that youth involved themselves in more offending and in the second instance was that they were encouraged towards dependency on welfare as a way of life. Youth were in most cases confined in residential homes or after their involvement in serious offenses end up in detention centers. Here new anti-social behavior patterns were developed along with new criminal skills. For them that behavior became the first step along the road of habitual criminal behavior. The Southern Regional manager of the then New Zealand Children and Young Persons Service, nominated several other factors that led to the radical change towards a restorative philosophy (Considine 1995, p103).

There was a growing dissatisfaction among youth justice professionals about the effectiveness of work with young offenders. The loss of confidence in the goal of rehabilitation built up. The Maori renaissance contributed to a renewed awareness of the Pacific cultures in New Zealand society. Another issue for the wider community was the growing rejection of the paternalism state to redress the imbalance of power between the state and its agents and individuals and families engaged by the criminal justice system.

Government at the time pointed out diversion schemes for young offenders but was not successful. The end result was that in 1987 another working committee was appointed and in 1989 with the second reading of the new child justice Bill, a new approach to juvenile offending into the Children, Young Persons and Their Families Act. The restorative approach that was introduced worked in the vast majority of cases (Considine: 1995, p90).

Including restorative justice in the New Zealand Children and Young Persons and Their Family Act, was seen as a radical but also positive step. With this act juveniles are brought before family group conferencing, which is a pillar of restorative justice. Although serious youth offenders are arrested by the police like adult offenders they are brought before court. If they admit to the offending FGC is held within 14 days. If the young person is remanded into custody, FGC will be held within 7 days.

According to Consedine, two researchers Morris and Maxwell, researched the effects of the act after 3 years in operation after and their results were very positive. Sanctions evolving from Family Group Conferencing included apologies, active penalties such as fines, reparation, donations to charity, community work, work for the victim, driving disqualifications and curfews. A positive quality of the restorative process is that in most cases Family Group Conferences are convened in the shortest time and therefore minimize the time that would have been spend in court. The aims of restorative justice accomplished through Family Group Conferences are where the offender can make amends for their offending. The principle is upheld that any outcome, including a prison sentence, can be restorative if it is an outcome agreed to and considered appropriate by the key parties. Examples observed at family group conferences in New Zealand include invitations by a victim to the offender and his family to join the victim's family for a meal and handshakes all round at the end of the meeting. Many consider the New Zealand Youth justice system as the ideal form of restorative justice (Morris: 2002, p 599).

South African Experience

The punitive (retributive) legal system as practiced prior to 1994 in South Africa, viewed crime as breaking the law, and justice as upholding the law by administering punishment. The needs of all the people involved, i.e., the victim, the community and the offender is marginalized in this system. In this regard the Criminal Youth Justice system was experienced as profoundly disrespectful of most of the people involved in it. According to traditional societies crime is fundamentally about disrespect; and about harming relationships within the community. Justice in response is about re-establishing that respect and upholding human dignity.

Restorative Justice is brought about by attempts to respond to crime effectively in South Africa and to seek appropriate justice for juvenile offenders. In essence, restorative justice rests on the principle that crime, like any other social problem, represents a divergence from the aims, aspirations, needs, feelings and behavior of different individuals and social groups, including society as a whole. In South Africa, restorative justice still has a long way to go before being implemented due to the fact that all juvenile justice professionals need to buy in and legislation needs to be implemented. Consider for example the following case:

A 14-year-old girl was suspected of shoplifting in a rural South African Town. The manager of the shop engaged the workman nearby to paint the upper half of her body and then he let her go. As she was leaving the shop one of the security guards took her to a nearby police office. The case ended in court and the manager was found not guilty while the workman received a fine of R1000, 00. After the magistrate had pronounced the sentence, the girl's family continued sitting until the court interpreter told them it was all over. The mother of the child however, commented "How could they paint my daughter, she is not a wall." "No one apologized." (The Child Justice Alliance 2001, p21).

This story illustrated the shortcomings of the current legal system. As a child suspected of an offence, she was not offered the usual protection that adult offenders are given – she was presumed guilty and immediately punished. Even though the system worked in a sense that it found someone guilty for the wrong done to the girl, and imposed a sentence, this had little meaning for the girl, her family and the immediate community. The payment of the fine to the state did nothing to repair the discomfort and loss of dignity she had suffered.

Restorative justice merges with the main stream of traditional African resolution practices. The principle is not necessarily new to South Africa. They can be traced back to various African traditional forms of dealing with problems, ranging from natural disasters to criminal offences and domestic disputes. In more recent situations, this term can be equaled to 'street committees'. Restorative justice practices have recently been revived in this country through borrowing from the Family Group Conference (FGC's) model of New Zealand.

The process seeks to involve those directly affected by conflict with each other in the process of finding a solution to restore the damage. Conventional justice systems see offending as a violation of the interests of the state and decisions about how it should be responded to be made by those professionals who represents the state. In contrast, restorative justice returns decisions about how best to deal with the offence to those most affected victims, offenders and their communities of care and gives primacy to their interests (Wright: 1992, p42).

Restorative justice thus emphasizes addressing the offending and its consequences. It seeks to restore the victim's security, self-respect, dignity and most importantly, sense of control. This means that the needs as well as the victim are acknowledge. The victim is part of the process and not on the sideline as with the traditional justice system where the victim is not at all involved in the process. On the other hand, it seeks to restore responsibility to offenders for their offending and its consequences, to restore a sense of control to them, to make amends for what they have done and to restore a belief in them that the process and outcomes were fair and just. Restorative justice encourages cultural relativity and sensitivity rather than cultural dominance (Morris: 2002, p600).

Restorative justice according to Hudson et al; 1990 is based on the following values and assumptions, that: all parties should be included in the response to crime, including offenders, victims and the communities; that the government and local communities should play a complementary role in that response; Further that accountability is based on offenders understanding the harm caused by their offending, accepting responsibility for the harm, and repairing it.

As a philosophy for the juvenile justice system, restorative justice guides professionals in the appropriate and equitable use of sanctions, to ensure that offenders make amends to victims. The philosophy gives meaning to sanctions such as restitution and community service. This is because without a restorative understanding, these sanctions are viewed as bureaucratic in nature to be used solely for punitive purposes (Mc Logan: 1992, p63).

Principles of Restorative Justice

The restorative justice principle sees crime as an injury. In other words crime hurts individual victims, communities and juvenile offenders and creates an obligation to make things right. One of the main principles is therefore that all parties should be a part of the response to crime, including the victim, if he/she wishes, and if it is in the best interest of the community and the juvenile offenders.

Within this paradigm the victim's perspective is central to deciding how to repair the harm caused by the crime. The accountability of the juvenile offender means accepting responsibility and acting to repair the harm done. In addition, the community is being held responsible for the wellbeing of all its members, including both victim and offender, because "crime control cannot be achieved without active involvement of the community" Restorative justice thus views that all human beings have dignity and self-worth. Restoration, in other words, repairing the harm and rebuilding relationships in the community is the primary goal of restorative juvenile justice. Within the restorative paradigm results are measured by how the harm was repaired rather than by how much punishment was inflicted (Zehr: 1985, p5).

The new child justice system as set out in the South African Child Justice Bill, was designed to cater for the majority of children who have committed crimes and the different levels of diversion offers innovative ways of dealing with crime, based on appropriate assessment by the probation officer. Restorative justice programmes include Family Group Conferencing (FGC) and Victim Offender Mediation (VOM) processes. However only a few of these exist in the different parts of the country and the challenge is to develop more of these programmes. Restorative justice initiatives require highly skilled professionals and therefore require community development and capacity building (Monahang: 2000, p12).

Sentences With A Restorative Justice Element

Sentences with a restorative justice element as set out in the Child Justice Bill Section 75, include referral of the child concerned to appear at a victim – offender mediation, a family group conference or other restorative justice dispute

resolution process at a specified time, on a specified date and at a specified place. The decisions or agreements reached at a process referred to in above-mentioned section must be referred back to the child justice court. Other sentences in the South African context include the youth offender's programme, which is presented by Nicro. This entails further life skills as well as youth involvement in crime and the consequences of their involvement in crime. Parents are also included in this programme. The yes school serves mostly as a diversion programme for youth who are first offenders. Another programme is the Journey programme, which is also a wilderness programme where youth are in a way forced to do introspection in their own lives and work on future plans and referred to a training programme to help them enter the job market.

In order to transform the current juvenile justice system into a more balanced and restorative juvenile justice system, professionals need to develop new roles and redirect resources. This needed services can be made available for victims of crime and will reward them with the opportunity to participate and give their input. Community members, including individual victims of crime, will be granted the opportunity in making decisions and carrying out plans for resolving issues and restoring community cohesiveness. On the other hand juvenile offenders will be encouraged to take responsibility for their behavior and will be actively involved in repairing the harm they caused.

Contrasting Restorative And Retributive Justice

While retributive justice is focused on public vengeance, deterrence and punishment, restorative justice is concerned with repairing the harm done to victims and communities. In contrast to the individual treatment approach, which focuses on providing limited services to offenders, restorative justice is concerned with the broader relationships among offenders, victims and the community.

Restorative justice is neither punitive nor lenient in focus and provides a clear alternative to juvenile justice sanctioning and intervention based on retributive treatment assumptions. According to Zehr (1990, p19), restorative justice offers a different lens through which to view the problem of crime and provides a new outlook on the public's response to the harm that results when an offence is committed.

Table 5 will contrast the assumptions of the new restorative paradigm with the old retributive paradigm (Zehr ;1990: p 19).

Table oneRetributive Justice

Crime is an act against the state, a violation of a law, an abstract idea.

The criminal justice system controls the crime.

Offender accountability is defined as taking punishment.

Punishment is effective because the threat of punishment prevents crime. Punishment changes behavior.

Victims are peripheral to the process.

The offender is defined by deficits. The offender is defined by capacity to make reparation.

Restorative Justice

Crime is an act against the community.

Crime control lies primarily in the community.

Crime has both individual and social dimensions of responsibility and accountability.

Punishment alone is not effective in changing behavior and is disruptive to community harmony and good relationships.

Victims are central to the process of resolving a crime.

Focus on problem solving, on liabilities/obligations on the future

(Zehr:1990,p7)

According to Zehr (1990, p7), the Retributive Justice Theory views crime as an act against the state, a violation of a law, an abstract idea, where the Criminal Justice System controls the crime. The Retributive Theory defines offender accountability as taking punishment. Punishment is viewed effective and that the threat of punishment prevents crime. Punishment also brings about change in behavior. The victims are peripheral to the process and the offender defined by deficits. The offender is defined also by a capacity to make reparation and emphasis is placed on adversarial relationship. Crimes cause an imposition of pain and justify the punishment in order to deter/prevent an offender from re-offending. The community is on the sideline and represented abstractly by the state. There is also a dependence on proxy professionals.

According to Zehr (1990, p19) the Restorative Justice approach views crime as an act against the community and crime control lies primarily in the community. Crime is seen as having a distinction of two dimensions of responsibility, namely, individual and social. With the Restorative Theory on the other hand, punishment alone is not effective in changing behavior and is disruptive to community harmony and good relationships. In this approach victims are central to the process of resolving a crime. The focus is on solving the problem and liabilities/obligations and on the future. Restitution is seen as a means of restoring both parties with the goal of reconciliation.

Restorative justice recognizes that people are all interconnected and that what one do, may it be good or evil has an impact on others. This system offers a process, whereby those affected by criminal behavior, be it victims, offenders. Families or the wider community, all have part in resolving the issues that flow from the offending. The process of restorative justice does not focus like the retributive system on vengeance and punishment but seeks to heal both community and individual. Retributive justice is interested in how the person will be punished but restorative justice is interested in how the damage of the offending will be repaired (Consedine: 1998, p183).

Advantages of Restorative Justice

Restorative Justice is Indigenous:

In countries such as New Zealand, Canada, Australia, and Ireland, the reshaping of the process of law is an essential process and sign of maturity. There is no reason, except vested interest, why indigenous traditions of above-mentioned countries could be applied to criminal offending. Sentencing circles, a tradition of the first nation countries, having been successfully implemented can be applied much widely and amongst various nations. The Maori traditionally based their system on the overall good of the community and the desire to restore its wellbeing.

Restorative Justice Place Victims at the Centre:

With the retributive system victims does not get the attention they deserve although they are the complainants. Punitive justice brings about emotions of anger pain and unresolved issues after nasty criminal incidents. The new youth justice system offers some positive results. A young person experience feelings of shame after they have met the victim and their families. Zehr in Consedine (1998:187) wrote, that victims need to speak to the offender to sometimes determine who were at fault and sometimes they need to experience forgiveness. According to Consedine victims need to be able to let go of the experience of the crime so that the crime does not dominate their lives. Therefore to re-empower victims enable them to be healed (Consedine: 1998, p187)

Offenders Are Called To Account For Actions:

Restorative justice brings a dimension of community responsibility. Therefore it is recognized that we all form part of humanity and that we have responsibility to one another. We have to be a caring community that has the interest of our fellow man at haert. Therefore to focus only on the individual is to focus on narrowly. Often offenders have no comprehension of the damage done in people lives. In most cases although an offender has a lot of cases against him he sees it as simply to support their drug habits or their greed. In either case restorative justice makes them accountable for their actions (Consedine: 1998, p190)

Disadvantages of Restorative Justice

There is no right way to deliver restorative justice because there is no “ideal” form of restorative justice. The main criticisms made against restorative justice will be discussed under the headings as pointed out by Morris (2002, p600) as cited in the magazine Article 40 Volume 3 April 2003, namely:

Restorative justice erodes legal rights:

A common criticism made of restorative justice is that it fails to provide procedural safeguards or to protect offender's rights. The picture painted is that restorative justice advocates and promote this failure in order to obtain more readily offenders acceptance of their responsibility for their offending and agreements amongst participants about how to deal with that offending. However, restorative justice practitioners have to follow certain guidelines or practice manuals and there are statutory guidelines that have to be followed. Thus one cannot say that restorative justice erodes one's legal rights.

Restorative justice results in net widening:

With this statement it is meant that the net of social controls is widened. The assumption is that this new paradigm focuses on minor offenders at low risk of re-offending. The key issue is to test the validity of this claim or to prove that this claim is valid. In New Zealand, restorative justice processes are used not for relatively minor offenders but rather for the most serious and persistent offenders in the youth justice system and for relatively serious and persistent offenders in the adult criminal justice system (Morris 2002, p603).

Restorative justice fails to restore victims and offenders: some critics have alleged that full monetary restoration is not always achieved as many offenders have limited resources. Research has shown that victims who have taken part in restorative justice processes have high levels of satisfaction with reparative agreements, have reduced levels of fear and seem to have an improved understanding why the offence occurred and its likely hood of reoccurrence. As mentioned above, monetary restoration is not what victims want. They want emotional reparation and because it does not always happen, it happens more often with restorative justice.

Latime in Morris (2002, p6) has conducted a meta-analysis of 22 studies, which examined the effectiveness of 35 restorative justice programmes that have shown that victims who participate in restorative processes were significantly more satisfied than those who have participated in traditional justice systems. For the offender, restoration means restoring a sense of control to them, to make amends for what they have done and restoring the belief in them that the process was fair and just.

Restorative justice lacks legitimacy:

Thior in Morris (2002, p609) found that citizens treated with respect and listened to by the police were likely to see the law as fair, and when they were treated without respect and not listened to, they see the law as unfair. He distinguished between “process control” and “out-come control” and having a say. That decisions were however, based on decisions made by judges. Restorative justice embodies some principles for instance, consistency, impartiality, accuracy, correct ability and ethically. Restorative justice however, involves different values, and legitimacy is one of them (Morris: 2002, p 609).

Conclusion

Restorative Justice and Retributive Justice are not mutually exclusive terms. The transformation of the juvenile justice system, to a more restorative justice system, will mean a process of responding to crime and administering appropriate justice without compromising the right of any individual. The Restorative Justice Approach was brought about by attempts to respond to crime and to seek appropriate justice for juvenile offenders.

The next chapter will be a discussion of how the principles of restorative justice were implemented. This will be done through the discussion of a case study. The Stepping Stones One Stop Justice Centre will be discussed in detail.

CHAPTER 3

The One Stop Youth Justice Centre “Stepping Stones Project”

Introduction

This chapter discusses the One Stop Youth Justice Centre “Stepping Stones”. A comparison between the punitive system and restorative justice system was illustrated in chapter 2. Since the transformation of the juvenile justice system, youth legislation and strategies are geared towards a restorative system to empower youth rather than prosecuting them.

In chapter 3 a research methodology will illustrate how theory was but in practice at the One Stop Youth Justice Centre, Stepping Stones. A case study will outline how the centre incorporates the restorative justice method in their current service delivery. The purpose of illustrating the restorative justice principle in practice is to ascertain how it is a better approach to retributive justice. This project was established as a learning center in 1997, after research found the project to be the most effective way of dealing with youth/children in conflict with the law in a restorative way.

Research Method

The scope of the research was limited to Stepping-Stones One Stop Youth Justice Centre and this report should not be confused with other centres.

The fact that the centre is in Port Elizabeth limited the fact that one to one interviews could be concluded. In order to obtain the information needed for the study information was obtained through telephonic interviews with the head of the Stepping Stones Centre. Non-scheduled interviews were also conducted with social workers working at the center to obtain information regarding the day to day operation at the center.

Telephonic permission was received from the head of the department in the Eastern Province to conduct a study of Stepping Stones. In order to illustrate service delivery at the centre as well as the presentation (how it looks like) was posted by a social worker. A clear picture was formed in terms of how services are divided and which role -players are involved to ensure effective delivery.

Other methods include literature studies of recent studies conducted of the centre. Information was compiled by means of a computer to compile the information gathered and present it in a thesis. The telephone and electronic mail was utilized to gather the information and prove therefore that the restorative approach in action may prove to be a better option to deal with youth crime.

Access to information regarding statistics about crime related issues such as the total of children who commits crime per months and make use of the One Stop Youth Justice Centre and how many children are diverted to the different programs, were limited.

Sample Design: Case Study

A case study as research method was chosen due to the fact that Stepping Stones One Stop Youth Justice Centre is situated in Port Elizabeth and is the first of its kind in South Africa. Stepping Stones incorporates the principles of restorative justice and service delivery embraces the principles implicitly. This case study explains the history of the project as well as the services delivered by the centre in the Port Elizabeth magisterial district. This philosophical design was used due to the fact that not a lot of research has been done in the field of juvenile justice. The system is currently being implemented and has not yet become an Act. This method draws on literature mostly and in this chapter specifically explains the service delivery programs.

Background to the Project

Restorative justice has been discussed in South Africa since 1993. After the amendment of Section 29 of the Correctional Services Act (1995, p50), an opportunity was created to look formally in the transformation of child justice and youth care system in South Africa. Restorative justice formed a key aspect of the transformation process. The regional working group of the Inter-Ministerial Committee, decided to focus their pilot project on the children in trouble with the law in the Port Elizabeth magisterial district, as it was an area of great concern.

The decision to establish a One Stop Youth Justice centre in Port Elizabeth was based on the high numbers of children arrested, the average number of children awaiting trial and fragmented services, which resulted in children slipping through

the system. The Restorative Working Group realised that a comprehensive, holistic service was needed to ensure that youth are being assessed. The overall purpose of the centre was to ensure that youth receive all the services required under one roof. The centre was officially opened on 15 August 1997. The centre received the recognition and was appraised by the President of the time President Nelson Mandela, for making a difference in the lives young people and families.

Stepping Stones Centre

Operational Review

Stepping Stones, consists of a police charge office (exclusively for children), a youth court (dealing only with children), and a welfare component, staffed by probation officers, an assistant probation officer as well as child and youth care workers. The centre is equipped to render a comprehensive and holistic service within a multi-disciplinary team approach. When a child is arrested within the Port Elizabeth Magisterial District, the police would take him or her to Stepping-Stones, where the child can be detained in child-friendly holding facilities, if necessary. All police procedures are finalized here, and the child is charged at the centre. The child's immediate and basic need is seen after, and enjoys priority, as well as notification of the child's parent or guardian of his detention.

Probation officers work according to a shift system to make them available to receive children arrested and to start with a pre-trial assessment. The child is not detained more than 24 (youth 13 years and younger) to 48 (youth older than 14 years) hours before appearing in court for the first time, even on a weekend or public holidays.

At the first court appearance the probation officer makes an initial recommendation to the court, based on the pre-trial assessment. This include that normal court procedures be followed. For instance that a child be referred to a diversion program, converted to the Children's Court for opening of Children's Court Inquiries, or released in the care of his/her parent or guardian. This will be done as soon as possible where the court is willing to allow the child to be released. If a child is found guilty, a pre-sentence report is normally requested by the court and completed by a probation officer, who then takes a

recommendation regarding sentence. Depending on the needs of the child and family and the outcome of the court case, services are rendered to the child and family. This may include probation supervision, referral to an appropriate agency, counseling services, parent skills training or therapeutic groups.

The centre staff (including Justice, SAPS and Welfare) has received numerous and intensive training courses designed to allow the staff to work effectively from a developmental and strength-based perspective, placing emphasis on multi-disciplinary teamwork and an integrated approach.

Aims and Objectives

The aim of presenting Stepping Stones as a case study is mainly to illustrate which of the two methods, retributive or restorative is a better system in dealing with youth in trouble with the law. A further aim of the center is keep youth in trouble with the law in the Port Elizabeth magisterial district. The objective of the project is preventing youth from re-offending. The ultimate goal of the Stepping Stones centre is to return the young person to the care of their families as soon as possible to promote the competence of the family as well as the community.

Target Group

The target group includes all the children under the age of 17 years in the area of service delivery of the Stepping Stones, who came in conflict with the law. The community in the service delivery area often seeks assistance from the centre especially in high-risk behavior by youths.

Service Delivery Programmes

Within this project, emphasis is being placed on the involvement of the families of youth and significant others in service delivery. A strength-based approach, as well as the restorative approach is used and the probation officers are continuously motivated to make their engagement with the client system meaningful. Positive feedback has been received from youth and their families, who confirmed that this system of service delivery made them feel valuable and respect.

The philosophy of the centre is as follows: “For the harm done through their wrongdoing, offenders are responsible but, for using inappropriate methods for treating offenders, when better methods are known, we are responsible” (Scheepers U; 2000, p16). The centre operates 7 days a week, and it makes it convenient for families to attend interviews, without being absent from their work.

Incorporation of Paradigm Principles

Stepping-Stones embraces the transformation of the Child and Youth Care System, which is guided by Paradigm Principle’s identified by the IMC (Inter Ministerial Committee on Young People at Risk) and Restorative Justice. This principle includes Accountability, Empowerment, Participation, Family Centred, Continuum of Care, Integration, Normalisation, Effectiveness and Efficiency, Child-Centeredness, Restorative Justice and Family Preservation (Inter Ministerial Committee on Young People at Risk: 1996, p23).

At Stepping-Stones everybody who intervenes with young people and their families, are held accountable for the delivery of an appropriate quality service. Staff members at the centre are held accountable in terms of regular staff supervision on an individual and group basis. The staff is also accountable to the court (Criminal and Children’s Court) through rendering professional psychosocial reports, which are subject to cross-examination and rules of admissibility in court.

Stepping Stones attempts to ensure empowerment of their client system by utilizing diversion programs to avoid the criminal prosecution of young people. Active participation of young people at risk and their families are required in every process they are involved in and include life-skills training programs. The resourcefulness of each young person and their families are promoted by providing opportunities to use and build their own support networks and act on their own choices and sense of responsibility.

The young people and their families are actively involved in all stages of the intervention process. An active involvement is required of the young person and families in all stages of the assessment and intervention process. Family Group Conferencing and decisions affecting their lives, necessitate active participation

by young people and their families. Support and guidance are provided through regular assessment and action planning enhances the family's development over time. The primary emphasis is placed on the importance of the family as a socialization agent and environment that in most cases are suitable to child rearing. Family centered services as far as possible focus therefore on family reunification, taking the child's best interest into account.

The young person at risk has access to a range of differentiated services on a continuum of care, ensuring access to their needs. Stepping Stones strives to provide a range of appropriate and differentiated services with the active involvement and co-operation of relevant stakeholders. Nicro presents a range of present diversion programs and include intervention programs, guidance and support to in the implementation of diversion programs. Group intervention programs, serves as conditions of sentences and differs from individual and family counseling as well as parenting skills training programs. Services are inter-sectoral and delivered by a multi-disciplinary team wherever appropriate. The multi-disciplinary team involves inter-sectoral staff from Welfare, Justice, Police Services and Non-Governmental organizations where appropriate.

The young person and his/her family are exposed to normative challenges, activities and opportunities, which promote participation and development. Focusing on the inherent strengths of the young person and family and their development instead on their dysfunction and deviancy is enforcing the principle of normalization. Re-framing the negative experience of being in trouble with the law and going through court processes as a learning experience and chance to make positive changes. In other words the negative experience of being in trouble with the law are changed into a learning experience and the young person is granted the chance to make amends and change his behavior. The cultural appropriateness is also taken into consideration.

All the actions with the young people and their families are tendered in the most effective and efficient way possible. Positive developmental experiences, both individually and collectively, are ensured for the juvenile. Appropriate guidance and support are ensured through regular assessment and action planning, which

enhances the youth development over time. Services are child centered and child friendly holding facilities are in line with security regulations.

Stepping Stones implements this restorative justice paradigm by means of pre-trial diversion programs, involving and assisting victims of crime. The success of the approach also lies in educating stakeholders regarding the principles of Restorative Justice. The least restrictive and most empowering sentences and placement options are considered during sentencing. Other sentences conditions also include community services and the victim/offender mediation diversion program.

Through the developmental restorative approach, services rendered prioritize the need to have the young person remain with the family where possible. To this end family capacity building and access to variety of resources and supports are of primary concern. The centre utilizes family finders to locate families or inform them about the arrest and detainment of the child. The parents are informed as soon as possible in order to increase the possibility of children being released in the care of their parents at the first court appearance. Family Group Conferences are arranged regularly to encourage family involvement, decision-making and appropriate planning.

Intervention Strategies

Certain pre-trial intervention strategies are followed at Stepping Stones One Stop Youth Justice Center. These pre-trial intervention strategies include diversion programs where a child will be diverted away from formal criminal procedures. Different diversion programs are considered, and the probation officer will specify in the recommendation for which programme the child qualifies. Presently, diversions are done at the discretion of the senior state prosecutor with the permission of Public Prosecution for certain approved programmes. The off-spin of diversion is to reduce the caseload of the formal justice system.

Probation officers or assistant probation officers at the centre present diversion programmes. The centre utilizes the Responsible Living Program, a group work programme designed to be implemented as part of a condition of a sentence and is also used as a diversion program. Other diversion programs include the Youth

Offenders Scheme, a life-skills programme that involves the youth and their parents or guardians. The pre-trial community services commit the young person to perform community service in lieu of prosecution. The Victim Offender Mediation Programme brings the victim and offender together in an attempt to address the needs of both parties. Family Group Conferences as discussed in the research are similar to Victim Offender Mediation, but involves the family and friends of the young person in a process to restore the harm done and prevent re-offending.

The selection of young persons in trouble with the law to qualify for diversion, include that they should be between the ages of 12 and 18 years. The discretion however lies with the prosecutor to divert people, who are a little older, e.g. 19 years old but still attending school. A further requirement include that the youth have fixed home addresses and the parents or guardian takes co-responsibility for attending the programme. Serious offences, which include armed robbery and rape, are not considered for diversion. In order for the young person to benefit from the program, he/she has to take full responsibility for their involvement in an offence. When children complete the diversion programme successfully, the criminal case against them is withdrawn completely by the prosecutor.

Post Sentence Intervention Strategies

Post Sentence Intervention Strategies entail programs whereby a youth at risk are referred to as part of a sentence option. Young persons, if first offenders, involved in serious offences, are placed under the least restrictive and most empowering programs. A youth is placed under supervision of a probation officer by the court in lieu of any sentence, or a part of condition of sentence. Assistant probation officers are also responsible for rendering supervision services.

Monitoring and supervision services are rendered in terms of the behavior of young people. Monitoring further involves frequent contact with the concerned youth and school and is mostly a supportive service. Therapeutic services are rendered when young people and their families require more intensive intervention and are offered the opportunity of individual, couple, family or group counseling.

Other programmes rendered by the probation supervision services include the education/therapeutic programme and forms part of sentence conditions. This programme is presented at the centre, as well as in three of the poor socio-economic areas of Port Elizabeth, and is currently under revision. A parenting skill course is presented from time to time to interested parents and focus on practical mastery of parenting skills, effective communication and problem solving as well conflict and stress management. Camps are arranged to offer young people an intensive outdoor experience. The Say-Stop programme, developed by Nicro, is used as a diversion option or condition of sentence for youth who clashed with the law involving minor sexual offences.

Community Service

The court, as part of their sentence, if suitable, requires young people, to perform a number of hours community service. Some of these youth perform their community service at the centre, and others at community based organizations to participate in this process. Stepping Stones have identified youth structures, which could impact on services rendered. Links were formed with youth groups

like Liberty Youth Forum, Legit for Christ and clubs providing a positive experience. Hospitals, clinics, libraries, police stations and NGO's provide young people with placements to perform their community service.

Presentation of a Case

In order to give insight into the operation of the centre, a case will be presented: Lulamile, a 13 year old was arrested on charges of shoplifting. In the past, the police would have collected the child at the shop and tried finding his parents. The parents or guardian cannot be traced for numerous reasons; for instance, a street child might have given wrong information to the police. The child will be officially charged at the police station and kept in custody. The child will report at court without his parents being present and knowing about his detention. The case will be remanded for further investigation and to locate the parents. The child will then be kept in custody at St Albans Prison pending the location of the parents. This means that the child will then be kept on awaiting trial for a period of up to 2 or 3 months pending finalization.

Only when the parents of the child are traced, will the case be finalized and he/she will receive a suspended sentence and returned into the custody of his parents. The child will then have a criminal record and spend unnecessary time in detention (IMC: 1997, p44).

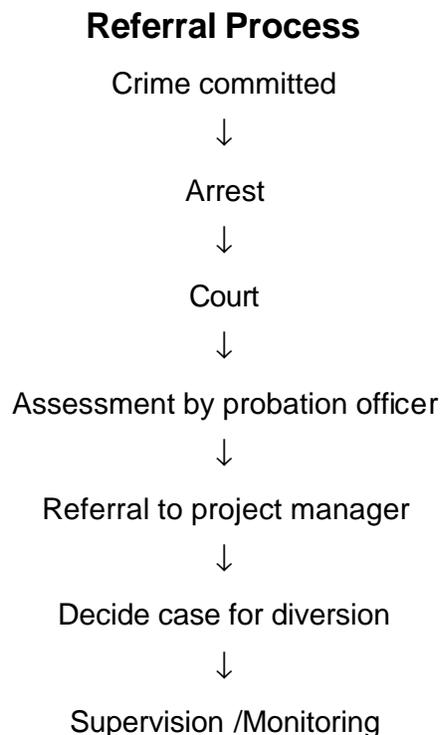
The One Stop Youth Justice Centre will handle such a case in the following manner. The child is arrested for shoplifting and he will go through the arrest, reception and referral process. The arresting officer will bring the child to the One Stop Justice Center and informs the probation officer (social worker) of the arrest and completes the necessary documentation. The Probation Officer reports at the police section to start with the reception process and will start with an initial assessment to obtain information from the child to enable him/her to make a decision regarding the immediate placement of the child. The probation officer contacts a family finder in order to locate the parents and bring them to the centre. While the child waits on his family/guardian, he is kept in a child friendly holding facility. If the child is in a neglected state physically, he will be given access to washing facilities and provided with clothes.

When the parents of the child arrive at the centre, the initial assessment will continue. If the home circumstances are satisfactory, the child will be released into the custody of his parents/guardian. Depending on the availability of the state prosecutor, the process to keep the child out of the mainstream criminal justice system (diversion option) will also receive attention. However, if the state prosecutor is not available, an appointment will be made for a proper assessment and the referral process will take place the following day. This referral process relates to the decision about how the case will be handled. The procedure regarding the referral will include if the child acknowledges his responsibility for the offence committed. The rights of all involved will be explained as well as the process that will be followed. An appropriate assessment will be conducted as well as decision-making on the correct disposition of the case. Options that can be used for the disposition of the case include the withdrawal of the criminal charges, formal caution, children's court inquiry, diversion programmes such as the youth offender's programme, family group conferencing and a shoplifting programme or formal criminal court procedures.

Referral is seen as a multi-disciplinary process, which include the police representatives, prosecutor, probation officer, young person, his or her guardian and law community member will participate in the meeting. The victim will also be consulted in keeping with the principles of restorative justice. When a child is referred to a diversion programme, the case against him is provisionally withdrawn, pending on the successful completion of the diversion programme. On completion of the programme it is expected from a probation officer as well as the programme coordinator to give a progress report to the senior state prosecutor. In turn the state prosecutor will then decide to withdraw the charges in totality or to prosecute in the cases where youth have not completed the programme successfully.

The Stepping Stones Centre makes use of trained family finders, volunteers or assistant probation officers to assist with aftercare services for youth that have completed a diversion programme. The purpose is to facilitate the successful re-integration of the child into his or her family and community and to minimize the risk of the re-offending (IMC: 1997; p 19).

Schematic Illustration of the Process:



Benefits for Children and Families

The perception of the staff, the children and their families are that service delivery is time saving because the services are centralised and less time is spent travelling from one police station to another or from one court to another. Probation officers no longer spend many unproductive hours in various courts, waiting for cases allocated to them to be heard.

Time can be spent more productively and quality wise on assessments. In the past, investigations had been rushed through and not receive the attention it deserved. As a result the focus was not on the families as a resource in the intervention programme. Due to the pressure put on them to deliver within a specific time, they were forced to make decisions on behalf of families. The benefit of the centre is that they have more time to include families in the intervention and decision-making process. Due to the fact that the centre operates on a strength-based approach, contributions made by children and families are valued. The assessment also results in a reduction in the request for pre-sentence reports from court, as not all children are now processed through the court process, and more time is spent on doing family support and intervention.

Multi Sectoral Teamwork

In the past, probation officers were not treated as part of a team by prosecutors and magistrates, but they were viewed as people with welfare hearts, who did not always give a balanced and objective report. The probation officer had to deal with the different approach of different prosecutors and magistrates in different courts and to work in an almost hostile environment. Probation officers at the centre are still nervous when attending the outside courts in cases where children are involved in crime with adult offenders, as they are not sure of the reception they will get. Working as a team at the Stepping Stones One Stop Centre, contributes to a more relaxed atmosphere, where solutions for problems are found. Probation officers at the centre are open to discuss cases with magistrates and prosecutors and, in this way, contribute to the learning experience of the probation officer as they give advice on what the Criminal Procedure Act stipulates.

This centre encourages probation officers to view families as the first option, when consideration is given to the fact as to where the child should be detained. Restoring children into the custody of parents, lessen the task of probation officers in looking for a vacancy in institutions. The benefit for the families is that more children are returned to the custody of their families soon after arrest and they are in a position to return to their normal life (school, friends, church, etc.).

It is also more conducive for the probation officer to deal with the child within the family environment, than dealing with him while in custody at an institution or prison. The implementation of a weekend court at the centre, contributed to speeding up the process of restoring children into the custody of their parents. Children who are arrested at the end of the working week (Friday) and where detectives refuse to give permission for their release or warning (J496), do not have to wait anymore for a Monday morning, when the courts resume, to be able to go home.

The centre also operates with three family finders/volunteers who collect parents at their homes to ensure that they are present in court to facilitate the release of children into parent's custody. The probation officers have built up a high caseload and cannot spend enough time on aftercare services, which is important to prevent re-offending. They improvised and utilised family finders to assist with aftercare services. This group of family finders consist of retired or unemployed professionals (teachers, wardens, clerks, etc.) as well as regional ministers whom have received training and given regular feedback to the probation officers, whom give them structural guidelines.

Community Involvement

Staff at the centre has come to realise that in order to make a real difference to the circumstances of children, they have to involve the community. The saying: "it takes a village to raise children", is especially true in the service delivery at the centre. Meetings are held on a regular basis with community members, church leaders and community police forums. Decisions are made at meetings on a monthly basis. It was determined at these meetings that communities, together with the help of the probation officer and Nicro, is to establish branches in the area. The task of the branches will be to gain support for children who are in

trouble with the law and establish private secure care places within each community. This will be done in order to lessen the number of trail awaiting children in detention. However, a structure has to be established that will assist the probation officers with aftercare services and the re-integration of children back into the care of families and communities.

Statistics

Statistics are viewed to be important for the One Stop Youth Justice Centre due to the lack of accurate statistics on Juvenile Justice. Statistics enables the centre to identify problems and blockages in their systems. During an operational review it was found that social work programmes are generally planned without research and without establishing the extent and nature of the problems. A schematic outline will be given to illustrate the different types of offenses the center is deals with.

Table 2**Offences Committed from January 2003 to September 2003**

OFFENCES	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
Arm robbery	16	21	12	13	11	15	14	14	9
Arson	-	-	-	-	-	-	1	-	-
Assault Common	-	-	-	-	-	-	1	-	-
Assault GBH	16	17	20	15	16	12	22	10	11
Att. H/Breaking	4	-	5	3	3	-	10	-	-
Att. Murder	2	2	5	2	1	3	2	2	1
Att. Rape	-	-	-	-	-	-	1	2	-
Att. Robbery	-	-	2	1	1	-	4	-	-
Att. Theft	-	5	1	-	1	2	1	1	-
Att. Theft/ o/o m/v	6	-	1	6	-	2	-	1	-
Child Abuse	-	-	1	-	-	-	-	-	-
Dealing in Dagga	-	-	-	-	-	-	-	1	-
Dealing in Mandrax	-	-	2	-	1	-	2	-	-
Drinking in Public	-	1	-	3	-	-	2	1	-
Driving m/v w/o Licence	-	-	1	-	-	-	-	-	-
Driving m/v w/o permission	-	1	-	1	-	-	-	4	-
Drunk in public	5	-	4	1	2	4	-	-	1
Drunk Driving	-	2	-	-	-	-	1	-	-
Fraud	-	3	2	2	-	-	-	-	-
Gambling in Public	-	2	-	3	6	-	-	-	-
Hostage Situation	1	-	-	-	-	-	-	-	-
Housebreaking	87	62	73	58	53	39	90	72	51
Illegal Alien	-	-	-	-	-	-	-	1	-
Indecent Assault	6	3	3	-	1	7	2	3	2
Interfering SAPS Duties	-	1	1	-	-	-	-	-	-
Loitering	-	-	-	3	3	3	7	1	1
MITP	19	14	14	8	15	13	11	16	12
Murder	5	4	5	-	5	1	4	11	3

Need of Care	-	-	-	-	-	2	1	-	-
Point F/A	5	4	-	1	-	2	-	2	-
Poss. Of Abelons	3	4	5	1	3	-	2	-	4
Poss. Of Ammunition	-	1	-	-	-	-	2	-	-
Poss. Dagga	5	1	4	2	9	3	2	5	8
Poss. Ecstasy	-	-	-	-	-	-	-	-	1
Poss. F/A	3	-	3	-	4	1	2	5	1
Poss. H/B Implements	-	-	-	-	-	1	-	2	-
Poss. Mandrax	1	2	3	2	-	-	3	4	1
Poss. Of Theft o/o m/v Implements	-	-	1	-	-	-	-	-	-
Poss. Stolen goods	9	14	14	11	7	17	19	17	9
Public Violence	-	-	-	-	-	2	-	-	-
Rape	12	6	4	10	9	17	12	5	4
Reckless Driving	1	-	-	1	4	1	-	-	-
Riot Behavior	6	9	8	14	8	8	9	6	6
Robbery	14	16	23	14	13	-	34	23	27
Shoplifting	31	61	36	31	43	38	46	54	29
Sodomy	-	-	-	-	2	1	-	-	-
Stock Theft	-	-	-	4	2	-	-	4	-
Theft	4	42	73	56	36	52	65	42	51
Theft o/o m/v	9	9	15	6	17	12	9	5	7
Theft of m/v	5	2	-	-	3	4	1	1	-
Trespassing	9	-	-	-	2	-	2	2	-
Urinating in Public	-	-	-	-	-	-	-	2	-
Walking on Freeway	-	-	-	-	-	-	2	-	-
Warrant	7	10	10	8	7	6	6	12	5

Source: stepping stones One Stop Youth Justice Centre

From above statistics it is clear that attempted housebreaking and housebreaking offences are the most prevalent offences and escalates over school holidays. This conclusion is supported by the numbers for January, April, July and September. Theft and shoplifting offences are equally popular offences.

This might be due to the fact that children prefer those crimes that can be easily accomplished. The police defines these type of offences as property related crimes as well as social related crimes. It is also evident that violent crimes, such as, armed robbery and murder amongst youth are on the increase in these areas.

The One Stop Youth Justice Centre mainly deals with youths between the ages of 7-14 and 15-17. Recent statistics were obtained from the One Stop Youth Justice Centre for the period January 2003 until September 2003. The following table illustrates the age distinction and number of arrests for the period of January 2003 to September 2003.

AGE	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
7-14	82	75	90	68	63	75	91	88	67
15-17	250	240	265	207	225	205	299	251	177

Source: Stepping Stones One Stop Youth Justice Centre

The conclusion that can be drawn from above statistics is that the numbers fluctuate according to school holiday periods. This can be linked to a lack of positive extra mural activities for the children in the service area of the centre. A point of concern is the huge discrepancies in numbers between the two different age groups. The assumption that can be drawn from this is that the older juvenile offenders are the most vulnerable group.

Table3

MONTH	NUMBER ARRESTED	NUMBER ASSESSED	
JANUARY	335	234	
FEBRUARY	336	278	
MARCH	360	175	
APRIL	267	133	
MAY	288	227	
JUNE	282	240	
JULY	289	249	
AUGUST	232	228	
SEPTEMBER	236	192	
TOTAL	2 625	1 956	

Source: Stepping Stones One Stop Youth Justice Centre

Schematic illustration of problems regarding assessment the center has to deal with For the period January 2003 30% of juveniles arrested were not assessed. For the period of February 2003 17% were not assessed. In March 2003 51% were not assessed. During April 2003 50% of children were not assessed. In May 2003 21% were not assessed and for June 15% of children were not assessed. During July 14% of children were not assessed and for August 2003 2% of children were not assessed. For the month of September 2003 19% of the children were not assessed.

The conclusion drawn from the total number of children arrested and assessed, is that 25% of the total amounts of children were not assessed. The reason for this discrepancy of children not assessed was not known. A contributing factor reported by the centre can be linked to the fact that children lie about their ages and make themselves older.

Statistics obtained from the centre regarding their service delivery for the period of November 2002 until November 2003 reveal the following:

Table 4

SERVICES PROVIDED	NUMBER OF CHILDREN
Children have been placed in private places of safety, within the various communities	14
Children received postponed sentences and were restored back into the custody of their parents	48
Children received suspended sentences and were restored back into the custody of their parents	132
Cases were converted into Children's Court inquiries	30
Foster care placements were finalised in the children's court	10
Cases were referred to Reformatory Schools	5
Absconders inquiries for return to Reformatory Schools	8
Children were returned to the custody of the Children's Court under the supervision of a social worker.	9
Children are presently receiving aftercare services.	86
Youth were found to be adults and referred back to court.	28
Children received sentences of imprisonment for serious crimes committed, i.e. rape, murder, etc.	2
Youth whose cases were not followed up after the initial assessment, due to non-attendance of court.	40
Youth involved with adults in serious offences.	16
Children in diversion programs.	70

Diversions for the Period of January 2003 to September 2003

Children who commit minor or less serious offences are diverted to different programmes presented by Nicro and the assistant probation officer at the centre. Their statistics reads as follows:

Table 5

TYPE OF DIVERSION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
Youth Empowerment Scheme	57	59	23	37	34	45	47	38	47
Pre-trial Community Service Order	11	15	3	5	5	8	5	6	8
Family Group Conference	6	11	-	1	2	1	2	1	8
Combination	-	-	-	-	-	-	4	-	-
SAYSTOP	-	-	-	-	-	1	-	-	1
Victim Offender Mediation	-	-	-	-	-	-	2	1	1
TOTAL	74	85	32	43	41	54	60	47	65

Source: Stepping Stones One Stop Youth justice Centre

Above-mentioned two tables illustrate the progression of the restorative paradigm at this centre. During the initial stages little recognition was given to aspects of the strength-based approach and the restoration of the juvenile offender back to his community. Emphasis was placed on the most restrictive options (reformatories, suspended sentences) rather than the most empowering option (parents, community, postponed sentences). A huge discrepancy is also obvious in terms of diversion numbers in the two time periods.

From the second table it is clear that the majority of children, who are involved in less serious offences, are referred to the Youth Empowerment Scheme. Although sexual offences are very serious, the SAYSTOP programme makes provision for those who commit less serious sexual offences. The restorative nature of the Stepping Stones Center is emphasized by the fact that they are incorporating those intervention programmes that enhances victim and community participation in the process of juvenile justice.

Strengths and Challenges

Strengths of the centre are determined by the fact that more cases were diverted from the criminal justice system. Since the official opening and proclamation of the centre by late Honourable Mr Dullah Omar in 1997, more than 517 cases have been registered and 153 cases diverted from the criminal justice system. The involvement of the community through their representation on the Inter Ministerial Regional Working Group serves as promotion of the centre, which is a resource that belongs to the community. A further strength includes the weekend court sessions, in other words, committed staff working towards restorative justice. The individualisation of every youth that clashed with the law in Port Elizabeth and their specific strengths is taken in consideration.

With the implementation of family finders, parents/guardians and extended families they are encouraged to take responsibility for the youth. Staff working shifts is able to render a more accessible and efficient child centered service. Ongoing in-service training enables staff members to find “better” ways to approach and deal with youth in trouble with the law. Staff members are also committed to develop more diversion options to which juveniles can be referred. They believe in the transformation of the child and youth care system and strives to implement restorative justice principles. A further strength is that the centre serves as a resource for social workers in service of the Department of Social Services who has to act as protection officers, by providing guidance in terms of sentencing/diversion programmes. A challenge lies in the fact that there is a determination to render a restorative justice service despite criticism that it is going soft on crime.

A further strength lies in the fact that a motivated magistrate and prosecutor, is appointed, who believe in the implementation of the restorative approach. Families are also recruited to serve as private places of safety and parents are consulted on the type of action that should be taken. Due to the social worker of Nicro being stationed at the centre, cases are more accessible and this speeds up the finalization of cases. In situations where the centre is unable to provide an appropriate service, clients are referred to specialist organisations. The centre has also formed a partnership with the Zankhanyo Youth Group, who does dramatisations at residential care facilities and schools in order to educate young

people on the dangers of HIV/AIDS. The President's Awards programme instils life-skills, business skills as well as craft skills in youth at risk.

In recent studies done by researchers in the juvenile justice field, on the approach of restorative justice, it was found not only to benefit children and families, but also staff involved in the process. The Inter-Ministerial Committee found the project to be sustainable and a cost-effective way to protect the children in trouble with the law and to ensure adequate integrated service delivery to them by the Departments of Safety and Security, Social Security and Correctional Services.

A further challenge entails that the centre have come across youth who have misrepresented their ages and who are older than 18 years. A district surgeon was appointed to service the centre on a sessional basis in assisting with the determination of age in order to take these adults out of the system as soon as possible. Another solution was also to set up a network with the Department of Home Affairs, whereby they will, on request, forward the centre with immediate proof of registration of birth.

Mangaung One Stop Youth Justice Centre

Another example of restorative justice in action is the **Mangaung-** One Stop youth justice centre in Bloemfontein, which lends its origin from Stepping Stones. The idea of One Stop Youth Justice Centres is one of the offspring of the Child Justice Reform programme. Dealing with children in conflict with the law under one roof was decided on in 1996 when the Department of Social Development and Justice formed a committee to discuss these matters. After the committee listed the One Stop Youth Justice Centre in Port Elizabeth, guidelines for the establishment of the One Stop Youth Justice Centre in Bloemfontein was put to table. The Monument Place of Safety was phased out and the premises were allocated for this project (Morris: 2002, p1).

The centre became functional in 2002 and Monument Place of Safety served as holding cells for the centre. Children awaiting trial for serious offences were kept in the holding cells. The main aim of the centre is to prevent children from being kept in prison and police cells and also keeping the child out of the mainstream

criminal justice system. Furthermore the centre aims to gain support and involvement of communities, to motivate children to take responsibility for their actions and therefore receive the children back into the community. The centre also aims to involve the parents in programmes to enable them to support their children in taking responsibility for their actions. The centre is committed to strengthen children's positive points, which will challenge them for a crime free future. Services at the centre include holding counselling sessions with parents/guardians and the child and exposing young people to restorative justice (Morris: 2000, p9).

From Scars To Stars Project

Restorative justice plays a very important role in the transformation of the juvenile justice system and working towards shifting from punitive measures. At the Mangaung -One Stop Centre, 280 cases have been reported since January 2002, including boys and girls. Most of the participants in the form of Scars to Stars programme are between the ages of 14 and 17 years. The different types of problem behaviour that the centre deals with relating to boys include, coming home very late at night, smoking dagga, not attending school and not adhering to house rules and stubborn behavior. Problem girls engage in sleeping out, playing truant at school, not attending school regularly and refusing to do home chores, using alcoholic beverages and stealing money at home.

The programme is utilised both as a community-based programme and as diversion programme. The programme also encourages children to be positive in life and attempts to boost their self-esteem. The programme mainly deals with problem solving, drugs, sexuality, decision-making, and motivation. With decision-making, children are taught the do's and don'ts in life. They are shown that it is easy to make decisions, but making the right decisions require skills and knowledge. They are also taught to take responsibility for the choices they make. The motivation programme teaches the children to be a winner in life, believe in themselves, know their values, have a vision, set goals and plan for the future. Children in the programme are also taught that conflict is part of life and efforts are made to teach them to handle conflict without emotional outbursts and without hurting other people.

Out of the 280 cases handled, 70 ended up re-offending, i.e. a recidivist rate of 25% or one out of four children ended up in court again. However, it was argued that more children would become involved in crime if they had not participated in the above programme. A further criticism point was that it does not serve any purpose to motivate children if the parents of the children does not co-operate and also change their behaviour. The study showed that children come from broken homes, alcohol abuse by parents, domestic violence and family conflict occurs. The centre realised that it is important to involve parents in the programme (Senekal A: 2002, p1).

Conclusion

Educating children and teaching them socially acceptable values is not the task of the justice system and courts, but in light of government policy of Ubuntu, the whole community needs to embrace its role in the development of children.

This chapter dealt with how restorative justice was put into practice and how successful programmes can be if there is commitment to the process. These two centres are making significant advances in implementing some elements of restorative justice and provide growing evidence that this paradigm is feasible and beneficial for juvenile justice professionals, victims, offenders, and the community.

The next chapter will discuss the question of why restorative justice is a better alternative. Further, how children are being influenced in a positive manner by this paradigm. This chapter will also illustrate how restorative justice is working in practice.

CHAPTER 4

Toward A Policy Framework Of Restorative Juvenile Justice In South Africa

Introduction

This chapter motivates why restorative justice is a better alternative. This chapter also discusses how children from marginalized communities are positively influenced by this paradigm shift.

The One Stop Youth Justice Centre in Port Elizabeth, the first of its kind in South Africa was established due to the high numbers of children being kept in police cells and on detention at prisons in the surrounding area. The widespread sub-economical areas and the existence of only one magisterial court caused problems, which contributed to the high crime rates. This resulted in the violation of children's rights, due to them being kept for extended periods in police holding cells before they are brought before a court. Children in the area were mostly treated in the same manner as their adult counterparts. With the establishment of the Stepping-Stones Centre, children, specifically those in conflict with the law, received the attention they needed.

Key activities can be identified with the establishment of the Stepping Stones Centre e.g. Stakeholders in the field of juvenile justice were identified and were represented in the planning of the centre. An assessment by the Department of Social Development was done to determine how the resources are spent, what the performance outcome of the centre would entail as an intervention agency in the marginalized community of Port Elizabeth and the factors determining case handling. Discrepancies were identified with the juvenile justice system in the past and how the transformation of the juvenile justice system will benefit youth in trouble with the law. The centre identifies the most promising opportunities for change. Results are measured in terms of the recidivism rate or how many children re-offended. The Inter- Ministerial Committee on youth at risk realized that a comprehensive, holistic juvenile justice system is needed in the fragmented areas in Port Elizabeth.

The figures as pointed out in chapter three indicated a commitment from staff at the centre and that they are working more developmentally. The aim of the centre is further to develop the centre into becoming an integral part of the total youth justice system.

Restorative Justice in Action

The centre's approach to young people in trouble with the law focuses on restoring the child back into the community. This is done by putting the wrongs right and making amends for their wrong-doings, rather than trying to rehabilitate the youth offender with punishment and thereby increasing the recidivism rate.

A very structured system presently exists to ensure effective service rendering to sentenced youth offenders in the Port Elizabeth magisterial area. Children are being referred for community-based sentence options, such as community service, whereby a youth offender must render an amount of community service hours within a timeframe and thereafter need to report back to court. The youth are also involved in responsible living programmes, which aims to develop them into responsible adults. Sentenced children and volunteers are also recruited and trained to work with and support young people in their own communities. This also assists probation officers and assistant probation officers in the rendering of monitoring services.

The sole purpose of the One Stop Youth Justice Centres is to cluster functions and disciplines under one roof. This is in line with the principles of the Restorative Justice paradigm. Children in conflict with the law are dealt with very rapidly at the centre and in a way that their best interests are taken into consideration. Both the Stepping Stones and Manguang One Stop Centres are cost effective. For example, it was beneficial in reducing transportation costs incurred by the South African Police Department. Another advantage of the centers is that it runs on a 24-hour basis. This is beneficial to children in trouble with the law because they do not have to be locked up in police custody or a prison cell. The centres are located in areas where the concentration of the population is high in localities where they can service a number of magisterial districts and where crime rates are high.

The One Stop Youth Justice Centres were thus established with the aim of working more restoratively and to transform the current juvenile justice system. The objectives of the centre are based on restorative justice principles, which in essence are that crime is an injury that causes suffering and pain. The centre therefore acknowledges the fact that an individual or a community was hurt by the crime and that juvenile offenders has the obligation to make amends. The centres thus focus on giving the young people the opportunity to correct the wrongs done through their actions. The centres focus on uniting young people with their families and preventing them from being separated from their families. Children in trouble with the law are also given the least restrictive and most empowering sentence options.

Restorative Justice: A Multi-Sectoral Approach

South African Police Services

At the centre restorative justice is not limited to one profession only. As previously stated the different professions are working multi-sectorally. For example, the South African Police services, Department Of Justice, Department of Welfare, Department of Correctional Services, National Association of Child Care Workers Nicro, Child Welfare Society and the University of Port Elizabeth work together as one team.

At the centre police officials work on a 24-hour shift and their tasks include receiving children after arrest and making immediate contact with the probation officer. They make an enormous effort to release the child into the care of his/her parents, by giving them written warnings to appear at the court. The holding facilities are only utilized as a last resort. The police provide the children with food and holding facilities and make sure that injured children are taken to a physician and receive medical attention. If the children cannot pay for their transport, the police take them back home to their parents. The police officials handlings of the children are respectful and patient at all times.

Probation Officer

The role of the probation officer at the centre is to assess the youth offender before their first appearance in court. The probation officer has to determine whether the child is a first offender, examine the seriousness of the crime,

ascertain the age of the child and establish if the child is going to take responsibility for his/her actions and then makes recommendations of whether or not they should be diverted, after discussions with the prosecutor.

If, after the assessment by a probation officer, it is decided to proceed with the case and prosecute the young offender, and detain the child into custody, the principle of the least restrictive and most empowering sentence option is taken into consideration. At the One Stop Centres, a structural system exist to ensure the effective service rendering to sentenced offenders. These offenders have to do a specific number of community services at certain police stations and other community-based, non-profit organizations. They also report to a probation officer, who will follow an individual care plan, compiled in collaboration with the offender, the school, parents and probation officer. Youth at the centre are then referred to the Responsible Living Programme, which aims to develop them into responsible adults. An assistant probation officer assists the probation officer in monitoring sentenced juveniles and to work with and support young people in there own communities.

Restorative Justice In Practice

At the centre, programmes help make the offender to take responsibility for his actions and make him accountable. Working together with the community and victims, the offender mediation programme brings resolution in meeting some of the victim's needs. It also brings resolution to the offender. An understanding of what hurt he caused may help discourage the offender from causing such harm in the future. Therefore the young offenders are given the opportunity to become productive citizens and boost their his self-esteem. This encourages lawful behavior. The centre's service delivery is primarily focused on the restorative principles. Punishment for the crime committed is thus a secondary consideration. There is however room in a restorative concept for punishment. Offenders view restitution as part of punishment in a more positive way.

This instills the fact that youth offenders should accept responsibility for their action, however painful this might be. Restitution according to Zehr (1990, p45) requires the offender to compensate the victim for harm sustained. This is done

by returning or replacing property, monetary payment or performing a direct service for the victim.

The centre's approach to justice is therefore also empowering and working in a developmental manner. The centre aims to reunite the children with their families and at least 65% of children are released back into the care of their parents. The diversion programmes that are offered at the centre are used to protect the best interest of the young offender. This means that normal court procedures are not followed. Diversion programmes include pre-trial community service, the Journey, Youth Empowerment Scheme, Family Group Conferences and Victim-offender mediation. Since the official opening of the Stepping Stones Centre in 1997 more cases has been registered and diverted away from the criminal justice system. Pre-sentence investigation reports are rendered to court and recommendations are made with regards to sentencing. These recommendations must take into consideration the seriousness of the crime, the interest of society, and the circumstances and best interest of the young person.

In addition, a parent guidance and support system are in place and regular workshops with them are presented in order to equip parents with skills in managing behavior of their children, and building positive family relationships. The centre fosters a philosophy that emphasizes the preservation of families. This is done in participation with young people and their families, in all processes that affect their lives. The centre therefore complies with the restorative justice approach to assist the offender, the family, and the victim to break historical disadvantages, such as poverty and poor education. Prevention services are also part of the centre's aims in order to target children who have not been involved in crime. This has a greater impact on reducing the crime rate. Diversion programmes are also utilized as preventative and developmental interventions. These programmes are made available to the areas surrounding the centre, where the majority of criminal incidents occur and where most of those children who becomes in conflict with the law live. Leadership camps have been arranged to empower leaders to establish crime prevention clubs. Programmes that are dealt with are peer group pressure, drug and alcohol abuse and gangsterism. The One Stop Youth Justice Centers therefore embraces the transformation of the Child Youth Care System.

Transformation Towards Restorative Justice

Working restoratively, the centre ensures working towards the transformation of the juvenile justice system. The One Stop Youth Justice Centre in Port Elizabeth was the first of its kind, working inter-sectorally and as a multi-disciplinary team and set an example to the rest of the country. The establishment of other centres soon followed, for instance, the Manguang Centre in Bloemfontein and the centre in Port Nolloth. The Stepping Stones centre therefore serves as a learning centre, reaching out to various districts and provinces, to provide training and capacity building to stakeholders who render services to young people in trouble with the law. The centre also provides on-line training to those stakeholders who spend time at the centre, equipping them with a theoretical foundation for restorative probation practice. The centre's approach to justice thus contributes to broader transformation in the country

Conclusion

As a case where restorative justice was built in the working methods, the One Stop Youth Child Justice Centres was found to be less formal and actively encouraging participation of all role players. The centre operates in a child friendly environment, which is beneficial to staff, children and families. Families and children feel less threatened in this kind of environment and are therefore more eager to provide information as requested by the various stakeholders.

The centres are central with all role players under one roof. It was found by stakeholders that the Youth Justice Centre reduced the amount of children in police holding cells and prisons and is more cost effective. A team approach is followed, the involvement of community is ensured and the promotion of the centre as a resource that belongs to the community is encouraged. Through this system families, guardians, parents and extended families are encouraged to take responsibility for the youth of the community.

Ongoing service training sessions encourage and equip staff with better ways of dealing and approaching youth in trouble with the law. This creates a staff complement that believes in the transformation of the child and youth care system and strives to implement the new paradigm principles. The centre is

determined to render restorative justice service despite criticism that they are going soft on crime.

The last chapter will conclude that the restorative and punitive justice approaches are not necessarily mutually exclusively of each other and that the two systems can thus be utilized to supplement each other. Certain recommendations will also be made with regard to enhancing the implementation of the restorative justice method to ensure optimal benefits for the young offender.

CHAPTER 5

FINDINGS AND RECOMMENDATIONS: THE CHALLENGES OF RESTORATIVE JUSTICE

Introduction

This chapter presents the findings of this research and suggests that there various challenges facing restorative justice.

There is no specific body of legislation, which governs the handling of juvenile offenders. Roleplayers dealing with young people in conflict with the law have had to struggle through a number of Acts, in order to find a few sections which deals with juvenile offenders. During Apartheid children in conflict with the law were treated in the same manner as their adult counterparts. However, since the 1980's children's rights activists have been campaigning for a comprehensive justice system to manage children and young people who came into conflict with the law.

Findings

According to the National Crime Prevention Strategy (1997, p12) the Government of National Unity inherited a racially based and unequal distribution of Criminal Justice resources. Insufficient and ill-equipped personnel, combined with outdated systems and fragmented departments, have contributed to a system that has been unable to cope with the demands created by the need to provide services to all the people of South Africa.

Justice for children and young people accused of committing crimes in South Africa was predominantly governed by four acts; namely; Child Care Act (No.74 of 1983 and 1996 Child Care Amendments Act), the Criminal Procedures Act (No.51 of 1977), the Probation Services Act (No.116 of 1991, p22) and the Correctional Services Amendment Act (No.8 of 1998).

In the past, thousands of young people awaited trial in abysmal conditions in prisons and police cells in South Africa, often for months at a time. Frequently their parents and guardians were not informed of their whereabouts and they were seldom legally represented.

Many children did not have the assistance of a probation officer. Imprisonment has been standard sentences handed down by the courts.

During the 1980's hundreds of young people were detained due to the state of emergency and it caused a national outcry. Young people detained for ordinary crimes also slipped into the system unnoticed. There was no strategy to ensure that young people in trouble with the law are treated humanely and with adherence to just principles. There was no realization that a crisis existed regarding children in detention and the lack of a comprehensive juvenile justice system.

During the early 1990's, the courts continued to use retributive punishment, and the community has been reminded through the media that an increasing number of young people were appearing in court for increasingly violent crimes. It was clear that the numbers have grown faster than the ever-increasing number of services necessary to clear with these offenders. The juvenile justice system during the period of the early 1990's used the same systems and procedures that did not curb crime nor assist the young person to take responsibility for their actions.

In 1992 a campaign was launched, namely Justice for Children: No child should be caged, which raised national and international awareness about young people in trouble with the law. The campaign followed after a 13-year-old child who was held in police cells with adults was killed and only then did a campaign start to treat children more humanely.

In August of 1992 a television program, Agenda, highlighted the plight of young people awaiting trial in detention. The National Working Committee on Children in Detention was formed. A paper was presented at the International Conference on the Rights of the Child, held in Cape Town. The campaign spelled out the need for a comprehensive juvenile justice system. Lawyers for Human Rights "Free a Child for Christmas" campaign, continued to put pressure on state departments to find effective ways to manage young people in trouble with the law. Overall it was clear that children in trouble with the law were not treated according to internationally accepted standards.

In 1993 a paper, "Raising Ideas for a Juvenile Justice System", was presented which formed the basis of the new Child Justice Bill and also led to the establishment of the Inter Ministerial Committee on Young People at Risk.

The timeline below sketches some of the significant events in the process of youth justice reform:

1992: "Justice for Children. No child should be caged" campaign was launched. NICRO started to introduce the idea of Diversion.

1993: Juvenile Justice Drafting Consultancy was formed to draft policy and legislative proposals. It was in these proposals that the concept of restorative justice was introduced.

1994: Children's Rights are written into the Constitution and as a result, "Children could not be detained except as a measure of last resort" and the sentence of whipping was abolished.

1995: The Inter-Ministerial Committee on Young People at Risk (IMC) established in May. The IMC were charged to oversee the transformation of the child and youth care system. On 16 June of that year, South Africa ratified the United Nations Convention on the Rights of the Child. Article 40 (3) of the Convention obliges the state to establish a separate body of legislation to govern the handling of children in conflict with the law. As a result, the South African Law Commission Initiated the Project on Juvenile Justice with the aim of drafting such legislation.

1997: May Issue Paper 9 on Juvenile Justice was released.

1998: Discussion Paper 79 was released.

2000: Final Child Justice Bill submitted by the South African Law Commission.

From above information it is clear that those professions who have worked with juvenile reform in South Africa have always placed the issue firmly within the ambit of children's rights.

Juvenile Justice for South Africa turned the traditional justice system of dealing with young people on its head. It suggested that criminal charges should be a last resort, and that diversion becomes the pivotal method of dealing with young people in conflict with the law. It was also suggested that children should be held in secure care facilities instead of prisons. The proposal suggested that serious offenders are dealt with in a way that the young person is held accountable for his or her actions and is handled by the court that is governed by appropriate rules. It was found that the punitive justice system is degrading and although the offender is "dealt" with, he is not accorded him the emotional responsibility of his action. It was also found that, in most cases, the system does nothing to rehabilitate the person nor does it limit the chances of recidivism. Imprisonment was seen as depriving a person of his freedom and as a condemnation of a person.

With this system however, the victims do not have a role to play in the trial proceedings except as a witness. No opportunity are provided for them to express their feelings about the violation they incurred, nor are they encouraged to give input on how they would prefer the offender to be dealt with or be re-paid for the damage done to them. The restorative approach encourages the offender to take responsibility for his behaviour, to empathise with the victim and to make an effort to restore the damage done to the victim in a concrete manner.

The community views punishment as a measure that offenders must be dealt with for their offences. Restorative justice on the other hand, which was learned from the indigenous Maori people of New Zealand and other traditional communities, based their principles on the belief that the control of justice procedures should be placed in the hands of those who are directly involved in the offence. According to Restorative justice, the criminal justice system has a function of problem solving without over emphasis on the punishment of the offender. The transformation process has been strongly informed by the Restorative Justice Paradigm. The theory has argued for the development of a variety of restorative interventions that will facilitate a process of reconciliation between the offender, victim and significant others. Throughout the Child Justice Bill (2000), strong emphasis has been placed on encouraging the justice professionals to carry out practices informed by restorative justice.

Another finding was that the incorporation of the diversion of cases away from the formal court procedures forms a central feature of the restorative process. Diversion outlines the procedures to be followed for Family Group Conferences, Victims, offender mediation and other restorative justice processes. As a case where restorative justice was built in the working methods, the One Stop Youth Justice Centre was found to be less formal and actively encouraged the participation of all players. The centre is also central with all the role-players and activities under one roof. It was found that the Youth Justice Centre has reduced the amount of children in police cells and prisons and it is more cost-effective.

Aforementioned findings prove that Restorative Justice and Retributive Justice do not work mutually exclusive of each other and the two systems can even be utilised in conjunction of each other. The expected outcomes of the victim/offender mediation programmes will mean repayment of material losses to victims and visible contribution to the community. In turn, victims will sense and acknowledge the harm that was done by the offender as well as some degree of repair. The community will also deem juvenile offenders as having made some degree of amends. This process will also result in increased awareness amongst juvenile offenders of how their behavior impacts on other people (Zehr: 1998, p16).

Juvenile Justice professionals benefits from this new approach in terms of greater victim satisfaction and greater community satisfaction. There is also an increased fulfillment of requirements by the juvenile offender because he/she recognizes that accountability strategies in the Restorative Justice approach are fair and reasonable. The different options for more creative forms of accountability increase because of the input from the victim, community and offender.

Restorative Justice grants opportunities to facilitate a process that promotes a greater sense of closure for the victim and personal growth of the offenders. The Restorative Justice System guides professionals in an appropriate and equitable use of sanctions to ensure that offenders make amends to the victim and their community.

Recommendations

According to the report on Juvenile Justice (2000), the journey towards an improved system for dealing with children accused of crimes in South Africa has been influenced by a number of factors. These factors include high caseloads of probation officers, inadequate provision of appropriate places of safety, constant changing of justice personnel, who also need to be retrained in the restorative justice paradigm, etc. In the context of the community crime should be regarded as a social phenomenon because it is inextricable from the general problems of the community.

The restorative response to crime should focus on the good qualities of offenders in order to encourage them to accept responsibility for their actions and to earn re-acceptance in the community. In developing a Juvenile Justice System for South Africa, we need to create an environment of support wherein young people at risk can experience a sense of belonging and in turn develop a sense of competence and self-esteem.

A very important aspect that needs to be addressed is the fact that more secure care facilities need to be put in place. The fact that only three places of safety exist in the Western Cape results in an increase in the number of children in holding facilities, such as Pollsmoor Prison. In prison whilst, awaiting trial children are exposed to situations where they had to defend themselves and become hardened in order to survive.

Although the Bill was introduced in Parliament in August of 2002, an advocacy campaign needs to be put in place to inform all stakeholders, in order to reach uniformity where youth in trouble with the law is concerned. Action steps and benchmarks have to be established for guidance in the progress and ensuring movement towards the goals and objectives.

Legislation should be enhanced to ensure liability of adults who use children to commit crime. Similarly, parents who are directly liable – through neglect or abuse – for their children's offending, should also be held accountable, either through mechanisms in the new legislation or other (such as the Child Care Act 74 of 1983). Parental accountability through a variety of mechanisms should be a

central theme in the new system. This will contribute to an improved quality of family life.

The new legislation should be applicable to those, who, at the time of commission of the crime, are below the age of 18 years. Legislation should also apply until conclusion of criminal proceedings, notwithstanding the fact that the child attains the age of 18 years during the course of the criminal process.

An ongoing advisory process involving stakeholders will be created and mechanisms have put in place to measure results. Consequently it is essential that policy and practice be tested against restorative values on a regular basis.

The Director of Public Prosecutions should play a role in ensuring that only cases where prosecution is warranted should proceed to plea and trial in court. Thus, children who acknowledge responsibility should be diverted at a preliminary inquiry. Such children will still be held accountable through diversion options.

When arresting a child, the police official must explain to the child what is going to happen to him or her and what procedures are going to be followed. In addition to informing the child about his or her rights, the nature of allegations against him or her and the immediate procedures to be undertaken should also be explained.

Every police official and probation officer should have access to a computerised central database, to ascertain whether a child has previously been in conflict with the law.

Every person has a constitutional right to a fair trial and to be presumed innocent, unless found guilty in a court of law.

Assessment is an essential starting point in the proposed new child justice system. The overall responsibility for assessment should remain that of the probation officer.

Guiding Steps For Organisational Change

Juvenile justice professionals will be most effective in their service delivery if implemented as part of a comprehensive systematic change in juvenile justice. Professionals need to develop consensus around approaching their mission when implementing the model. Current practices and policies need to be assessed to determine the consistency with their goals and objectives. Key activities that juvenile justice professionals need to follow include the identification of stakeholders working in the field of juvenile justice and these stakeholders need to be represented in the planning phase. Professionals appointed in dealing with youth in trouble with the law will be able to identify discrepancies in current practices against the goals and objectives of Restorative Justice. The most promising opportunities for change has to be identified and specific goals set out from information gathered. According to the Balanced and Restorative Justice Practice, changes in practice must go hand in hand with changes in the system. Implementing this new approach will be evolutionary.

Roles for Juvenile Justice professionals are set out and include the facilitation of Victim Offender Mediation and Family Group Conferences, and require skilled training. Volunteers can be recruited through community organisations to facilitate Victim Offender Mediation or Family Group Conferences. Professionals should encourage victim's input, to determine the harm and possible ways of making amends must be found. In order for juvenile offenders to earn money for restitution and make them law-abiding citizens, employment opportunities can be created with local businesses or the Chamber of Commerce. Furthermore sites for community work services, particularly work that are highly valued by the community, can be developed.

Restorative Justice grant victims the opportunity in the process in developing victim empathy groups and victim advocacy groups as well as victim impact panels. Professionals, which include probation officers, social workers police services, court personnel and others, should facilitate the process of apologies to victims and communities (Zehr: 1998, p16).

Conclusion

This research proved that legislation should be put in place in terms of dealing with children in trouble with the law.

Restorative Justice is a philosophy that offers an opportunity to juvenile justice professionals, to practice the qualities that make people better persons. In other words a true justice system based on apology, compassion, healing, reconciliation and forgiveness. It offers the process whereby those affected by criminal behaviour can have part in resolving issues that flow from the offending. It places the responsibility for crime in the hands of those who commit it.

This country therefore need a quality youth justice system that recognises the immense value and acknowledges the centrality and need to enhance and protect the common good. This philosophy is not a softer approach of dealing with crime, rather it is a plea to take a tougher approach that can change human behaviour for the better. The restorative approach has much to offer the new post-apartheid South Africa with its healing, reconciling and compensating qualities.

Before the new approach, one would have thought that the youth justice system was beyond reform. The country's history, as well as the social welfare and the youth justice system, were entrenched in a retributive and punishing philosophy, which did little to improve the situation of youth offenders. The onus was on juvenile justice professionals to change the course of history.

BIBLIOGRAPHY

BOOKS

Consedine, Jim. (1999). *Restorative Justice: Healing the Effects of Crime*. Published by Ploughshares Publications, Lyttelton New Zealand.

Duff, C. & Garland, L. (1994). *A Reader on Punishment*. New York Oxford University Press.

Davel, C.J. (Ed). (2000). *Introduction To Child Law In South Africa*. Juta Cape Town.

Garland, D. (1985). *Punishment and Welfare: A History of Penal Strategies*, London, Aldershot Gower Publications Ltd.

Greenwall, A. (1990). *Criminal Strategies of Competing Protagonist In The Development Of Crossroads*. The transition from apartheid, to democratic evil society. Institute of Criminology, University of Cape Town.

Honerich, T. (1990). *Punishment: The Supposed Justification*. Hutchinson & Co (Publishers) LTD, London.

Koch, R. & Wood, C. (2001). *A New Child Justice System: Two Decades of Research*. An annotated bibliography. Institute of Criminology UCT in association with Child Justice Alliance.

Primoratz, Z. (1998). *Justifying Legal Punishment*. Humanities Press International, INC. New Jersey London.

SOUTH AFRICAN LAW COMMISSION. (2000). *Report On Juvenile Justice*, 12TH Floor Sanlam Center Corner of Andries and Pretorius, Pretoria.

South African Law Commission Issue Paper on Juvenile Justice Issue Paper 9 (1997)

Van der Walt, H. (1995). *Transforming Criminal Justice*, University of Cape Town.

Wright, M. (1992). *Justice For Victims And Offenders. A Restorative Response To Crime*; Second Edition Water Side Press.

Wright, M. (1990). *Making Good: Prisons Punishment And Beyond*. Burnett Books London.

Zehr, H. (1995). *Changing Lenses*. p 40-44 Harold Press Scottsdale USA .

MAGAZINES

Children In Prison In South Africa . (1997). A Situational Analysis Community Law Centre University of the Western Cape.

Muntingh, LM. (2001) *Update; Sentenced and Unsentenced Children in Prison*. Article 40, Volume 3, March 2000; Published by the Children's Right Project, Community Law Centre , University of the Western Cape.

Soloman, P. *Children In The Criminal Justice System*. Article 40 Volume 3, No 1 March 2001 Published by the Children's Rights Project, Community Law Centre, University of the western Cape.

Midge, L. *Children Awaiting Trial In Prison Investigate*. Article 40 Volume 2, No 1 February 2000, Published by the Children's Rights Project, Community Law Centre, University of the Western Cape.

Senekal, A. *Mangaun g-the most recent One-stop Child Justice Centre*. Article 40 Volume 4 Number 4 December 2002; Published by the Children's Rights Project, Community Law Centre, University of the Western Cape.

Monahang, A. (1997) *Restorative Justice in South Africa, is it an appropriate alternative to Retribution*. Article 40 Volume 4 Number 1 April 2002, Published the Children's Rights Project, Community Law Centre, University of the Western Cape.

Letting In the Light: Seeking Justice for the Children of South Africa: A Workbook For Children in Trouble the Law, and their families, friends and advocates, Community Law Center, Children's Rights Advocacy Unit, University of the Western Cape.

Skelton, A. (2001). *Setting Standards for Diversio.n* Article 40 Volume 4, April 2000, ublished by the Children's Rights Project Community Law Centre, University of the Western Cape.

Shurink, W. *Changing the Mindset*. Child and Youth Care, Volume 18, No 1 January 2000

Wood, C. (2000). Book Review. *Restorative Juvenile Justice: Repairing the harm of Youth Crime, Punishment and Society*.

Vermeulen, A. *Inter-Ministerial Committee On Young People At Risk* November 1996, Government Printers.

NEWSPAPER ARTICLES

Lackay, A, Wet kom teen kinders in die tronk. Die Burger 12 August 2002; p 9.

LEGISLATION

Amended Correctional Services Act 8, August 1995, Pretoria, Government Printers.

National Crime Prevention Strategy, 1997, Cape Town, Government Printers.

The Child Justice Bill, South African Law Commission, August 2000, Government Printers.

South African Constitution, Act 106 of 1996, Pretoria Government Printers.

Reconstruction and Development Programme, 1994: Pretoria Government Printers.