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INTRODUCTORY NOTE

It is with pride that the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) offers to the international community Resource Material Series No. 75.

This volume contains the Annual Report for 2007 and the work product of the 136th International Training Course that was conducted from 23 May to 28 June 2007. The main theme of the 136th Course was “Effective Measures for the Treatment of Juvenile Offenders and their Reintegration into Society”.

In view of the importance of the issue of juvenile justice, the United Nations has taken action to establish standards for the administration of juvenile justice systems. At the United Nations congresses on crime prevention and criminal justice, held every five years since 1955, the management of the treatment of juveniles and the prevention of juvenile delinquency and juvenile crime has frequently been discussed, resulting in the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) in 1985 and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty in 1990. Furthermore, the Convention on the Rights of the Child, adopted in 1989, contains several provisions which call upon States Parties to ensure a juvenile justice system based on humanitarianism, the guarantee of due process and the expansion of diversion (particularly in Articles 37, 39 and 40). Despite recognition of the necessity of improving juvenile justice systems in many parts of the world, and continuing efforts in this regard, many countries are still faced with numerous challenges in this task.

In tackling these challenges, ensuring due process in the juvenile justice system is the first priority. In some countries, international instruments are often disregarded. Such countries often face a host of problems that impede their observance of international instruments and officials often lack an awareness of the rights of juvenile offenders and/or are insufficiently concerned about their well-being. Efficient management and treatment of juvenile offenders in correctional institutions is another area requiring particular attention. Due to limited alternative measures of disposition, insufficient management of diversion, the fear and concern of the general public and victims’ complaints of an excessively lenient juvenile justice system, juveniles in many countries serve long periods in custody. Thirdly, society has become increasingly concerned about the results of correctional treatment. The efficacy of correctional treatment and education of juveniles is becoming increasingly important to the agencies responsible for their treatment.

Furthermore, the importance of the provision of effective community-based treatment at all stages of the disposition of juvenile cases should be emphasized. The provision of individualized treatment based on the risks and needs of each juvenile is required at each stage. In addition, investigation into the background and circumstances of the juvenile offender, assessment of his or her risks and needs, proper record-keeping and systematic co-ordination among stakeholders is necessary. It is important that community-based treatment and institutional treatment are continuous and consistent (“through-care”). Finally, there is much debate concerning the social reintegration of juveniles in conflict with the law, as well as some concern about the lack of socialization of juvenile offenders who have served long periods in custody.

The Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century (A/CONF.187/4/Rev.3), adopted by the Tenth United Nations Congress, held in Vienna

in 2000, referred for the first time to the necessity of restorative justice policies, mainly in support of victims of crime (para. 27 and 28). In addition, the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice (A/CONF.203/18), adopted at the Eleventh United Nations Congress in Bangkok in 2005, stressed the importance of further developing restorative justice policies, procedures and programmes to promote the interests of victims as well as the rehabilitation of offenders (para. 32). Such innovations include Victim Offender Mediation, Family Group Conferencing, Restorative Community Service, and Victim Impact Panels, etc. and the Balanced and Restorative Justice Approach which attempts to give juvenile offenders greater support by providing an educational and practical programme for rehabilitation which considers both victims and the community.

Giving due consideration to the above, this International Training Course intended to identify the recurrent and newly raised challenges within the area of juvenile justice, especially the issue of the treatment of juveniles and their reintegration into society, as well as the best practices to meet these challenges. By analysing the actual situation and problems, and sharing experiences of types of treatment which have achieved a certain degree of success, it is hoped that the participants arrived at the most effective measures for their countries.

In this issue, in regard to the 136th Course, papers contributed by visiting experts, selected individual presentation papers from among the participants, and the Reports of the Course are published. I regret that not all the papers submitted by the Course participants could be published.

I would like to pay tribute to the contributions of the Government of Japan, particularly the Ministry of Justice, the Japan International Cooperation Agency, and the Asia Crime Prevention Foundation for providing indispensable and unwavering support to UNAFEI's international training programmes.

Finally I would like to express my heartfelt gratitude to all who so unselfishly assisted in the publication of this series; in particular, the editor of Resource Material Series No. 75, Ms. Grace Lord.

August 2008



Keiichi Aizawa
Director of UNAFEI

PART ONE
ANNUAL REPORT
FOR 2007

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UNAFEI

MAIN ACTIVITIES OF UNAFEI (1 January 2007 - 31 December 2007)

I. ROLE AND MANDATE

The Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) was established in Tokyo, Japan in 1961 pursuant to an agreement between the United Nations and the Government of Japan. Its goal is to contribute to sound social development in Asia and the Pacific region by promoting regional co-operation in the field of crime prevention and criminal justice, through training and research.

UNAFEI has paid utmost attention to the priority themes identified by the Commission on Crime Prevention and Criminal Justice. Moreover, UNAFEI has been taking up urgent, contemporary problems in the administration of criminal justice in the region, especially problems generated by rapid socio-economic change (e.g., transnational organized crime, corruption, economic and computer crime and the reintegration of prisoners into society) as the main themes and topics for its training courses, seminars and research projects.

II. TRAINING

Training is the principal area and priority of the Institute's work programmes. In the international training courses and seminars, participants from different areas of criminal justice discuss and study pressing problems of criminal justice administration from various perspectives. They deepen their understanding, with the help of lectures and advice by the UNAFEI faculty, visiting experts and ad hoc lecturers. This so-called "problem-solving through an integrated approach" is one of the chief characteristics of UNAFEI programmes.

Each year, UNAFEI conducts two international training courses (six weeks' duration) and one international seminar (five weeks' duration). One hundred and forty nine government officials from various overseas countries receive fellowships from the Japan International Cooperation Agency (JICA; an independent administrative institution for ODA programmes) each year to participate in all UNAFEI training programmes.

Training courses and seminars are attended by both overseas and Japanese participants. Overseas participants come not only from the Asia-Pacific region but also from the Middle and Near East, Latin America and Africa. These participants are experienced practitioners and administrators holding relatively senior positions in criminal justice fields.

During its 46 years of existence, UNAFEI has conducted a total of 137 international training courses and seminars, in which approximately 3,332 criminal justice personnel have participated, representing 116 different countries. UNAFEI has also conducted a number of other specialized courses, both country and subject focused, in which hundreds of other participants from many countries have been involved. In their respective countries, UNAFEI alumni have been playing leading roles and holding important posts in the fields of crime prevention and the treatment of offenders, and in related organizations.

A. The 135th International Senior Seminar

1. Introduction

The 135th International Senior Seminar was held from 12 January to 16 February 2007. The main theme was "Promoting Public Safety and Controlling Recidivism Using Effective Interventions with Offenders: An Examination of Best Practices". In this Seminar, eighteen overseas participants and seven Japanese participants attended.

2. Methodology

Firstly, the Seminar participants respectively introduced the current position regarding the role and function of criminal justice agencies in their countries in regard to the main theme. The participants were then divided into three group workshops as follows:

Group 1: The Use of Effective Interventions in Reducing Recidivism and Promoting Public Safety at the Prosecution and Sentencing Stage

Group 2: Promoting Public Safety and Controlling Recidivism Using Effective Interventions with Offenders Whilst Serving Their Sentences : An Examination of Best Practices

Group 3: The Use of Effective Interventions in Reducing Recidivism and Promoting Public Safety after the Offender has Served His or Her Sentence

Each group elected a chairperson, co-chairperson(s), a rapporteur and co-rapporteur(s) in order to facilitate the discussions. During group discussion the group members studied the designated topics and exchanged views based on information obtained through personal experience, the Individual Presentations, lectures and so forth. Later, Plenary Meetings were held to discuss the interim outline of the Group Workshop reports and to offer suggestions and comments. During the final Plenary Meetings, drafts of the Group Workshop reports were examined and critiqued by all the participants and the UNAFEI faculty. Based on these discussions, the Groups further refined their reports and presented them in the Report-Back Sessions, where they were endorsed as the Reports of the Seminar. The full texts of these Reports are published in UNAFEI Resource Material Series No 74.

3. Outcome Summary

(i) The Use of Effective Interventions in Reducing Recidivism and Promoting Public Safety at the Prosecution and Sentencing Stage

The common denominator in the discussions of Group 1 was that alternative intervention models that go beyond the conventional criminal justice process of prosecution, sentencing and imprisonment, such as diversion mechanisms at both the prosecution and sentencing stage and drug court programmes or other schemes targeting specific categories of offenders, may well serve the objectives of preserving public safety and order and rehabilitating the offenders with a view to controlling recidivism. In that sense, authorities and agencies involved in this area should establish an effective collaboration network to avoid fragmented action and ensure that a holistic and integrated strategy to address the problems posed by recidivism is pursued and effectively implemented.

The following recommendations were made.

1. Where necessary, legislative reform should be pursued and carried out as a first element and component of strategies aiming at achieving better results in the treatment of offenders and the control of recidivism;
2. There should be various options such as suspended sentences and other non-custodial measures to be applied at the pre-trial and sentencing stages, and the rehabilitation of the offender should always be considered in conjunction with other objectives of sanctioning policies to ensure that the interests of both the offender and the community are well served;
3. A more integrated approach should be followed to enable better co-ordination among national and local agencies, as well as consistency of action and more effective case management in preventing and controlling reoffending;
4. The designation of focal points in each authority or agency involved in intervention models with offenders as well as the establishment of a communication network between them and the enhancement of information-sharing mechanisms should be prioritized as a means of boosting co-ordination and facilitating concerted action among the various stakeholders;
5. An integrated information system database on recidivist incidents and rates should be developed to carry out an in depth evaluation and assessment of the extent and impact of the problem and to formulate appropriate policies and guidelines based on comprehensive, timely and reliable data and information;
6. In order to ensure the operational success of intervention models with offenders, primary consideration should be given to establishing the appropriate infrastructure and making available the necessary resources for supporting such infrastructure;
7. In order to address the lack of institutional capacity and experience in tackling the problems posed by recidivism, high priority should be accorded to training programmes and activities and the provision of technical assistance generally, aiming at enhancing the expertise and skills of

MAIN ACTIVITIES

- law enforcement and prosecutorial and judicial authorities, as well as other staff involved in criminal justice affairs;
8. Effective mechanisms primarily aimed at monitoring and assessing the effectiveness of intervention should be developed;
 9. Partnerships with non-governmental organizations and other elements of civil society should be built and further encouraged to allow for multi-stakeholder involvement in the implementation of intervention schemes;
 10. In seeking alternative models of effective interventions with offenders and dealing with problems of recidivism, the role of the community should be considered and restorative justice approaches can be considered as a response to crime problems, especially with regard to less serious offences.

(ii) Promoting Public Safety and Controlling Recidivism Using Effective Interventions with Offenders Whilst Serving Their Sentences : An Examination of Best Practices

It is agreed that mechanisms to enhance the opportunity for an offender to rehabilitate and re-enter society are an essential part of any strategy to reduce recidivism. However, the issues are extremely complex. It is not safe to assume that the offender was well integrated in society prior to his or her imprisonment. Worldwide evidence is that many prisoners were not well integrated, and in fact in many countries, the "average" prisoner does not have good life skills, educational or trade qualifications, work experience or stable housing. The group members, after taking into consideration the diverse social, economic, cultural, legal and geographical features existing in their respective countries, discussed possible action to meet the challenges of rehabilitation. This advice can be adapted by individual countries in reducing recidivism and promoting public safety whilst the offender is serving his or her sentence.

The following recommendations were made.

1. Implementation of comprehensive assessment methods to improve management of prison systems. This should include measures such as:
 - Establishing databases;
 - Providing centres for research;
 - Ensuring classification of offenders is in keeping with the United Nations Standard Minimum Rules (UNSMR) for the Treatment of Prisoners.
2. Identification of the most important treatment target:
 - Ensuring that the highest risk offenders are given priority treatment;
 - Making optimal use of available budgets;
 - Maximizing the human resources available;
 - Enhancing community participation.
3. Identification of the most effective treatment methods by providing comprehensive treatment, to include:
 - Motivational interviewing;
 - Cognitive behavioural therapy;
 - Education, work and social skills training;
 - Enhancing family and community participation;
 - Health, legal and religious assistance.
4. Revision and concentration of resources on target groups:
 - Preparation of an annual plan and budget;
 - Review assessment and classification of offenders.
5. Development and expansion of collaboration with other agencies:
 - Form teams to reflect diversification of professional staff roles, government and community support;
 - Disseminate information through the development of public relations plans;
 - Establish a Memorandum of Understanding with all stakeholders.
6. Increase public awareness of the importance of family and community in the reintegration process of ex-prisoners:
 - Encourage development of family relationships during an offender's incarceration;
 - Implement strategies to keep families informed of the progress of prisoners;
 - Strengthen networks with potential employers and keep them updated of prisoners' competences;

- Collaborate and maintain relations with welfare agencies.

(iii) The Use of Effective Interventions in Reducing Recidivism and Promoting Public Safety after the Offender has Served His or Her Sentence

The Group considered the topic for discussion in detail, keeping in mind that rehabilitation of the offender during the period of sentence and after sentence is key to public safety. Reduction of recidivism is possible only through rehabilitation of offenders as custodial or non-custodial sentences without rehabilitative programmes are useless. The issues of detrimental societal attitudes and supervision of known habitual offenders were discussed in detail and the following recommendations were made.

1. Necessity of Aftercare Programmes

- The group agreed on the general need for an aftercare programme when an offender completes his or her sentence. It is advisable that the programmes are designed to make the offenders useful and law abiding citizens who can rehabilitate and reintegrate and that the programme objective is to reduce recidivism;
 - Such programmes should be based upon standard assessment of the offenders upon their entry into prison. The programme should be based upon the risks, needs and responsiveness of each offender. Specific programmes could address a wide variety of their criminogenic needs such as sex offender therapy, drug addiction treatment and treatment for their criminal style of thinking (cognitive distortion) so that the chance of reoffending can be reduced;
 - Priority would have to be placed on programmes for high risk and high need offenders in order to reduce the chances of reoffending and to effectively utilize limited resources.
- (i) Gradual Reintegration
- Upon release, high risk offenders should not be exposed to society directly. There should be a system of rehabilitation whereby the offender may be sent out for short periods prior to release, depending upon his or her risk;
 - Where applicable, there should be halfway houses and parole systems, not only to provide board and lodging, but to offer mental care, living skills guidance and job placement services.
- (ii) Good Staff: Recruitment, Training, Integrity and Motivation
- Aftercare programmes should employ specialized staff such as psychologists, social workers and psychiatrists. Staff should be of high integrity;
 - To raise the level of efficiency, the conditions of service of personnel involved in the programme may have to be improved to motivate them and also to attract highly qualified personnel;
 - There should be training for staff in new techniques for carrying out their tasks. Staff should have access to institutions where they can acquire more knowledge and higher qualifications;
 - The current strength of corrections officers should be enhanced to reduce the burden on the existing officers.
- (iii) Volunteers
- Efforts have to be made to seek the involvement of volunteers with relevant competence to implement specialized programmes at minimum cost. The Japanese Volunteer Probation system could be a good model.

2. Post Release Rehabilitation Programmes

- For successful results of post release rehabilitative programmes, offenders should be given treatment from the very first day of custodial and non-custodial sentences;
 - The standard classification/assessment system needs to be introduced to the custodial and non-custodial punishment system and used upon an offender's entry into the system. Assessment should consider the motives and circumstances of the crime and the degree of the criminal behaviour i.e. assessment on the basis of risk/need.
- (i) Information Flow
- Management information systems may require improvement to maintain up-to-date records of offenders. As far as practicable, computers should be utilized;

MAIN ACTIVITIES

- In order to judge the success of the programme, assessments may be made regularly, duly recognizing the risk of the offender.
- (ii) Motivation of Offenders after Release
- In order to attract the offenders to the aftercare programme, motivating factors should be addressed carefully. Motivation can be formed externally or internally. In some cultural contexts, motivation could take the form of incentive; e.g. provision of vocational training, employment or the issuing of a good behaviour certificate. Offenders may even be coerced into treatment by making an appropriate legal framework. However, offenders can also motivate themselves to receive treatment in order to live a better life.
3. Co-ordination among Related Organizations
- Efforts to co-ordinate the work of not only related agencies such as prisons departments, parole and probation departments, and police departments, but also private institutions like NGOs, religious institutions and charitable institutions should be made to enhance the capabilities of these organizations;
 - The personnel in governmental organizations engaged in the delivery of programmes may exchange information with each other freely to enhance better understanding of the offenders.
4. Community Involvement (Public Awareness)
- Societal attitudes may be changed by conducting seminars, workshops, media campaigns, walks or rallies with the co-operation of non-governmental institutions, notables from all walks of life, students and religious institutions to create or develop awareness of rehabilitation and reintegration of offenders and to reduce stigmatizing of offenders by society;
 - Informal organizations performing rehabilitative activities for reintegration of ex-offenders should be encouraged by the government.
5. Sustainability of Programmes (Political Support)
- In designing programmes, factors such as consistency, adaptability, feasibility, suitability and affordability ought to be given prime attention. Gaining political support by presenting the effectiveness of such programmes is of vital importance.
6. Supervision of Known Ex-Offenders
- (i) Supervision by Police and Other Related Agencies
- In order to protect the public, it is necessary to monitor high risk known offenders. Information regarding such offenders should be given to the police from correctional institutions upon their release. The systems used in Japan and the UK could be used as a model.
- (ii) Vigilance Committees
- Where applicable, a vigilance committee comprising notables of the respective area from all walks of life including lawyers, doctors, educators, students and representatives of local police may take responsibility for the supervision of known offenders.

B. The 136th International Training Course

1. Introduction

The 136th International Training Course was held from 23 May to 28 June 2007. The main theme was “Effective Measures for the Treatment of Juvenile Offenders and their Reintegration into Society”. In this Course, fourteen overseas participants, nine Japanese participants and two overseas observers and attended.

2. Methodology

The objectives of the Course were primarily realized through the Individual Presentations and Group Workshop sessions. In the former, each participant presented the actual situation, problems and future prospects of his or her country with respect to the main theme of the Course. The Group Workshops further examined the subtopics of the main theme. To facilitate discussion, the participants were divided into three groups to discuss the following topics under the guidance of faculty advisers:

Group 1: Ensuring Due Process in the Juvenile Justice System and the Appropriate Adjudication or Disposition of Juveniles

Group 2: Effective Institutional Treatment of Juvenile Offenders for their Successful Reintegration into Society

Group 3: Effective Measures in the Community-Based Treatment of Juvenile Offenders and Enhancement of the Juvenile's Ability to Reintegrate into Society

The three groups each elected a chairperson, co-chairperson(s), rapporteur and co-rapporteur(s) to organize the discussions. The group members studied the designated subtopics and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures and so forth. During the course, Plenary Meetings were held to discuss the interim outline of the Group Workshop reports and to offer suggestions and comments. During the final Plenary Meeting the drafts of the Group Workshop reports were examined and critiqued by all the participants and the UNAFEI faculty. Based on these discussions, the Groups further refined their reports and presented them in the Report-Back Sessions, where they were endorsed as the reports of the Course. The full texts of the reports are published in full in this edition of the UNAFEI Resource Material Series.

3. Outcome Summary

(i) *Ensuring Due Process in the Juvenile Justice System and the Appropriate Adjudication or Disposition of Juveniles*

In regard to the above topic the following recommendations were made.

1. A special court system competent to deal with juvenile offenders is necessary. The Family Court in Japan, and also the model of the Criminal Child Court in South Africa as proposed in the Child Justice Bill, or the model of the *Barangay* Court in the Philippines, are considered good models;
2. The formulation of (or improvement of an existing) fundamental framework on arrest, detention, prosecution and trial, applicable to juvenile offenders, and based on United Nations standards, norms and guidelines;
3. Judges must have proper information in the form of comprehensive reports to enable them to make appropriate decisions;
4. Probation officers, as specialists of human sciences such as psychology, sociology and education, should be involved in the process of decision-making. Their reports and recommendations should have significant bearing on the final disposition;
5. The involvement of volunteer probation officers and social workers, etc. as community support resources in dealing with juvenile offenders should be encouraged;
6. The competent authorities, in their determination, should, as a rule, give priority to the juvenile offender rather than the offence;
7. Restorative justice, where the victim meets the juvenile offender to understand why the latter committed the offence and for possible compensation to be agreed upon, should be encouraged;
8. Many participants emphasized the importance of recording, properly and methodically, statistics on juvenile offenders.

(ii) *Effective Institutional Treatment of Juvenile Offenders for their Successful Reintegration into Society*

The Group carefully considered the situation and practices in each participating country and agreed upon the following recommendations.

1. To obtain more genuine and accurate information, the different aspects and characteristics of juveniles should be considered when conducting risk/needs assessment;
2. Treatment programmes should be updated regularly by inviting the opinion of experts and related parties. Consideration should be given to the ideas of participating staff members as well as the juveniles. Programmes should be introduced in a step-by-step manner, and according to available resources;
3. Objective measurement methods should be used to assess the effectiveness of treatment programmes, such as the rate of recidivism of participants;
4. Treatment programmes which consider victims and restitution of the harm caused to them

MAIN ACTIVITIES

- should prepare juveniles to apologize before victim mediation programmes commence;
5. Before discharging juveniles, greater pre-release training and preparation should be provided. For this purpose, parole board officers should be involved in treatment of the juvenile during his or her stay in an institution;
 6. For the juvenile to lead a stable life, employment is indispensable. Therefore, authorities should seek co-operation from private companies as well as the community through media contact;
 7. Effective systems to monitor volunteers and NGOs are necessary;
 8. In order for the juvenile to maintain his or her motivation to rehabilitate him or herself after release, it is necessary to provide innovative and creative programmes;
 9. Greater effort should be made to encourage the juvenile to build up trusting relationships with his or her family members. This should begin upon the juvenile's admission to an institution and be continued after release on probation or during the supervision period;
 10. Aftercare supervision with control and care elements significantly influences a juvenile's re-integration into society. For this purpose, juveniles' needs should be investigated before release.
 11. Training and education for staff on the rationale and mission of rehabilitation of juveniles should be strengthened. Some cultural change and motivational programmes could be good ways to enhance team spirit and levels of co-operation.

(iii) Effective Measures in the Community-Based Treatment of Juvenile Offenders and Enhancement of the Juvenile's Ability to Reintegrate into Society

The Group agreed to conduct its discussion according to the following agenda:

1. The current situation and problems faced by organizations that treat juveniles;
2. Measures of assessing the individual characteristics, degree of risk and individual needs of juveniles and classification accordingly;
3. Development of an effective programme in accordance with risk and needs assessment;
4. Development of an effective treatment programme considering victims and/or restitution of the harm caused to victims;
5. Continuous collaboration and maintaining links with institutional treatment services and/or related organizations for the effective treatment of juveniles and their rehabilitation (through-care); and
6. The creation of an aftercare system which helps maintain the effect of correctional treatment, reduces the risk of re-offending and enhances the juvenile's ability to reintegrate into the community.

The following recommendations were made.

1. Community-based correctional treatment must be in line with the needs of offenders. A governmental institution may screen these programmes before allowing implementation by NGOs and other community organizations. By doing this, the government may also need to set guidelines or regulations;
2. A treatment programme for the type of risk and need assessment should be developed by specialists and stakeholders in co-operation with the police and departments of justice, social welfare and corrections;
3. Considering the protection of the human rights of juveniles, governments must prioritize financial support of treatment programmes and concerned organizations;
4. Aftercare agencies should co-operate and collaborate with all institutional organizations. Communication and exchange of information and community resources between treatment agencies and the community is crucial in increasing collaboration and co-operation between them. This should take into consideration the juvenile's right to privacy and should be in the juvenile's best interests. Identically formatted documents should be used by all agencies to enhance co-operation and collaboration among stakeholders;
5. The use of community resources such as religious and community leaders and police community forums should be considered for community-based treatment;
6. Third parties are necessary for successful victim-offender meetings but they need to be chosen carefully, taking into account the desires and situations of both victims and offenders;
7. Aftercare residences (halfway houses, etc.) should be established or increased to continue effective treatment of the juvenile within the community;

8. Continuous supervision, assessment and treatment of juveniles, and supports to their parents and families should be maintained;
9. Treatment programmes should provide juveniles with healthy distractions and hobbies in which they have interest so as to reduce negative peer influence and recidivism.

C. The 137th International Training Course

1. Introduction

The 137th International Training Course was held from 5 September to 11 October 2007. The main theme was “Corporate Crime and the Criminal Liability of Corporate Entities”. Twelve overseas participants, six Japanese participants and one overseas observer attended.

2. Methodology

The participants of the 137th Course endeavoured to explore the investigation, prosecution and trial of corporate crime. This was accomplished primarily through a comparative analysis of the current situation and the problems encountered. The participants’ in-depth discussions enabled them to put forth effective and practical solutions.

The objectives were primarily realized through the Individual Presentations and the Group Workshop sessions. In the former, each participant presented the actual situation, problems and future prospects of his or her country with respect to the main theme of the Course. To facilitate discussions, the participants were divided into three groups.

Each group elected a chairperson, co-chairperson, rapporteur and co-rapporteur(s) to organize the discussions. The group members studied the situation in each of their countries and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures and so forth.

Group 1: Issues Concerning the Legal Framework on Corporate Crime, Corporate Liability and Misuse of Corporate Vehicles

Group 2: Issues Concerning the Investigation and Prosecution of Corporate Crime

Group 3: Issues Concerning Trial and Sentencing in Corporate Crime Cases

Plenary Meetings were later held to discuss the interim outline of the Group Workshop reports and to offer suggestions and comments. During the Plenary Meetings, drafts of the Group Workshop reports were examined and critiqued by all the participants and the UNAFEI faculty. Based on these discussions, the Groups further refined their reports and presented them in the Report-Back Sessions, where they were endorsed as the reports of the Course. The reports will be published in full in UNAFEI Resource Material Series No. 76.

3. Outcome Summary

(i) *Issues Concerning the Legal Framework on Corporate Crime, Corporate Liability and Misuse of Corporate Vehicles*

In this globalized era, corporate activities have become transnational. Corporations can expand, creating employment and investment opportunities. However, globalization is not free of negative impacts on society, such as the commission of economic crimes with highly sophisticated and complicated *modi operandi*. Faced with this challenge, each segment of the criminal justice system is mandated to come up with effective solutions to address the problem. Furthermore, the international community has to work hand in hand to curb corporate crimes. Every participating country has taken some steps to prevent and detect corporate crimes and misuse of corporate vehicles and to impose sanctions on corporate entities that commit crimes. Although the legal systems of participant countries regarding liability of legal persons vary, the Group concluded that it is important to punish legal persons effectively and appropriately and made the following recommendations.

MAIN ACTIVITIES

1. Raise awareness among the public and the law enforcement authorities in regard to charging legal persons;
2. In order for the competent authorities to impose adequate sanctions against legal persons it is important to have a variety of sanctions available as options, which may be criminal, administrative and/or civil, in accordance with the legal system of each country;
3. In order to prevent, deter, and combat corporate crimes, effective and adequate legal sanctions should be imposed on legal persons, regardless of sanctions against natural persons;
4. Proceeds of corporate crime should be taken from legal persons and offenders. To serve this purpose, laws on confiscation or forfeiture should be strengthened and fully implemented;
5. Corporate crime is a global problem. Therefore, international co-operation, in terms of international agreements as well as co-operation and co-ordination through formal and informal channels, is important and should be strengthened;
6. Sharing of technical investigative know-how pertaining to corporate crime, including by means of training, should be enhanced among the international community;
7. Legal measures that may contribute to the prevention and detection of misuse of corporate vehicles and corporate crime, such as registration systems for companies and obligations of financial institutions (customer identification, record keeping and suspicious transaction reporting) should be strengthened. Company and bank information kept by relevant authorities or institutions should be accessible to the competent authorities in a timely manner.

(ii) Issues Concerning the Investigation and Prosecution of Corporate Crime

Regarding the above topic, the Group made the following recommendations.

1. Development of a basic guideline document in the investigation of financial, commercial or economic crimes involving corporate entities which have a serious impact on the economic and social stability of their countries that should include: i) the legal study of the elements of the crime; ii) the identification of the sources of information; iii) the techniques of investigation that could be applied; iv) methods of interrogation; v) collection of material or evidence that can be used to prove the elements of the crime; etc;
2. Development of interrogative techniques for victims, witnesses and suspects;
3. Establishment or strengthening of co-operation between prosecutors or police officers and the administrative investigative authorities at state level who have power to conduct administrative investigations in relation to corporate crime;
4. Strengthening of co-ordination between police officers and the prosecutors from the beginning of the investigation;
5. Establishment or strengthening of co-operation with foreign countries to develop joint investigations between law enforcement agencies of different countries. This would ensure a close working relationship to fight corporate crime and enforce mutual legal assistance measures to share information and collect evidence. It would also help in the identification and location of the profits or proceeds of the crime with the purpose of seizing or freezing them and later on, confiscation of same;
6. Enhancement of the expertise of the administrative investigative authorities, police officers and prosecutors in investigation of corporate crime and the strengthening of the financial resources for investigative authorities to train them in order to acquire or improve their specialized knowledge.

In addition to the above mentioned recommendations, it become clear that the majority of the participating countries do not provide for special investigative techniques to investigate corporate crime and such mechanisms and any changes to the existing systems would require extensive discussion and agreement between various state agencies in accordance with the domestic laws in respective countries. Therefore the Group suggests the following:

1. An investigation or a study to assess whether special investigative techniques, in accordance with the domestic law, could be applicable in the field of corporate crimes; and
2. A comparative study of the legal framework in various countries as an aid to determining the most appropriate legal tools to support investigators in carrying out their work.

(iii) Issues Concerning Trial and Sentencing in Corporate Crime Cases

After a lengthy discussion on all the above topics the Group members agreed upon the following recommendations:

1. There is no need to establish or create special courts in respective countries to deal with corporate crime cases. The procedure currently followed in dealing with such cases is appropriate. However, it is useful to establish specialized departments to deal with corporate crime cases like tax evasion in order to ensure speedy and fair trials;
2. Every country should have legislation to provide for the use of electronic evidence to avoid such evidence being challenged in court. The legislation will make its use in court unequivocally binding;
3. As much as possible, countries should use original documents as evidence in courts. Copied documents must be used with strict conditions to avoid the use of tampered evidence;
4. Preparation before the actual trial is vital in all countries where clarifications of disputes and disclosure of evidence are required. The preparation will speed up the trial process by cutting unnecessary objections which may arise during the trial;
5. The court should maintain a list of qualified forensic analysts and experts who can be called to give testimony, rather than the parties calling their own analysts and experts; this would avoid possible conflicts of interest between opposing experts. The list would be prepared by the court in consultation with relevant bodies. However, the parties should not be bound to use only the analysts and experts on the list;
6. Countries must have adequate numbers of jurists and legal personnel who handle corporate crime cases in order to ensure fair and speedy trials. Countries should strive to have, as much as possible, a continuous trial process without adjournments;
7. Judgment and sentencing should be rendered within a reasonable time after the trial. Preferably, the judgment and sentence should be delivered together at the end of the trial;
8. In order to avoid disparities in sentences and to speed up the trial, it is useful to establish sentencing guidelines in respective countries. However, judges are not bound by the guidelines in determining the sentence;
9. In order to combat corporate crimes, there should be a balance amongst criminal (penal), civil, and administrative sanctions being imposed on both corporate entities and the individuals concerned.

D. Special Seminars and Courses

1. The Third Seminar on Criminal Justice for Central Asia

The Third Seminar on Criminal Justice for Central Asia was held from 26 February to 17 March 2007. The main theme was "Effective Measures and Enhancement of Treatment for Drug Abusers in the Criminal Justice Process". Thirteen criminal justice officials from Central Asian countries (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan) attended.

2. The Twelfth Special Seminar for Senior Criminal Justice Officials of the People's Republic of China

The Twelfth Special Seminar for Senior Criminal Justice Officials of the People's Republic of China was held from 5 to 23 March 2007. The main theme was "Globalization of Crimes and International Criminal Justice Co-operation". Thirteen senior criminal justice officials from China attended.

3. The Second Country Specific Training Course on the Revitalization of the Volunteer Probation Aide System for the Philippines

The Second Country Specific Training Course on the Revitalization of the Volunteer Probation Aide System for the Philippines was held from 17 to 26 April 2007. Eleven Parole and Probation Officers and one Volunteer Probation Aide from the Philippines discussed measures to improve communication and feedback, and measures to promote Volunteer Probation Aide Associations.

4. The Eighth Training Course on the Juvenile Delinquent Treatment System for Kenya

The Eighth Training Course on the Juvenile Delinquent Treatment System for Kenya was held from 15 October to 9 November 2007. Eleven participants from Kenya reviewed their progress in regard to improving the treatment of juveniles in correctional institutions and in the community and the progress they have made in establishing a Volunteer Children's Officers programme.

MAIN ACTIVITIES

5. The Tenth International Training Course on Corruption Control in Criminal Justice

The Tenth International Training Course on Corruption Control in Criminal Justice was held from 24 October to 21 November 2007. In this Course, thirteen overseas and five Japanese officials engaged in corruption control comparatively analysed the current situation of corruption, methods of combating corruption, and measures to enhance international co-operation.

6. The First Regional Seminar on Good Governance for Southeast Asian Countries

The First Regional Seminar on Good Governance for Southeast Asian Countries, jointly hosted by UNAFEI, the Office of the Attorney General of Thailand and the UNODC Regional Centre for East Asia and the Pacific, was held from 17 to 23 December 2007 in Bangkok, Thailand. The main theme was “Corruption Control in the Judiciary and Prosecutorial Authorities”. Approximately thirty participants from eight countries, comprising judges, prosecutors and other law enforcement officials attended.

III. TECHNICAL CO-OPERATION

A. Regional Training Programmes

1. Short-Term Experts in Kenya

Two UNAFEI professors were dispatched to Kenya, from 28 July to 1 September 2007, to assist the Children’s Department of the Vice President and Ministry of Home Affairs in a project to develop nationwide standards for the treatment of juvenile offenders and vulnerable children.

2. Short-Term Experts in Latin America

Two UNAFEI faculty members visited Argentina and Costa Rica from 8 to 27 July 2007. In Argentina they held a follow-up Seminar, focusing on the specific situation in Argentina. In Costa Rica, they jointly hosted, with ILANUD, a course on Criminal Justice Reform in Latin America in which ten countries were represented.

3. Short-Term Experts in the Philippines

A UNAFEI professor was dispatched from 22 September to 2 October 2007 to Baguio, the Philippines, to attend and present lectures at the In-Country Training Programme of the Philippines PPA.

B. First Regional Seminar on Good Governance for Southeast Asian Countries

UNAFEI, the Office of the Attorney General of Thailand and the UNODC Regional Centre for East Asia and the Pacific held the First Regional Seminar on Good Governance for Southeast Asian Countries in Bangkok, Thailand from 17 to 23 December 2007. Approximately thirty participants from eight countries attended the Seminar. The main theme of the Seminar was “Corruption Control in the Judiciary and Prosecutorial Authorities”.

IV. INFORMATION AND DOCUMENTATION SERVICES

The Institute continues to collect data and other resource materials on crime trends, crime prevention strategies and the treatment of offenders from Asia, the Pacific, Africa, Europe and the Americas, and makes use of this information in its training courses and seminars. The Information and Library Service of the Institute has been providing, upon request, materials and information to United Nations agencies, governmental organizations, research institutes and researchers, both domestic and foreign.

V. PUBLICATIONS

Reports on training courses and seminars are published regularly by the Institute. Since 1971, the Institute has issued the Resource Material Series, which contains contributions by the faculty members, visiting experts and participants of UNAFEI courses and seminars. In 2007, the 71st, 72nd and 73rd editions of the Resource Material Series were published. Additionally, issues 122 to 124 (from the 135th Seminar to the 137th Course respectively) of the UNAFEI Newsletter were published, which included a brief report on each course and seminar and other timely information. These publications are also available on UNAFEI’s website <http://www.unafei.or.jp/english>.

VI. OTHER ACTIVITIES

A. Public Lecture Programme

On 2 February 2007, the Public Lecture Programme was conducted in the Grand Conference Hall of the Ministry of Justice. In attendance were many distinguished guests, UNAFEI alumni and the 135th International Senior Seminar participants. This Programme was jointly sponsored by the Asia Crime Prevention Foundation (ACPF), the Japan Criminal Policy Society (JCPS) and UNAFEI.

Public Lecture Programmes increase the public's awareness of criminal justice issues, through comparative international study, by inviting distinguished speakers from abroad. This year, Mr. Peter Wheelhouse from the United Kingdom Home Office and Dr. Brian A. Grant from Correctional Services Canada were invited as speakers to the programme. They presented papers on "The Impacts of the *Prolific and other Priority Offenders Programme* and its Significance" and "Reducing Recidivism by Applying the Principles of Risk, Need and Responsivity", respectively.

B. Assisting UNAFEI Alumni Activities

Various UNAFEI alumni associations in several countries have commenced, or are about to commence, research activities in their respective criminal justice fields. It is, therefore, one of the important tasks of UNAFEI to support these contributions to improve the crime situation internationally.

C. Overseas Missions

Ms. Megumi Uryu (Professor) visited Helsinki, Finland from 21 to 26 January 2007 to attend the HEUNI 25th Anniversary Symposium and made a presentation on Technical Activities in the Traditional Areas of Crime Prevention and Criminal Justice.

Ms. Tae Sugiyama (Professor) and Mr. Koji Yamada (Professor) visited Manila, the Philippines to attend the In-Country Training Programme of the Parole and Probation Administration of the Philippines, sponsored by JICA. Mr. Yamada delivered the Director's remarks. Mr. Yamada attended from 15 to 18 January 2007 and Ms. Sugiyama attended from 17 to 20 January 2007.

Director Keiichi Aizawa and Ms. Kayo Ishihara (Professor) visited Vienna, Austria from 21 to 29 April 2007 to attend the 16th Session of the Commission on Crime Prevention and Criminal Justice. The Director made a presentation and a statement and Ms. Ishihara made a statement to the Commission.

Mr. Shintaro Naito (Professor) and Ms. Yoko Hosoe (Staff) visited Bangkok, Thailand from 3 to 9 June to make preparations for the First Regional Seminar on Good Governance, held in December 2007. While in Bangkok, they had meetings with personnel from the Office of the Attorney General, Thailand and the UNODC Regional Centre, Bangkok.

Ms. Kayo Ishihara (Professor) visited Guangzhou, China from 16 to 27 June 2007 to attend the first IAACA Seminar. Ms. Ishihara gave a presentation on "Anti-Corruption Measures in Japan".

Deputy Director Takeshi Seto visited Vientiane, Laos from 25 to 28 June 2007 to attend the Fourth and Fifth ASEAN Senior Officials Meetings on Transnational Crime (SOMTC).

Deputy Director Takeshi Seto visited Bangkok, Thailand from 29 June to 4 July 2007 to prepare for the First Regional Seminar on Good Governance, held in December 2007.

Ms. Kayo Ishihara (Professor) and Mr. Jun Oshino (Professor) visited Argentina and Costa Rica from 8 to 27 July 2007. In Argentina they held a follow-up Seminar, focusing on the specific situation in Argentina. In Costa Rica, they jointly hosted with ILANUD the International Training Course on Criminal Justice System Reforms in Latin America in which ten countries were represented.

Deputy Director Takeshi Seto visited China from 22 to 26 July to meet with personnel from various criminal justice organizations and to prepare for the 2008 Special Seminar for Senior Criminal Justice Officials of the People's Republic of China.

MAIN ACTIVITIES

Mr. Tetsuya Sugano (Professor) and Ms. Tae Sugiyama (Professor) visited the Republic of Kenya from 28 July to 25 August 2007 and 4 August to 1 September 2007, respectively. The purpose of the trip was to observe children's institutions, observe the conditions of the treatment of children and the activities of volunteers, exchange ideas and provide advice to the staff of the Department of Children's Services. The professors also gave lectures at training seminars.

Deputy Director Takeshi Seto visited Vietnam from 27 to 1 September 2007 to present lectures on the Japanese criminal justice system at the Vietnamese Supreme People's Procuracy.

Deputy Director Takeshi Seto visited Hong Kong from 16 to 21 September 2007 to attend and serve as a panellist at the meeting of the International Association of Prosecutors.

Mr. Koji Yamada (Professor) visited Manila and Baguio, the Philippines from 22 September to 2 October 2007 to attend the In-Country Training Programme for the Revitalization of the Volunteer Probation Aide system for the Philippines. Mr. Yamada gave lectures on the Japanese criminal justice system, focusing on the role of Volunteer Probation Officers, and attended group workshop sessions.

Mr. Ryuji Tatsuya (Professor) visited Bangkok, Thailand from 20 to 27 October 2007 to attend the Annual General Meeting of the International Corrections and Prisons Association.

Director Keiichi Aizawa visited Saudi Arabia from 9 to 14 November 2007 to attend and contribute to the discussion of the PNI Co-ordination Meeting.

Deputy Director Takeshi Seto, Mr. Koji Yamada (Professor) and Mr. Ikuo Kosaka (Staff) visited Uzbekistan, Kyrgyzstan and Tajikistan from 13 to 28 November 2007 to conduct research on the criminal justice systems of Central Asia.

Mr. Tetsuya Sugano (Professor) and Mr. Atsushi Takagi (Staff) visited Hanoi, Vietnam from 25 November to 2 December 2007 to attend the Asian Pacific Conference of Correctional Administrators.

Director Keiichi Aizawa, Deputy Director Takeshi Seto, Mr. Shintaro Naito (Professor), Mr. Jun Oshino (Professor), Ms. Yoko Hosoe (Staff) and Mr. Etsuya Iwagami (Staff) visited Bangkok from 11 to 23 December 2007 to attend the First Regional Seminar on Good Governance for Southeast Asian Countries, which UNAFEI co-hosted with the Office of the Attorney General of Thailand and the UNODC Regional Centre for East Asia and the Pacific.

D. Assisting ACPF Activities

UNAFEI co-operates and corroborates with the ACPF to improve crime prevention and criminal justice administration in the region. Since UNAFEI and the ACPF have many similar goals, and a large part of the ACPF's membership consists of UNAFEI alumni, the relationship between the two is very strong.

VII. HUMAN RESOURCES

A. Staff

In 1970, the Government of Japan assumed full financial and administrative responsibility for running the Institute. The Director, Deputy Director and approximately nine professors are selected from among public prosecutors, the judiciary, corrections officers, probation officers and the police. UNAFEI also has approximately 15 administrative staff members, who are appointed from among officials of the Government of Japan, and a linguistic adviser. Moreover, the Ministry of Justice invites visiting experts from abroad to each training course and seminar. The Institute has also received valuable assistance from various experts, volunteers and related agencies in conducting its training programmes.

B. Faculty Changes

Mr. Keisuke Senta, formerly Deputy Director of UNAFEI, was transferred and appointed Senior Legal Expert in Terrorism Prevention (Asia and the Pacific), Terrorism Prevention Branch, UNODC on 22 February 2007.

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Mr. Hiroyuki Shinkai, formerly Professor of UNAFEI, was transferred and appointed Principal Programme Supervisor, Education Division, Fuchu Prison, on 1 April 2007.

Ms. Megumi Uryu, formerly Professor of UNAFEI, was transferred and appointed Professor of Nihon University Law School and Shinshu University School of Law on 1 April 2007.

Mr. Ichiro Sakata, formerly Professor of UNAFEI, was transferred and appointed Judge of Sapporo District/Family Court on 1 April 2007.

Mr. Masato Uchida, formerly Professor of UNAFEI, was transferred and appointed Principal Programme Officer, Classification Division, Chiba Prison on 1 April 2007.

Mr. Takeshi Seto, formerly Senior Attorney for International Affairs, Criminal Affairs Bureau was appointed Deputy Director of UNAFEI on 1 April 2007.

Mr. Ryuji Tatsuya, formerly Chief Specialist for the Observation and Treatment Unit, Chiba Juvenile Classification Home, joined UNAFEI as a Professor on 1 April 2007.

Mr. Jun Oshino, formerly Judge of Ichinomiya Branch, Nagoya District/Family Court, joined UNAFEI as a Professor on 1 April 2007.

Mr. Tetsuya Sugano, formerly Chief of the Case Review and Assessment Section, Nagano Juvenile Classification Home, joined UNAFEI as a Professor on 1 April 2007.

Mr. Simon Cornell, Linguistic Adviser of UNAFEI, resigned on 19 October 2007.

Ms. Grace Lord, from Ireland, joined UNAFEI as Linguistic Adviser on 22 October 2007.

VIII. FINANCES

The Ministry of Justice primarily provides the Institute's budget. The total amount of the UNAFEI budget is approximately ¥272 million per year. Additionally, JICA and the ACPF provide assistance for the Institute's international training courses and seminars.

UNAFEI WORK PROGRAMME FOR 2008

I. TRAINING

A. The 138th International Senior Seminar

The 138th International Senior Seminar was held from 17 January to 15 February 2007. The main theme of the Seminar was “Effective Legal and Practical Measures for Combating Corruption: A Criminal Justice Response”. Fifteen overseas participants and six Japanese participants attended.

B. 139th International Training Course

The 139th International Training Course was held from 19 May to 29 June 2008. The main theme of the Course was “Profiles and Effective Treatments of Serious and Violent Juvenile Offenders”. Seventeen overseas participants and five Japanese participants attended.

C. 140th International Training Course

The 140th International Training Course is scheduled for 1 September to 9 October 2008. The main theme of the Course is “The Criminal Justice Response to Cybercrime”. Twelve overseas participants and five Japanese participants will attend.

D. The Fourth Seminar on Criminal Justice for Central Asia

The Fourth Seminar on Criminal Justice for Central Asia was held from 25 February to 14 March 2008. The main theme of the Seminar was “Countermeasures for Drug Offences and Related Crimes and Treatment for Drug Abusers in the Criminal Justice Process”. Fifteen participants from five Central Asian countries, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, attended.

E. The 13th Special Seminar for Senior Criminal Justice Officials of the People’s Republic of China

The 13th Special Seminar for Senior Criminal Justice Officials of the People’s Republic of China was held from 3 to 21 March 2008. The main theme of the Seminar was “Reform of the Criminal Justice System: Introducing the Views of Crime Victims and Improving Offender Treatment, Taking into Account the Risks and Needs of Offenders”. Ten participants and two Course Counsellors attended.

F. The Third Country Specific Training Course on the Revitalization of the Volunteer Probation Aide System for the Philippines

The Third Country Specific Training Course on the Revitalization of the Volunteer Probation Aide System for the Philippines was held from 15 to 26 April 2008. The number of participants, who were Parole and Probation Officers and Volunteer Probation Aides, was twelve. They discussed measures to improve the probation system and the promotion of Volunteer Probation Aides.

G. The Eleventh International Training Course on the Criminal Justice Response to Corruption

The Eleventh International Training Course on Corruption Control in Criminal Justice is tentatively scheduled for 16 October to 14 November 2008. In this Course, Japanese and overseas officials engaged in corruption control will comparatively analyse the current situation of corruption, methods of combating corruption and measures to enhance international co-operation.

H. The Ninth Training Course on the Juvenile Delinquent Treatment System for Kenya

The Ninth Training Course on the Juvenile Delinquent Treatment System for Kenya is tentatively scheduled for 4 to 28 November 2008. Participants from Kenya will review their progress in regard to improving the treatment of juveniles in correctional institutions and in the community and the progress they have made in establishing a Volunteer Children’s Officers programme.

II. TECHNICAL CO-OPERATION

A. Regional Training Programmes

1. Short-Term Experts in Latin America

Two faculty members visited Costa Rica and Argentina in August 2008. In Costa Rica they jointly hosted, with ILANUD, a course on Criminal Justice Reform in Latin America in which several countries were represented. In Argentina, they held a follow-up seminar on the specific situation in that country.

2. Short-Term Experts in Kenya

Two UNAFEI professors were dispatched to Kenya in July and August 2008. The professors assisted the Department of Children's Services of the Ministry of Gender, Children and Social Development in a project to develop nationwide standards for the treatment of juvenile offenders and vulnerable children.

3. Short-Term Experts in the Philippines

A UNAFEI professor will be dispatched to Baguio, the Philippines in September 2008, to attend the In-Country Training Programme of the Philippines PPA.

B. Second Regional Seminar on Good Governance for Southeast Asian Countries

The Second Regional Seminar on Good Governance was held from 23 to 25 July 2008, in Bangkok. The main theme of the Seminar was "Corruption Control in Public Procurement". Approximately 25 participants from Southeast Asian countries attended.

APPENDIX

MAIN STAFF OF UNAFEI

Mr. Keiichi Aizawa
Mr. Takeshi Seto

Director
Deputy Director

Faculty

Mr. Motoo Noguchi
Mr. Ikuo Kamano
Ms. Tae Sugiyama

Professor
Professor
Chief of Information & Library Service Division,
Professor
Chief of Research Division, Professor
Chief of Training Division, Professor
Professor
Professor
Professor
Linguistic Adviser

Mr. Tetsuya Sugano
Mr. Jun Oshino
Mr. Ryuji Tatsuya
Mr. Koji Yamada
Ms. Kayo Ishihara
Mr. Shintaro Naito
Ms. Grace Lord

Secretariat

Mr. Sakumi Fujii
Mr. Kazuyuki Kawabe
Mr. Hitoshi Nakasuga
Mr. Hideshi Ohashi
Mr. Seiji Yamagami

Chief of Secretariat
Co-Deputy Chief of Secretariat
Co-Deputy Chief of Secretariat
Chief of General and Financial Affairs Section
Chief of Training and Hostel Management Affairs
Section
Chief of International Research Affairs Section

Mr. Yuichi Kitada

AS OF DECEMBER 2007

2007 VISITING EXPERTS

THE 135TH INTERNATIONAL SENIOR SEMINAR

Dr. Tapio Lappi-Seppälä	Director National Research Institute of Legal Policy, Finland
Dr. Peter J.P. Tak	Professor of Law Radboud University of Nijmegen, The Netherlands
Mr. Peter Wheelhouse	Programme Director Drug Interventions Programme & Prolific and other Priority Offenders Programme, Home Office, United Kingdom
Dr. Brian A. Grant	Director Addictions Research Center, Correctional Service, Canada
Mr. Kwok Leung-ming	Commissioner Correctional Services Department, The Government of Hong Kong, Special Administrative Region, People's Republic of China
Dr. William L. Marshall	Director Rockwood Psychological Services, Canada

THE 136TH INTERNATIONAL TRAINING COURSE

Dr. Ann Skelton	Litigation Project Director Centre for Child Law, Faculty of Law, University of Pretoria, South Africa
Mr. Stephen O'Driscoll	Judge Dunedin District Court, New Zealand
Dr. Robert Hoge	Emeritus Professor of Psychology, Distinguished Research Professor, Carleton University, Canada

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THE 137TH INTERNATIONAL TRAINING COURSE

Mr. Paul Pelletier	Principal Deputy Chief for Litigation Fraud Section, Criminal Division, US Department of Justice, USA
Mr. Johan Vlogear	Head of Unit Investigations and Operations I, External Aid, Investigations and Operations, European Anti-Fraud Office (OLAF), European Commission, Belgium
Mr. Lawrence Ang	Principal Senior State Counsel (PSSC) Criminal Justice Division, Attorney General's Chambers, Singapore

2007 AD HOC LECTURERS

THE 135TH INTERNATIONAL SENIOR SEMINAR

Ms. Jennie Amison
Executive Director
Gemeinschaft Home,
Virginia,
United States

THE 136TH INTERNATIONAL TRAINING COURSE

Mr. Masanobu Fukuda
Director of Juvenile Protection Office
Juvenile Division,
Community Safety Bureau,
National Police Agency,
Japan

Dr. Kei Someda
Senior Researcher
Research and Training Institute,
Ministry of Justice,
Japan

Prof. Kenji Hirose
Professor of Law
Rikkyo Law School,
Japan

Ms. Yukiko Yamada
President
Victim-Offender Dialogue Programme
Management Centre,
(Incorporated Non-profit Organization)
Japan

Prof. Emeritus Kei Maeda
Emeritus Professor
Japan Lutheran Theological College,
Japan

THE 137TH INTERNATIONAL TRAINING COURSE

Mr. Hiroyuki Yagi
Director
Tokyo District Public Prosecutors Office,
Special Investigation Department,
Japan

Mr. Yoshifumi Asayama
Judge
Tokyo District Court,
Criminal Affairs Department,
Eighth Division,
Japan

Mr. Kiyotaka Sasaki
Director for Strategy and Policy Coordination
Securities and Exchange Surveillance
Commission,
Coordination Division,
Japan

2007 UNAFEI PARTICIPANTS

THE 135TH INTERNATIONAL SENIOR SEMINAR
Overseas Participants

Mr. Rodrigo Bonach Batista Pires	Police Chief/Deputy Director of the Federal District Penitentiary Civil Police of Federal District, Federal District Penitentiary, Brazil
Mr. Tongzhi Yu	Judge Beijing High People's Court, China
Mr. Boketshu Mike Mbongo	Central Director Frontier Service, Immigration Department, Democratic Republic of the Congo
Ms. Maria Magdalena Rodriguez Valdivieso	Director Ilopango Readaption Centre for Women, El Slavador
Mr. Getachew Erena Negera	Head Planning and Research Department, Ethiopian Federal Police, Ethiopia
Mr. Javier Francisco Leiva Gamoneda	Instructor National Police Academy, Honduras
Ms. Diah Aya Noorsinta Hidayati	Staff Directorate of Narcotics Affairs, Directorate General of Correction, Ministry of Law and Human Rights, Indonesia
Ms. Marcia Angela Reid	Deputy Superintendent of Police Community Relations Branch, Jamaica Constabulary Force, Jamaica
Mr. Raja Shahrom bin Raja Abdullah	Deputy Head of Criminal Investigation Department, Johor Police Contingent, Royal Malaysia Police, Malaysia
Mr. Bin Sulong Nor Afifi	Director Alor Star Prison, Malaysia

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Mr. Abdul Baaree Yoosuf	Judge Criminal Court, Maldives
Mr. Ko Ko Chit	Director (Planning) Correctional Department, Ministry of Home Affairs, Myanmar
Mr. Syed Waseem Raza Jaffery	Additional Secretary Public Prosecution Department, Government of the Punjab, Pakistan
Mr. Sukit Chua-Intra	Judge Dusit Municipal Court, Thailand
Mr. Somphop Rujjanavet	Director Academic Group of Correctional Studies, Department of Corrections, Thailand
Mr. Daniel Manuel Zambrano Jovez	Academy Director Autonomous Institute Chacao Police Department, Caracas, Venezuela
Mr. Young-Hoon Ha	Director Industries and Vocational Training Division, Gyong-ju Correctional Institution, Korea
Mr. Demostenes Chryssikos	Crime Prevention and Criminal Justice Officer Criminal Conventions Section, Division for Treaty Affairs, United Nations Office on Drugs and Crime

Japanese Participants

Mr. Toshitaka Ito	Judge Tokyo District Court
Mr. Toshiaki Kataoka	Public Prosecutor Tokyo District Public Prosecutors Office
Mr. Kenichi Oguri	Deputy Director Research Department, Research and Training Institute, Ministry of Justice
Mr. Ken Ogushi	Head Grievance Review and Investigation Unit, Tokyo Regional Correction Headquarters
Ms. Toshiko Suganuma	Director General Affairs Division, Chugoku Regional Parole Board

APPENDIX

Mr. Goro Udo	Director Rehabilitation Research and Liaison Office, Kanto Regional Parole Board
Mr. Kazuki Ueda	Research and Development Officer Naniwa Juvenile Training School

THE 136TH INTERNATIONAL TRAINING COURSE

Overseas Participants

Mr. Karma Sonam	Officer-in-Charge Royal Bhutan Police, Division III, Bhutan
Ms. Iacy Montiero Braga Caracelli	Special Agent Civil Police of the Federal District, Brasilia, Brazil
Mr. Henry Asaah Ngu Ndama	Administrator of Prisons Service Head for Probation and Training, Department of Penitentiary Administration, Ministry of Justice, Cameroon
Mr. Cesar Alexis Ruiz Rodriguez	Criminal Police Inspector Criminal Investigations General Directorate, Honduras
Mr. Abdelkhoder Mahdi Al-Taher	Deputy Minister of Interior for Southern Iraq Ministry of Interior, Iraq
Mr. Min Than Kyaw	Deputy Director Prison Department, Director General's Office, Myanmar
Mr. William Antonio Parodi Pugliese	Lawyer General Prosecutor's Office, Public Ministry, Panama
Mr. Agustin Esperanza Senot	Police Superintendent Chief of Firepower Section, Directorate for Logistics, Philippine National Police, Philippines
Mr. Braam Paul Korff	Superintendent Division of Training Research and Development, South Africa Police Service, South Africa

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Mr. Herath Mudiyansele T. N. Upuldeniya	Assistant Superintendent of Prisons Kegalle Remand Prison, Department of Prisons, Sri Lanka
Mr. Kapila Mudantha Waidyaratne	Deputy Solicitor General Attorney General's Department, Sri Lanka
Ms. Loupua Kuli	Probation Officer Officer in Charge of the Probation and Youth Justice Division, Ministry of Justice, Tonga
Mr. Thanh Quang Chu	Legal Specialist The Supreme People's Court of Vietnam, Vietnam
Mr. Joseph Makwakwa	Principal Law Officer (Public Prosecutor) Legal and Parliamentary Affairs, Attorney General's Office, Ministry of Justice, Zimbabwe
Mr. Shu-kan Kenny Cheung	Chief Officer Correctional Services Department, Hong Kong SAR
Mr. Hee-Ho Park	Chief Inspector Correction Bureau, Ministry of Justice, Korea
Japanese Participants	
Ms. Suwa Imai	Assistant Judge Tokyo District Court
Mr. Satoshi Imamura	Probation Officer Hiroshima Probation Office Fukuyama Branch
Ms. Ayumi Ishikawa	Probation Officer Kanto Regional Parole Board
Mr. Hisami Katsuda	Family Court Probation Officer Osaka Family Court
Mr. Masaru Kiuchi	Assistant Chief Programme Supervisor Nagoya Prison
Mr. Kenji Nagaike	Assistant Judge Tokyo District Court
Mr. Masaomi Nakazawa	Public Prosecutor Osaka District Public Prosecutors Office

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THE 137TH INTERNATIONAL TRAINING COURSE

Overseas Participants

Mr. Tsaone Chris Mokone	Head of Criminal Intelligence Bureau Criminal Investigation Department Headquarters, Botswana Police Service, Botswana
Ms. Mabel Alves de Faria Correa	Police Chief/ Department of Internal Affairs Adviser Civil Police of the Federal District, Brazil
Mr. Trimulyono Hendradi	Public Prosecutor Public Prosecution Office of Tangerang, Indonesia
Mr. Agung Purnomo Soenarto	Head of Sub Division for Evaluation and Monitoring Attorney General's Office, Indonesia
Mr. McSyd Hubert Chalunda	Senior Investigations Officer Anti-Corruption Bureau, Malawi
Mr. Francisco Montes de Oca Penaloza	General Coordinator Special Investigation Unit for Trespassers, Trafficking of Minorities and Organs, Organized Delinquency Investigation Unit, Mexico
Mr. Mohammed Ahmed Abani	Acting Deputy Prosecutor Special High Instance Court of Niamey, Ministry of Justice, Niger
Mr. Maximo Armando Navarro	Senior Detective Judicial Technical Police, Criminal Investigation Department, Panama
Mr. Alex Manolito Canedo Labador	Chief Law Enforcement Division, Directorate for Operations, Philippine National Police, Philippines
Ms. Sadhana Singh	Senior Superintendent Partnership Policing, South African Police Service, South Africa
Mr. Jayantha Chandrasiri Jayasuriya	Deputy Solicitor General Attorney General's Department, Sri Lanka

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Ms. Bhornthip Sudti-autasilp

Judge
The Civil Court,
Office of the Judiciary,
Thailand

Ms. Sitang Tangsiri

Provincial Public Prosecutor
Assistant Secretary to the Inspector General,
Department of Inspector General,
Office of the Attorney General,
Thailand

Japanese Participants

Mr. Takeshi Hashimoto

Assistant Judge
Osaka District Court

Mr. Hiromitsu Iizuka

Chief Examination Expert
Examination Department,
First Examination Section,
Fair Trade Commission

Mr. Mikio Matsuoka

Judge
Nagoya High Court

Mr. Hideaki Nakamoto

Public Prosecutor
Tokyo District Public Prosecutors Office

Mr. Noboru Shimizu

Public Prosecutor
Tokyo District Public Prosecutors Office,
Hachioji Branch

Mr. Yukitoshi Yokoyama

Public Prosecutor
Saitama District Public Prosecutors Office

THIRD SEMINAR ON CRIMINAL JUSTICE FOR CENTRAL ASIA

Mr. Sabyrzhan Kappasov	Head of Division Law Department, Ministry of Economy and Budget Planning, Kazakhstan
Mr. Azamat Achubayev	Senior Investigator Drug Control Agency, Kyrgyzstan
Mr. Marat Turgunbaevich Djamankulov	Head of Department of Penal Reform Ministry of Justice, Kyrgyzstan
Mr. Baktybek Suiumbaev	Senior Investigator Drug Control Agency, Kyrgyzstan
Mr. Az-zaybek Urustemov	Head of Department Main Department Fighting Crime Committed by Public Officials, The Ministry of Internal Affairs, Kyrgyzstan
Mr. Habibullo Saifulloevich Aliev	Deputy Chairman of Court City Court of Tursun-Zadeh, Tajikistan
Ms. Muhabbat Abdukahorovna Azizova	Chairman Khatlon Region Court, Tajikistan
Ms. Basbi Mizoevna Holova	Judge Supreme Court, Tajikistan
Mr. Anvarzhon Ibrogimovich Yusupov	Chairman Matcho District Court of Sogd Region, Tajikistan
Mr. Yorkin Abdullaev	Prosecutor of the Department General Prosecutors Office, Uzbekistan
Mr. Fakhridin Shamsitdinovich Djamolov	Senior Prosecutor of the Department General Prosecutors Office, Uzbekistan
Mr. Bahtiyorjon Satvoldievich Nizamov	Judge The Criminal Court of Andijan Region, Uzbekistan
Mr. Doniyor Bahtiyarovich Tashkhodjaev	Deputy Head Anti Corruption Unit, The Ministry of Internal Affairs, Uzbekistan

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OFFICIALS OF THE PEOPLE'S REPUBLIC OF CHINA**

Mr. Dong Kaijun	Director General Judicial Research Institute of the Ministry of Justice
Ms. Li Jing	Vice Director of Education and Correction Bureau of Prison Administration, Ministry of Justice
Mr. Lei Jianbin	Deputy Director Criminal Legislation Department, Legislative Affairs Commission, Standing Committee of NPC China
Mr. Xu Yongan	Section Chief Criminal Legislation Department, Legislative Affairs Commission, Standing Committee of NPC China
Mr. Wu Wenhe	Judge The Criminal Trial Division, Fourth Division, Supreme People's Court of the PR of China
Mr. Sun Jiang	Judge The Third Criminal Division, Supreme People's Court of the PR of China
Mr. Qi Zhanzhou	Vice Section Chief of Letter Section Procuratorial Department for Accusation, Supreme People's Procuratorate of the PR of China
Mr. Zhang Xiaojin	Vice-Director of Lodging Protest Section Public Prosecution Department of Supreme People's Procuratorate
Mr. Xiang Dang	Professor, Vice Dean Chinese People's Public Security University
Mr. Yin Yuanfang	Associate Professor Chinese People's Public Security University
Mr. Sun Yong	Division Director Department of Mutual Legal Assistance and Foreign Affairs, Ministry of Justice
Ms. Zhang Pingying	Division Deputy Director Bureau of Education through Labour, Ministry of Justice
Mr. Han Xiutao	Division Director Research Office, Ministry of Justice

**THE SECOND COUNTRY SPECIFIC TRAINING COURSE ON
THE REVITALIZATION OF THE VOLUNTEER PROBATION
AIDE SYSTEM FOR THE PHILIPPINES**

Mr. Rosalio De Guzman Balane	Deputy Administrator Parole and Probation Administration, Department of Justice
Mr. Arturo Ortega Gabrieles	Regional Director Parole and Probation Administration, Department of Justice, Region VIII
Mr. Jose Lino Matias Vibar	Regional Director Parole and Probation Administration, Department of Justice, Cordillera Administrative Region
Mr. Leo Sarte Carrillo	Regional Director Parole and Probation Administration, Department of Justice, Region XI
Mr. Angelito Aviguetero Ilano	Chief Probation and Parole Officer Manila Parole and Probation Office, Office No. 6, Parole and Probation Administration, Department of Justice
Ms. Neneitte Lopez Eugenio	Chief Probation and Parole Officer Community Services Division, Parole and Probation Administration, Department of Justice
Ms. Maria Lourdes Santos Guangco	Chief Probation and Parole Officer Zamboanga Sibugay Parole and Probation Office, Parole and Probation Administration, Department of Justice
Mr. Edgardo JR Geronimo Acuna	Probation and Parole Officer II Bulacan Parole and Probation Office, Office No. 2, Parole and Probation Administration, Department of Justice
Mr. Lloyd Daria Barrion	Probation and Parole Officer II Davao City Parole and Probation Office, Parole and Probation Administration, Department of Justice
Ms. Olivita Agton Alvaro	Volunteer Probation Aide Office of the Barangay Council, Davao City

ANNUAL REPORT FOR 2007

Ms. Olivia Angobung Sales

Chief Probation and Parole Officer
Isabela City Parole and Probation Office,
Parole and Probation Administration,
Department of Justice

Ms. Corzena Taray Gentindatu

Supervising Probation and Parole Officer
Davao City Parole and Probation Office,
Office No. 2,
Parole and Probation Administration,
Department of Justice

**EIGHTH COUNTRY FOCUSED TRAINING COURSE ON
THE JUVENILE DELINQUENT TREATMENT SYSTEM FOR KENYA**

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Ms. Grace Wanjiru Mburu	Volunteer Children's Officer
Mr. Stephen Musomba Kivuva	Chief Probation Officer Probation Training Institute
Mr. Danstan Omari Mogaka	District Children's Officer (Chief Children's Officer)
Ms. Esther Wanjiru Solomon	Superintendent-in-Charge Shimo La Tewa Borstal Institution
Mr. Paul Kipchumba Leting	Senior Superintendent Diplomatic Police Unit, Police Department, Office of the President
Mr. Davelyne Nkonge Mundi	Manager (Senior Children's Officer) Wamumu Rehabilitation School
Mr. Bakala Wambani	Provincial Children's Officer (Assistant Director, Department of Children's Services)
Ms. Salome Ndunge Muthama	District Children's Officer (Chief Children's Officer)
Mr. Githinji Stephen Murugu	Principal Magistrate Narok Law Courts
Ms. Wilbrodah Awino Juma	Chief Magistrate Kitale Law Courts

**TENTH INTERNATIONAL TRAINING COURSE ON
CORRUPTION CONTROL IN CRIMINAL JUSTICE**

Ms. Mary Ndayikunda	Public Prosecutor Anti-Corruption Court, Burundi
Ms. Fonachu née Fang Helen Ike	Deputy Attorney General Attorney General's Office of the Court of Appeal, Judge, Military Tribunal Cameroon
Mr. Dado Achmad Ekroni	Public Prosecutor Legal Bureau of Attorney General, Indonesia
Ms. Ivy Kamanga	Judge High Court of Malawi, Malawi
Mr. Mwangupiri Samuel Ngosi	Team Leader Anti-Corruption Bureau, Malawi
Mr. Amadou Bocar Touré	Magistrate Court of the First Instance of Commune Three of Bamako, Ministry of Justice, Mali
Ms. Oxana Bologan	Superior Inspector Center for Combating Economic Crimes and Corruption, Republic of Moldova
Mr. Sharada Bhakta Ranjit	Deputy Inspector General of Police Office of Inspector General's Secretariat, Nepal Police Headquarters, Nepal
Mr. Froilan Legaspi Cabarios	Public Attorney Public Attorney's Office, Philippines
Mr. Dejan Milenković	Investigator (Inspector) Ministry of Internal Affairs, Sector of the Internal Control of the Police, Serbia
Mr. Supakit Yampracha	Judge Nakhon Panom Provincial Court, Thailand

APPENDIX

Ms. Santanee Ditsayabut

Public Prosecutor
International Affairs Department,
Office of the Attorney General,
Thailand

Mr. Marito Magno

Director of Good Governance
The Ombudsman for Human Rights and Justice,
Timor-Leste

DISTRIBUTION OF PARTICIPANTS BY PROFESSIONAL BACKGROUND AND COUNTRY

(1st International Training Course / Seminar – 137th International Training Course / Seminar)

Professional Background Country/Area	Judicial and Other Administration	Judge	Public Prosecutors	Police Officials	Correc-tional Officials (Adult)	Correc-tional Officials (Juvenile)	Probation Parole Officers	Family Court Investiga-tion Officers	Child Welfare Officers	Social Welfare Officers	Training & Research Officers	Others	Total
Afghanistan	7	9	6	4									26
Bangladesh	21	13		12	5		4			5		2	62
Bhutan				8									8
Brunei	4				2								6
Myanmar	7	1	1	4	1								14
China	13	5	5	10							8		41
Hong Kong	15			11	27	3	9		1	3	1		70
India	15	10		52	7	1	1			2	6	4	98
Indonesia	23	22	31	25	14		3			6		1	125
Iran	5	11	8	8	6						2	1	41
Iraq	6	3	3	5	5	5					2		29
Jordan				4									4
Cambodia	1	2	1	7	1								12
Oman			1	3									4
Korea	13	3	53	6	25	4					3		107
Kyrgyzstan	1			1									2
Laos	10	6	7	10									33
Malaysia	21	2	7	46	35	8	3		1	5	3	1	132
Maldives	1	3	1	1									6
Mongolia	1			2									3
Nepal	29	13	11	31								3	87
Pakistan	20	10	2	37	8	1	2				2	1	83
Palestine	1			1			1			1			4
Philippines	18	9	23	36	9	3	11	3	1	7	5	6	131
Saudi Arabia	5			6	3						1	1	16
Singapore	10	18	5	12	10	3	10			3	1	1	73
Sri Lanka	21	20	15	20	20	1	11		1	3		1	113
Taiwan	12	4	2	2	1								21
Tajikistan	1												1
Thailand	24	39	39	16	18	9	11	1		8	5	1	171
Turkey	2	1	1	2							1	1	8
United Arab Emirates	1												1
Uzbekistan												1	1
Vietnam	12	5	2	7	1					4	1		32
Yemen	1			1									2
ASIA	321	209	224	390	198	38	66	4	4	47	41	25	1,567
Algeria		3	2										5
Botswana	1			4									5
Cameroon	4		1										5
Cote d'Ivoire		2		1									3
Democratic Republic of the Congo	1												1
Egypt	1	3		3							3	1	11
Ethiopia	3			2									5
Gambia				2									2
Ghana	1		1	5	1								8
Guinea			1	3									4
Kenya	6	4	1	12	7		7				2		39
Lesotho				1			2						3
Liberia											1		1
Madagascar				1									1
Malawi			1										1
Mauritius		1											1
Morocco			1	4								1	6
Mozambique	1			1	1								3
Namibia			1										1
Niger			1										1
Nigeria	1			5	5							1	12
South Africa				4	3					1	1		9
Seychelles				3			1						4
Sudan	2		1	13	1						2		19
Swaziland				2									2
Tanzania	4	3	4	7	2								20
Tunisia		1		1									2
Zambia		1		6									7
Uganda			1	5								1	7
Zimbabwe	1		3	8									12
AFRICA	26	18	19	93	20	0	10	0	0	1	9	4	200

APPENDIX

Professional Background Country/Area	Judicial and Other Administration	Judge	Public Prosecutors	Police Officials	Correc-tional Officials (Adult)	Correc-tional Officials (Juvenile)	Probation Parole Officers	Family Court Investiga-tion Officers	Child Welfare Officers	Social Welfare Officers	Training & Research Officers	Others	Total
Australia			1				1			1			3
Vanuatu				3									3
Fiji	6	1	9	21	17					1			55
Kiribati	1												1
Marshall Islands	1			4									5
Micronesia				1			1						2
Nauru				1									1
New Zealand	1			1									2
Palau				1	1								2
Papua New Guinea	10	1	4	16	10		4			1		2	48
Solomon Islands	3		1	2									6
Tonga	2	1		7	3		2				1		16
Western Samoa	1			2			1					1	5
THE PACIFIC	25	3	15	59	31	0	9	0	0	3	1	3	149
Antigua and Barbuda							1						1
Argentina	2	2		2									6
Barbados				1			1						2
Belize	1			2									3
Bolivia		1										1	2
Brazil	2		3	20					1	1			27
Chile	1			4	2								7
Colombia	3	1	2	3					1			1	11
Costa Rica	3	4	4								1	2	14
Dominican Republic				1									1
Ecuador			1	4		1							6
El Salvador	1	1		2	1							1	6
Grenada				1									1
Guatemala					1							1	2
Guyana				1									1
Haiti				1									1
Honduras			1	8									9
Jamaica	3			1	1								5
Mexico	1			1									2
Nicaragua		1											1
Panama			4	3								1	8
Paraguay			1	9		1							11
Peru	4	10	4	2	1						1	2	24
Saint Christopher and Nevis			1	1									2
Saint Lucia	1				1								2
Saint Vincent				2									2
Trinidad and Tobago	1				1								2
Uruguay				1									1
Venezuela	1		1	12							1		15
U.S.A.(Hawaii)								1					1
NORTH & SOUTH AMERICA	24	20	22	82	8	2	2	1	2	1	3	9	176
Albania	1			2									3
Bulgaria				1									1
Estonia			1										1
Hungary	1												1
Macedonia	1												1
Poland				1									1
Lithuania				1									1
EUROPE	3	0	1	5	0	0	0	0	0	0	0	0	9
United Nations Office on Drugs and Crime												1	1
JAPAN	114	168	265	96	91	82	194	63	38	2	48	69	1,230
TOTAL	513	418	546	725	348	122	281	68	44	54	102	111	3,332

PART TWO
RESOURCE MATERIAL SERIES
NO. 75

Work Product of the 136th International Training Course
**“EFFECTIVE MEASURES FOR THE TREATMENT OF JUVENILE
OFFENDERS AND THEIR REINTEGRATION INTO SOCIETY”**

UNAFEI

VISITING EXPERTS' PAPERS

REFORMING THE JUVENILE JUSTICE SYSTEM IN SOUTH AFRICA: POLICY, LAW REFORM AND PARALLEL DEVELOPMENTS

*Dr. Anne Skelton**



I. A NEW APPROACH: POLICY DEVELOPMENTS FROM 1992 TO 1996

The death of Neville Snyman in 1992 was a watershed moment for the movement working towards reform of South Africa's juvenile justice system. Neville was just 13 years old when he and a group of friends broke into the local shop in Robertson and stole sweets and cold drinks. Neville was detained in police cells with other offenders under the age of 21. He was beaten to death by his cellmates. Non-governmental organizations (NGOs) had been raising the issue of children in the criminal justice system and calling for law reform (Community Law Centre *et al.* 1992). Until this time, however, their calls had fallen on deaf ears. Neville's tragic death led to a public outcry, and the government took action by setting up a national working committee on children in detention.

In the meanwhile, NGOs redoubled their efforts. Lawyers for Human Rights ran a campaign called "Free a Child for Christmas", which resulted in the release of 260 children by Christmas 1992. The NGOs also decided that legislative reform was necessary, and in 1993, they set about drafting proposals for a new juvenile justice system. The proposals were published in 1994 and were based on restorative justice principles, centred on the procedure of family group conferencing (Juvenile Justice Drafting Consultancy 1994). This was drawn from the New Zealand model (Pinnock *et al.* 1994). Although the proposals did not have any official status, they did influence future developments, in particular the rights-based approach and the principle of restorative justice.

In 1994 a new government came to power, and President Nelson Mandela made a promise during his first address to Parliament that the issue of children in prison would be dealt with and that in the future the criminal justice system would be the last resort when dealing with juvenile offenders.

The ratification of the United Nations Convention on the Rights of the Child by the South African government in 1995 set the scene for broad-reaching policy and legislative change. The South African Constitution embodies a section protecting children's rights and includes the statement that children have the right not to be detained, except as a measure of last resort, and then for the shortest appropriate period of time, separate from adults and in conditions that take account of their age. One of the earliest cases to come before the new Constitutional Court was *S v Williams* 1995 (3) SA 632 (CC), which dealt with the sentence of corporal punishment, until then a sentence commonly used for the punishment of children by the courts. The court struck down corporal punishment on the grounds that it was cruel, inhuman and degrading treatment.

The government did act with urgency on the issue of children in prison, as President Nelson Mandela had promised it would. In this regard, however, the country learned that the practice of proceeding with too much haste can create problems of its own. An amendment to an existing law, which was intended to outlaw entirely the imprisonment of children during the pre-trial phase, led to chaos when it was suddenly promulgated. Inadequate consultation between the relevant government departments, as well as a lack of alternative residential facilities for children, caused the application of the new law to be fraught with practical problems. So serious were the consequences of this that within a year the government had to amend the law again, this time allowing children charged with certain offences to be detained in prison awaiting trial. The debacle also had some positive results, however. It led directly to the setting up of a structure called the Interministerial Committee on Young People at Risk (IMC), which became an important agency for policy-making in the field of child and youth care, including the management of children who come into conflict with

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the law. The IMC set up a number of pilot projects to try out its new policy recommendations, and some of these were important incubators for the development of new ways of dealing with children. Of particular relevance to children accused of crimes were projects that dealt with the management of offenders immediately following arrest, and family group conferencing in which young offenders were brought into a restorative justice process together with the victims of crime.

II. FROM POLICY TO LAW REFORM: 1997 TO THE PRESENT

The law-making process began when the Minister of Justice requested the South African Law Commission to include an investigation into juvenile justice in its programme. The Juvenile Justice Project Committee of the South African Law Commission commenced its work in 1997 and a discussion paper with a draft Bill was published for comment in 1999. The project committee followed a consultative approach, holding workshops and receiving written submissions from a range of criminal justice role-players. Children were also consulted on the Bill while it was being developed (Community Law Centre 2000). The final report of the Commission was completed and handed to the Minister of Justice in August 2000 (SALC 2000). The Child Justice Bill was approved by Cabinet in November 2001 for introduction into Parliament, and was introduced into Parliament in August 2002 as Bill No. B49 of 2002. However there have been significant delays in the passing of the Bill, and at the time of writing (2007), the Bill has still not become law. It is important that the reader should verify the current status of the Bill, and also check that the details described below are still features of the Act, as changes may occur during the legislative process.

The Child Justice Bill aims to establish a criminal justice process for children accused of committing offences that protects the rights of children as entrenched in the Constitution and as provided for in international instruments. The objectives clause of the Bill focuses on the promotion of *ubuntu* in the child justice system through the fostering of children's sense of dignity and worth, and reinforcing their respect for the human rights of others. The clause also stresses the importance of restorative justice concepts such as accountability and reconciliation, and the involvement of victims, families and communities.

The Bill applies to any person under the age of 18 years who is alleged to have committed an offence. It is proposed that the minimum age of criminal capacity will be raised from seven to 10 years. It is presumed that children aged 10-14 years lack criminal capacity, but the state may prove such capacity beyond reasonable doubt.

In order to keep children out of police cells and prisons, the Bill encourages the release of young offenders into the care of their parents and entrenches the constitutional injunction that imprisonment should be a measure of last resort for a child. A probation officer will assess every child before the child appears at a preliminary inquiry. A preliminary inquiry is held in respect of every child within 48 hours of arrest and is presided over by a magistrate, referred to as the "inquiry magistrate". Decisions to divert the child away from the formal court procedure to a suitable programme may be taken at the preliminary inquiry stage, if the prosecutor indicates that the matter may be diverted.

If a child is not diverted, the matter will proceed to plea and trial. Any court before which a child appears for plea or trial is regarded as a child justice court. Provisions have also been proposed in the Bill for the establishment of one-stop child justice centres. The Bill provides a wide range of sentencing options for children as alternatives to prison sentences. Children who are 14 years or older may nevertheless be sentenced to imprisonment in certain specified circumstances.

The Bill also proposes monitoring mechanisms for ensuring the effective operation of this legislation, and promotes co-operation between all government departments and other organizations and agencies involved in implementing an effective child justice system.

The Bill, when introduced to Parliament, was accompanied by a budget and implementation plan. The juvenile justice project committee had, with a great deal of foresight, predicted that the Bill would not succeed if questions about implementation could not be answered effectively. Consequently, the project committee made history at the South African Law Reform Commission by being the first project committee to undertake a costing of their proposals (Barberton and Stuart, 1999). Following the handover of the South African Law Commission Report on Juvenile Justice to the Minister of Justice in August 2000, work on

implementation planning began. The Child Justice Project, a United Nations technical assistance project of the government of South Africa, followed up on the costing work already done by assisting the government to produce a comprehensive budget and implementation strategy for the Child Justice Bill. This is an inter-sectoral budget developed with the involvement of the Treasury, and linked to the government's medium term expenditure framework. The Deputy Minister of Justice and Constitutional Development has described it as a model according to which all future Bills should be costed and planned for.

Sloth Nielsen (2003), in her innovative article entitled "The Business of Child Justice" undertakes an in-depth analysis of the pragmatic approach which was followed by the project committee and by government. She concedes that children's rights and restorative justice were important influencing factors in the development of the Child Justice Bill, but she makes the following observation: "The article has described and explained how, in the child justice sphere, a growing realism about the transition South Africa is facing resulted in a measurable shift in emphasis from human rights values (as philosophical constructs), and from a stance based on the righteousness derived from the worthiness of the cause. The increasing reliance for both law reformers and government's technical advisers on arguments and practices related to economic modelling and cost efficiency have been illustrated here in support of the contention that, while providing a useful backdrop, children's rights and restorative justice ideology have been eclipsed by business-speak. This could give the impression that an efficiency model, along corporatist lines, has supplanted the idealism of the endeavour." (Sloth-Nielsen, 2003 at p. 192).

Sloth Nielsen, a well-known South African children's rights advocate and academic, is no doubt being a little provocative in this statement. In the closing remarks of her article she concludes that children's rights ideology and pragmatic management philosophy are not competing discourses if we want to ensure that we provide a system that can actually deliver rights to children.

III. PARALLEL DEVELOPMENTS IN PRACTICE

A. Introduction

The system proposed by the Child Justice Bill is not a completely new one. It incorporates and builds on some sections in existing laws that have in the past provided sporadic, unco-ordinated protection for children accused of crimes. The new system has been in a process of organic development for a number of years. This development has grown through the introduction of reforms and pilot projects by NGOs and government departments, often working in partnership. The implementation of the new child justice legislation will be made easier by the fact that there is an existing infrastructure on which to build.

B. Probation Services

1. Current Practice and Recent Developments

Probation work consists of a body of occupation-specific knowledge and skills (Department of Social Development 2002a). Probation officers are currently all social workers who carry out work in the fields of crime prevention, treatment of offenders, and the care and treatment of victims of crime, as well as working with families and communities.

Over the past decade in South Africa, the importance of probation officers as agents in an integrated criminal justice system has grown. The Department has accordingly strengthened probation services through increasing the number of probation officers and through widespread training. The University of Cape Town was the pioneer of post-graduate specialized training for probation officers, being the first university in the country to offer a social science honours degree in probation practice. The Nelson Mandela Metropolitan University, Rhodes University, the University of Johannesburg and the University of Fort Hare are all now offering honours degrees in probation practice. Probation practice is drawn from a number of disciplines including social work, criminology, penology, criminal law, psychology and sociology.

Probation work is currently carried out in terms of the Probation Services Act 116 of 1991, which provides for the establishment and implementation of programmes to combat crime and for rendering assistance to and treatment of both victims and offenders. An amendment to the Act in 2002 (Probation Services Amendment Act 35 of 2002) inserted certain definitions for terms such as "diversion" and "restorative justice", provided for compulsory assessment of all arrested children within 24 hours of arrest, and introduced home-based supervision as an alternative to detention – both in the pre-trial phase and as a

sentence. Pursuant to the amendments, assistant probation officers can now be appointed and be empowered to carry out certain functions under the Act. Assistant probation officers are not required to have third level education, and this is a very practical way of extending the services that the probation services department can carry out. However, statutory services remain the sole preserve of probation officers. The Department of Social Development has undertaken an intensive drive to appoint new assistant probation officers since the end of 2005.

The Annual Report of the Department of Social Development (2005/2006 Financial Year) points out that whilst there are only 780 probation officers, 940 young assistant probation officers have recently embarked on an 18 month training course (the curriculum developed by the University of Cape Town). The report goes on to say the following: "This complemented efforts to improve the quality of learning in the probation services environment that, during the period under review, saw the Standards Generating Body (SGB) Board for Probation Services come into being in April 2005, with the added result of a Probation Work Certificate Course at NQF Level 4 being registered with the South African Qualifications Authority (SAQA)." (Annual Report 2005/2006: 100)

2. Future Prospects

The Child Justice Bill provides for a more central role for probation officers. They will carry out assessments of every child who comes into conflict with the law, and make recommendations about the prospects for diversion, as well as the release or placement of the child. They will also be required to attend the preliminary inquiry, render pre-sentence reports, and carry out supervision of children in the community. In addition, probation services must ensure that there are sufficient programmes in place to support diversion and alternative sentencing.

C. Assessment

1. Current Practice and Recent Developments

The Interim Policy Recommendations for the Transformation of the Child and Youth Care System stressed the importance of an individual assessment of every child (IMC 1996). The Department of Social Development has adopted a model of developmental, strengths-based assessment, and many probation officers have been trained in the use of this method.

The assessment of children by probation officers during the first 24 hours after arrest and prior to the first court appearance is already the general practice in a number of urban centres. This has now become part of statutory law with the passing of the amendment to the Probation Services Amendment Act.

2. Future Prospects

With regard to the availability of probation officers to carry out these assessments within 24 hours, the major urban areas are reasonably well served. There are some smaller towns and rural areas that may not have sufficient staff to undertake these assessments, and some probation officers are required to cover a large geographical area. The purchasing of such services by contracting on a fee-for-service basis with trained personnel in the private or non-government sector is part of the plan envisaged by the Department of Social Development to ensure the availability of probation services to meet the assessment requirements that the forthcoming legislation will set (Intersectoral Committee on Child Justice 2002).

D. Diversion

1. Current Practice and Recent Developments

Diversion is the channelling of children away from the formal court system into reintegrative programmes. If a child acknowledges responsibility for the wrongdoing, he or she can be "diverted" to such a programme, thereby avoiding the stigmatizing, and even brutalizing, effects of the criminal justice system. Diversion gives children a chance to avoid a criminal record, while at the same time, the programmes are aimed at teaching them to take responsibility for their actions and to avoid getting into trouble again.

Current law does not specifically provide for diversion practised in South Africa. Experiments with diversion of young offenders have been pioneered by NICRO (an NGO partially subsidized by the government) since 1992, with the co-operation of public prosecutors and probation officers (Muntingh & Shapiro 1997).

Although diversion is currently not mentioned in the statutes, it has recently been recognized and pronounced upon by the courts in *S v D* 1997 (2) SACR 673 (C), *S v Z en vier andere sake* 1999 (1) SACR 427 (E), and *M v The Senior Public Prosecutor, Randburg and another* (Case 3284/00 WLD, unreported). Diversion can thus be said to be officially recognized by South African law.

The National Prosecuting Authority (NPA) issued a national policy manual in 1999, Chapter 7 of which deals with diversion. It was tabled and approved by Parliament in November 1999. The manual defines diversion, how it should be implemented, the selection criteria, and the processes to be followed. In addition, training manuals on Child Law have been developed by the Justice College for both prosecutors and magistrates, and each of the manuals contains detailed information about diversion.

In 2000, the NPA conducted a national audit on diversion programmes. The audit revealed that access to diversion was uneven, with children in rural areas receiving few opportunities. The NPA (with the assistance of NICRO and the Department of Social Development) has carried out training throughout the country since that time. Data collection remains weak in this area. The NPA reports that from July 1999 to December 2005, a total of 115,582 matters were diverted. However, a major shortcoming is that the figures do not indicate the kinds of offences and the ages of the children diverted (Tserere 2006: 38).

2. Future Prospects

The Child Justice Bill will make diversion part of the law, instead of being solely dependent on the discretion of a prosecutor, as it is in the current system. The Department of Social Development has developed minimum standards for diversion. These are aimed at ensuring that diversion services will, in the future, be offered by accredited service providers. The quality of the programmes will be subject to evaluation, using the minimum standards as an evaluative benchmark.

E. Restorative Justice

1. Current Practice and Recent Developments

Restorative Justice is recognized as being closely linked to African traditional justice systems. This traditional form of justice preceded colonization and still exists in South Africa today, more commonly in rural areas. Modern restorative justice practice has its roots in victim-offender mediation, which became popular in the Western world during the 1970s. The term "restorative justice" began to be applied to such practices during the 1980s, and was first comprehensively presented as a theorized model in 1990 with Zehr's *Changing Lenses*. South Africa's participation in the modern international movement of restorative justice began in 1992. The first initiatives were taken by a non-governmental organization, the National Institute for Crime Prevention and Reintegration of Offenders (NICRO), in 1992 to establish and later evaluate South Africa's first victim-offender mediation project. A person was employed to get the project going, and he undertook a study visit to the United States. The visit was hosted by the Mennonite Central Committee and included time at a training conference in San Francisco, Los Angeles to observe a victim-offender mediation project, and then on to Elkhart, Indiana to observe the victim-offender programme there.

NICRO's first victim-offender mediation project was established in Cape Town. The results of the project were published in a report that describes Zehr's model of restorative justice as the theoretical framework for the project, and gives several examples of victim-offender mediation projects in North America and Europe as well as a brief description of the Japanese legal system, with reference to a parallel mediation track (Muntingh 2003). The project targeted referrals at both the pre-trial and pre-sentence stages. The report indicated that prosecutors had been reluctant to refer serious cases to the project, and had referred a majority of juvenile offenders, as opposed to adults.

In 1995 an Interministerial Committee for Young People at Risk was established. Restorative justice was adopted as a "practice principle" for the transformation of the child and youth care system. A study tour to New Zealand was authorized by the IMC in 1996 and four South Africans travelled there to consider the applicability of the New Zealand youth justice system to South Africa. Following the study tour to New Zealand, the IMC established a pilot project on family group conferencing in Pretoria that handled 42 cases in 1997, some of which dealt with relatively serious offences. The project was evaluated and the findings were published in a document that is both a practice research study and an implementation manual (Branken and Batley 1998).

The Restorative Justice Centre was established in Pretoria in 1998. From the outset the organization aimed not only to offer victim-offender conferencing as an alternative to the criminal justice system, but also to build capacity within South Africa for the delivery of restorative justice programmes. The Centre has forged links with other organizations in a consortium called the Restorative Justice Initiative.

Several training initiatives have also played an important role in helping to establish restorative justice in South Africa. Since it began to function in 2000, the Restorative Justice Centre has offered a three-day workshop in the theory of restorative justice as well as conferencing skills. This package was adapted for probation officers, first for the North West province in 2001, and later for the whole country as a project of the National Department of Social Development funded by the Royal Netherlands Embassy in 2003. During 2005 and 2006 there has been a rapid growth in training on restorative justice, with the Department of Justice, magistrates' organizations and the National Prosecuting Authority all commissioning training for their officials.

A recent audit by Skelton and Batley entitled "Mapping Progress, Charting the Future: Restorative Justice in South Africa" (2006) has found that there are restorative justice initiatives in all nine provinces in South Africa. The probation sector appears to be the most active, which is probably due to the fact that this sector was the first to receive training. The role of the NGOs has been very important, but government departments are definitely coming on board. Victim-support service involvement has not been very active, which given that restorative justice is a victim-centred process, is disappointing, but it may be due to general weaknesses and lack of funding in that sector.

Very recently, a fledgling jurisprudence has begun to emerge from the superior courts. Justice Bertelsman, in a High Court judgment called *S v Joyce Maluleke* (an as yet unreported case no. CC 83/04 Transvaal Provincial Division, handed down on 13 June 2006) has set the groundwork.

Drawing on other judgments, one from Zimbabwe, *S v Shariwa* [2003] JOL 11015 (ZH) and another from the Transvaal Provincial Division, *S v Shilubane* 2005 [JOL 15671(T)], the judge opened the door in an explicit way to the use of restorative justice in sentencing. He remarked as follows: "In addition, restorative justice, seen in the context of an innovative approach to sentencing, may become an important tool in reconciling the victim and the offender and the community and the offender. It may provide a whole range of supple alternatives to imprisonment."

This judgment was mentioned in one of the dissenting judgments in the recent constitutional case of *David Dikoko v Thupi Zacharia Mohkatla* CCT 62/05, an as yet unreported judgment delivered on 3 August 2006 by the Constitutional Court of South Africa. This case dealt, interestingly enough, not with a criminal matter but a civil claim for damages arising from defamation. Whilst the majority awarded a hefty claim of financial damages, the two separate but concurring minority judgments, by Justices Mokgoro and Sachs, focused instead on a restorative justice approach, making the point that dignity could not be restored through disproportionate punitive monetary claims, and that apology would have been a more powerful tool, more in keeping with African notions of *ubuntu* and our constitutional commitment to dignity.

2. Future Prospects

The development of standards for restorative justice practice are currently being developed, led by the non-government sector, but with active participation by government department officials and consultation with practitioners. The National Prosecuting Authority has announced that it plans to roll out a restorative justice pilot project to numerous courts around the country, in which child offenders will benefit from diversion and alternative sentencing options.

F. Assessment Centres and One-Stop Child Justice Centres

1. Current Practice and Recent Developments

Over the past decade, service arrangements have been developed at grass-roots level in an attempt to streamline pre-trial services to children. Some of these are called assessment centres, others are named arrest, reception and referral centres. These centres, usually based at the magistrate's court, are staffed by probation officers. They are service hubs, designed to streamline the process of children who have been arrested by police being transferred as swiftly as possible to a probation officer for assessment prior to their first appearance (IMC 1998).

A more complex and developed model of a service centre is the One-Stop Child Justice Centre, which has a range of services involving several departments housed under one roof. This model has been operating at "Stepping Stones" in Port Elizabeth since 1996 (IMC 1998). The project has now been incorporated as part of the normal services rendered, with permanently appointed staff. A second One-Stop Child Justice Centre has been established at Mangaung, in Bloemfontein. Although initially these centres were co-ordinated by the Department of Social Development, there have been moves for the Department of Justice and Constitutional Development to take a more active lead in the promotion of such centres. This is in line with the Child Justice Bill, which empowers the Minister to establish such centres in the future system, in consultation with Ministers of other relevant departments. The Department of Justice and Constitutional Development has been leading a process to develop a blueprint for the establishment and maintenance of One-Stop Child Justice Centres.

2. Future Prospects

Assessment and referral centres, and One-Stop Child Justice Centres, are very useful as service hubs (different services are inter-related and form a hub), which enhance efficient service delivery. However, it is not essential that such centres be universally in place for the implementation of the Child Justice Bill. Rather, such centres can be progressively realized and promoted, in an organic manner that suits the specific needs of that particular district or region. In their report on costing and implementation of the Child Justice Bill, Barberton and Stuart (1999) recommended that the distribution of One-Stop Child Justice Centres should seek to maximize impact by being established across metropolitan and certain large urban areas. They proposed that the establishment of 19 such centres would serve at least 30% of the country's arrested children, or possibly more, given the metropolitan and urban bias in child crime rates (Barberton & Stuart 1999). The Department of Justice budgeted R31 million between 2003 and 2005 to be spent on infrastructural costs for One-Stop Child Justice Centres (Intersectoral Committee on Child Justice 2002).

G. Children Awaiting Trial in Detention

1. Current Practice and Recent Developments

The South African Constitution, in section 28(1)(g), gives every child the right not to be detained except as a measure of last resort, in which case he or she may be detained only for the shortest period of time. Despite this provision and numerous ad hoc efforts on the part of the legislature to limit pre-trial detention of children, South Africa has had an ongoing battle with the problem of too many children being detained in prison. The concerted efforts of government to reduce the numbers has paid off, however, and the Department of Social Development reports a 40% reduction of children in prison during the period 2004 to 2006 (Department of Social Development 2006: 97). The annual report issued by the Office of the Inspecting Judge of prisons reports that in December 2005 there were 1,217 children in prison awaiting trial. Dissel (2006: 116) attributes this to the *Interim National Protocol for the Management of Children Awaiting Trial* which was issued by the Intersectoral Committee for Child Justice in June 2001. This is an intersectoral document that clearly sets out procedures to be followed after the arrest of a child. It emphasizes measures to get children released into the care of a parent or guardian, failing which, to have them placed in the least restrictive residential option available.

In addition to children detained in prison, there are also children awaiting trial in facilities run by the provincial Departments of Social Development. In 1998, the Department of Social Development commenced a programme to support the establishment of secure care facilities and funds have been made available by the Treasury for this purpose. The number of children accommodated in these facilities has risen over recent years, which is to be expected as children who were previously in prison may be held in secure care. However, the facilities are still not fully utilized. The Department had provided 2,199 secure care beds by February 2006, but reported that only 71% of these were being occupied on 28 February 2006 (Dissel 2006: 114).

A national workshop on secure care was held in March 2001 in Bloemfontein to consider the development of a protocol for secure care, uniformity of secure care practice and the development of a programme for document quality assurance (DQA); to establish a forum for secure care; to consult on the regulations for secure care; and to finalize an audit of all facilities accommodating children awaiting trial.

2. Future Prospects

The forthcoming legislation, while continuing to allow older children charged with serious offences to be held in prison to await trial, does aim to limit the number by removing the discretionary clause and incorporates as part of law the principle that imprisonment should always be used as a measure of last resort. It is predicted that as a result the total number of children awaiting trial in prison will not rise and is likely, in fact, to be reduced.

A further consideration is the fact that, due to crowded court rolls in the current system, trials are taking longer to complete and this backlog tends to keep detention figures high. The Child Justice Bill encourages the completion of trials within a six-month period from the taking of the plea, as children will not be able to be detained for longer than this (unless they are charged with murder, rape, car hijacking or aggravated robbery). This provision will hopefully speed up trials where children are the accused.

In addition to increasing the number of beds available in residential facilities, the Department of Social Development is committed to providing community-based alternatives to pre-trial detention. The Department, in partnership with the Western Cape Provincial Department, started a home-based supervision project during September 1998. The arrested child is placed in the care of his or her parents under the supervision of a probation officer. The child is then monitored by an assistant probation officer. It is recorded that from September 1998 until February 2002, a total of 379 children were in this programme. An interesting observation is that out of all these cases of children in this programme 188 cases were eventually withdrawn from court. This means that at least that many children could have been in prison awaiting trial for up to a year or longer, their young lives totally disrupted and their schooling interrupted, only to have the charges ultimately withdrawn. It is also noted that such programmes are highly cost effective when compared with the expensive option of residential care.

In the Annual Report of the Department of Social Development 2005/2006 Financial Year it is reported that a blueprint for secure care is being developed to regulate norms and standards in secure care. Secure care is a component of residential care, and the running of such facilities will in future be governed by the Children's Act 35 of 2005, expected to become operational in 2008.

H. Pre-Sentence Reports

1. Current Practice and Recent Developments

Although current statutory law in South Africa does not make pre-sentence reports by a probation officer compulsory, a series of recent High Court judgments have created precedents for the requirement of pre-sentence reports, at least in cases where children are likely to be sent to reform school or prison. *S v Z en vier andere sake* 1999 (1) SACR 427 (E) sent a clear message that due to the importance of understanding the personality and personal circumstances of the child offender, a pre-sentence report is vital. The approach was also followed in *S v Kwalase* 2000 (2) SACR 135 (C), which also stressed the importance of an individualized approach. In the case of *S v J and others* 2000 (2) SACR 384 (C) a 16 year old offender had been sentenced on the basis of an "assessment record" instead of a proper probation officer's pre-sentence report. The court found that the form was inadequate for purposes of sentencing. The role of the probation officer was fully discussed in the Supreme Court of Appeal in *S v Petersen en 'n Ander* 2001 (1) SACR 16 (SCA). In that the case the Director of Social Services had submitted a letter saying that probation officers do not undertake home visits to gang infested areas in Port Elizabeth. The Appeal court firmly stated that the magistrate had misdirected himself when he accepted this excuse, and that he should not have sentenced a young offender without the benefit of a probation officer's report. This case was cited and followed in *S v M and another* 2005 (1) SACR 481 (E). In the same year, the case of *S v N and Another* 2005 (1) SACR 201 (CkH) dealt with the fact that it is preferable for a probation officer to be called to give evidence, rather than just hand in a written report.

2. Future Prospects

The Child Justice Bill provides that pre-sentence reports should be requested in every case, and that this may only be dispensed with if the matter is a petty offence or if the pre-sentence report would cause a delay that would prejudice the child. However, no sentence involving "a residential element" can be imposed unless a pre-sentence report has been presented to, and considered by, the court. It seems likely that the

new system may require the provision of more pre-sentence reports than are required in the current system, and the Bill also requires that a report be completed within one calendar month from the date on which it is requested. However, the fact that a probation officer will have already completed a pre-trial assessment will shorten the process of the preparation of the pre-sentence report. Probation officers are already dealing with pre-sentence reports in the majority of serious matters.

I. Community-Based Sentences

1. Current Practice and Recent Developments

A range of non-custodial sentences are available to the courts for the sentencing of convicted children. It is possible to postpone the passing of sentence conditionally or unconditionally. In the case of unconditional postponement, the court does not pass sentence but warns that the offender may have to appear again before the court if called upon to do so. The postponement may be made conditional to compensation, rendering of a benefit or service to the victim, community service, instruction or treatment, supervision, or attendance at a centre for a specified purpose. Postponement of sentence is used regularly by the courts, particularly for non-violent offences. Also available under the current law is the option of correctional supervision. This provides for an offender to be placed under correctional supervision which takes the form of house arrest, combined with a set period of community service and attendance at a relevant course. This can either be completed as a wholly community-based sentence, or a person can spend a portion of the sentence in prison, and then be released to carry out the rest of the sentence under correctional supervision. Correctional supervision is not designed for child offenders specifically and is not used as frequently as it could be.

In the case of *The Director of Public Prosecutions, KwaZulu Natal v P* 2006(1) SACR 243 (SCA), the Supreme Court of Appeal reviewed a sentence of correctional supervision for a girl who had been 12 years old at the time of the commission of murder. Although the court set the sentence aside, it did not interfere with the correctional supervision part of the sentence, but replaced the postponed sentence to a wholly suspended sentence of imprisonment.

2. Future Prospects

While the courts have for many years had the power to use community-based sentences, they have often opted for less imaginative options from the list available to them, such as postponed sentences (Skelton, in Robinson 1997:174). The Child Justice Bill offers a comprehensive range of options for diversion. In the community-based sentencing section it refers back to the options for diversion, indicating that any of these can also be used as a sentence, or be linked to a sentence, through postponement or suspension.

Probation services will play an important role in ensuring and brokering the availability of programmes for sentences (which in most cases will be the same programmes used for diversion). Probation officers need to be thoroughly trained in this field.

With regard to correctional supervision, the content of this sentencing option should be reconsidered to ensure that it is suitable for the needs of child offenders, and it should then be promoted as a sentencing option. The availability of correctional officials to supervise these sentences also needs to be considered and planned for.

J. Reform School

1. Current Practice and Recent Developments

In the current system, children may be sentenced to reform schools (managed by the Department of Education), which are compulsory residential facilities offering academic and technical education. In 1996, there was a Cabinet-requested investigation into the availability and suitability of such facilities and it was found that there were nine reform schools in South Africa, seven for boys and two for girls. Since then, however, the Western Cape facilities have been "rationalized" and a reform school in KwaZulu-Natal has been closed.

Currently, there are only four facilities receiving sentenced children, namely Ethokomala Reform School (for boys) and Faure Youth Centre (for boys and girls) in Mpumalanga, Ottery Youth Centre (for boys only) in the Western Cape, and Denovo in the Western Cape, which is still being developed. The total number of

beds for sentenced children in these facilities is 420. Due to the fact that these facilities are not evenly spread throughout the country, numerous children who have already been sentenced to reform school have to await designation to such a facility in prison. The situation has been commented upon with concern by the High Court in a series of cases, notably *S v M* 2001 (2) SACR 316 (T); *S v Z and 23 similar cases* 2004 (4) BCLR 410 (E) and *S v Z and 23 similar cases* 2004 (1) SACR 400 (E). In these reported cases, and other unreported ones, the courts have expressed grave concern about the situation where issues relating to provisioning, transport and other practical concerns are leading to a serious violation of the rights of children sentenced to reform school.

2. Future Prospects

The Child Justice Bill is moving away from the terminology of “reform school” and is instead allowing for children to be sentenced to a “residential facility”. The definition of the latter is broad enough to include facilities run by either the Department of Education or the Department of Social Development. This will mean that the former department will be able to consider utilizing schools of industry for the accommodation of sentenced children, and also that currently existing and planned secure care facilities can be utilized for sentenced children and not just for children awaiting trial, as is currently the case. Reform schools will in future fall under the administration of the Children’s Act 35 of 2005, which is expected to become operational by 2008.

K. Prison Sentences

1. Current Practice and Recent Developments

Children can be sentenced to imprisonment and under the current law there is no limit regarding a minimum age for imprisonment of sentenced children. In practice, children under the age of 14 are not often sentenced to imprisonment, but the fact that it happens at all remains a concern. According to the annual report issued by the Office of the Inspecting Judge of Prisons (2005/2006), of the 2,354 children in prison (awaiting trial and sentenced) 12 are under the age of 14 years.

The statistics relating to children being sentenced to imprisonment indicate that the number of children being sentenced to imprisonment is decreasing, but the length of their sentences is increasing on average. According to the annual report issued by the Office of the Inspecting Judge of Prisons (2005/2006), the number of persons serving sentences of imprisonment in December 2005 was 1,137.

The minimum sentences introduced by the Criminal Law Amendment Act No 105 of 1997 may have affected the length of sentences because some courts initially applied the legislation to 16 and 17 year olds. The legal uncertainty on this issue was resolved when the Supreme Court of Appeal ruled in the case of *Brandt v S* [2005] 2 All SA 1 (SCA) that minimum sentences do not apply to persons who were below the age of 18 years at the time of the commission of the offence.

South Africa remains one of only a few countries in the world that retains life imprisonment as a sentence for children, with 32 such prisoners having been identified. In South Africa, a person sentenced to life imprisonment must serve 25 years in prison before he or she can be considered for parole (Du Toit 2006: 13).

2. Future Prospects

The fact that any children under the age of 14 years are being sentenced to imprisonment is cause for concern, and the proposed new legislation seeks to remove the possibility of sentences to imprisonment for children under this age, although other forms of secure residential care will remain available.

With regard to children of 14 years and older, it is not predicted that the Child Justice Bill will bring about any increase in the number of children being sentenced to imprisonment. Hopefully, there will be a reduction in the number of such sentences, especially in those categories of children sentenced to less than two years. Community-based alternatives are being developed and promoted, and may be appropriately used in these matters. The Bill as introduced into parliament included a clause outlawing the use of life imprisonment.

L. Legal Representation

1. Current Practice and Recent Developments

Children have a right to legal assistance in South Africa in cases where a substantial injustice would otherwise occur, and where a child's family cannot afford to pay for the services of a lawyer. State-funded legal representation can be obtained through the Legal Aid Board (Zaal & Skelton 1998:520). Although the percentage of children being legally represented has increased in recent years, it is still estimated to be less than half of all cases appearing in court (Intersectoral Committee on Child Justice 2002). A large number of children who are offered state-funded legal aid decline these services, which indicates a need for the education of children who have come into contact with the criminal justice system. There has previously been little or no specialization amongst lawyers regarding the legal representation of children.

The Legal Aid Board has committed itself to providing legal representation for children. The Board has appointed legal representatives for children – both in child justice and children's court matters – in several of their justice centres.

2. Future Prospects

The Child Justice Bill provides for access to state-funded legal representation when the child is remanded in detention, when there is a likelihood that a sentence involving a residential requirement is to be imposed, and when the child is at least ten years old but not yet 14 years and the matter is to be tried in court. The children in these categories may not waive legal representation.

The idea of non-waiver may appear to be a provision that will cause a large increase in the number of cases that will have to be taken on by the Legal Aid Board. The Legal Aid Board agrees, however, that these categories correspond with the constitutional test of whether a substantial injustice would otherwise occur (Intersectoral Committee on Child Justice 2002). It is also likely that the Child Justice Bill, with its focus on diversion of cases, will result in fewer cases going to trial overall, although the number of serious cases going to trial will probably remain much the same. These serious cases tend to be the ones in which children do have legal representation in the current system.

Planning for legal representation will be done primarily through making the legal aid officers as well as legal aid justice centre managers and staff aware of the requirements of the Bill, and through the training of relevant justice centre staff. Further, efforts to provide some specialization in legal representation of children will be supported.

M. Monitoring

1. Current Practice and Recent Developments

Since its inception in 2000, the government-led Intersectoral Committee on Child Justice has attempted to set up structures and systems to monitor the situation of children in the criminal justice system, although these have focused mainly on pre-trial detention. By 2006 all provinces had set up some form of monitoring structure. However, data collection remains incomplete.

There is a general monitoring system for all prisoners, the "independent prison visitors" model that provides for each prison to have a paid prison visitor, and this nationwide structure is overseen by a judicial inspectorate of prisons. Children have benefited from this system, although the quality of the services does differ from prison to prison. The Office of the Inspecting Judge has taken an interest in children in prison, and does include specific details about them in its annual reports.

The process of automatic appeal in certain cases is also a useful part of the monitoring process. A number of High Court judgments have picked up irregularities and injustices relating to cases involving children in the criminal justice system. This helps to monitor what is happening in the courts and also contributes to law reform and improvement in practice.

2. Future Prospects

The Child Justice Bill does include a section on monitoring. Much of the detail on monitoring that was included in the draft Child Justice Bill, itself included in the Law Commission Report on Juvenile Justice, has

been removed, and the Child Justice Bill as introduced into Parliament includes only a simple framework for monitoring. The detailed provisions are likely to appear in the regulations to the Act.

IV. CONCLUSION

The issue of child justice is very fluid in South Africa, which is why it is necessary to describe a system in the making, as this chapter has aimed to do. It is necessary for the reader to check the current status of the law when using this text, since changes to the Child Justice Bill may occur during the parliamentary process, and the Act that emerges may be different from the Bill as it is described in this paper. To check the status of the law, visit the following website: www.childjustice.org.za .

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YOUTH JUSTICE IN NEW ZEALAND: A RESTORATIVE JUSTICE APPROACH TO REDUCE YOUTH OFFENDING

*Stephen J. O'Driscoll**



I. INTRODUCTION

New Zealand, a small country in the south-west Pacific, is located approximately 2,000 kilometres east of Australia and over 8,000 kilometres from Japan with a land area of 268,000 square kilometres (about two-thirds of the land area of Japan). New Zealand has a population of just over four million people with one quarter of those people under 17 years of age. Although New Zealand has a distinctly bicultural heritage, Māori and Pākehā (of European descent), it is developing an increasingly multicultural identity, through immigration mainly from the Pacific Islands and from Asia. It is a member of the Commonwealth and its legal system basically follows the traditional common law British model.

The New Zealand criminal court structure is comprised of the District Court, the High Court, the Court of Appeal, and the Supreme Court (New Zealand's highest appellant Court). The District Court, in its very wide criminal jurisdiction, presides over all criminal offences except for the most serious, such as murder, manslaughter and high end drug offences. There are presently 120 District Court Judges based in 17 urban centres throughout New Zealand, although many of these 120 Judges travel between the 65 different locations where the District Court sits. All District Court Judges have what is known as a general warrant that gives them general jurisdiction in civil and criminal matters. In addition to a general warrant, a District Court Judge may also hold a Jury Trial warrant, a Youth Court warrant and/or a Family Court warrant. The Youth Court and the Family Court are divisions of the District Courts and are considered specialist Courts.

While children and young persons sometimes engage in behaviour that gives rise to the same criminal offences that adults are charged with, the New Zealand Youth Justice system recognizes that the maturity and cognitive levels of children mean that their offending should be dealt with in a manner distinct from that currently applying to adult offenders. Young people develop at different rates and will be at different levels of maturity at any given age. The ability to understand the wrongfulness of criminal acts develops gradually. Offending by children and young persons can be symptomatic of wider care and protection issues, which if dealt with through a traditionally adversarial criminal justice approach will most often be destructive. The New Zealand Youth Justice system recognizes and upholds the rights of children and young people as a distinct group, and provides an individual response to youth offending.

This paper is designed to give the reader a brief outline of the New Zealand youth justice system. Many readers will be unfamiliar with New Zealand's emphasis on diversion and may be surprised to learn that only a small percentage of youth offenders end up in the Youth Court. Most readers will also be unfamiliar with the family group conference [FGC] where offenders, victims, the police, Child Youth and Family Services, youth advocates and community representatives get together. This is for the purpose of attempting to find a consensual approach to deal with the young person in an attempt to reduce the risk of their reoffending. The approach is restorative in nature rather than punitive. This is how we do things in New Zealand! Hopefully other jurisdictions might see there are some strengths and advantages in the New Zealand system and adapt some of those to their own system of dealing with youth offenders.

II. STATUTORY FRAMEWORK FOR YOUTH JUSTICE IN NEW ZEALAND

A. Children, Young Persons, and Their Families Act

In New Zealand the primary legislation governing youth justice in the District Court is the Children,

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Young Persons, and Their Families Act 1989 (CYPF Act), which establishes the procedures governing State intervention in the lives of children, young people and their families. The Act can be seen as a response to the principles enunciated in international instruments relating to youth justice.¹ The Act has two distinct operational components, providing for a jurisdictional separation or division of function between the Family Court and the Youth Court which are two Courts of specialist jurisdiction, both divisions of the District Court. Simply stated, the Family Court deals with care and protection matters while the Youth Court has jurisdiction in matters of youth offending.

The CYPF Act provides for an innovative system of youth justice, introducing a hybrid justice/welfare system where young people, their families, victims, the community and the State are involved in taking responsibility for offending and its consequences. Maxwell and Morris observe the following innovative strategies that are incorporated into the New Zealand system of youth justice:

- the rights and needs of indigenous people are to be taken into account;
- families are to be central to all the decision-making processes involving their children and young people;
- young people are themselves to have a say in how their offending is to be responded to;
- victims are to be given a role in negotiations over possible penalties;
- the model of decision-making advocated is to be group consensus.²

These strategies are achieved through changes to police and court procedures and practice and through the introduction of the Family Group Conference (FGC), a decision-making forum that enables offenders, victims, families, community and professionals to recommend an appropriate penalty to the Court. In the vast majority of cases Youth Court Judges, who are not present at FGCs, accept and adopt the recommendations arrived at by the participants of the FGC.

Guiding all decisions made under the CYPF Act, but subject in respect of care and protection issues to the welfare and best interests of the child or young person, are the following principles:³

- (a) Wherever possible, a child's or young person's family, *whānau, hapu, iwi*, and family group should participate in the making of decisions affecting that child or young person, and accordingly that, wherever possible, regard should be had to the views of that family, *whānau, hapu, iwi*, and family group;
- (b) Wherever possible, the relationship between a child or young person and his or her family, *whānau, hapu, iwi*, and family group should be maintained and strengthened;
- (c) Consideration must always be given to how a decision affecting a child or young person will affect—
 - (i) The welfare of that child or young person; and
 - (ii) The stability of that child's or young person's family, *whānau, hapu, iwi*, and family group;
- (d) Consideration should be given to the wishes of the child or young person, so far as those wishes can reasonably be ascertained, and that those wishes should be given such weight as is appropriate in the circumstances, having regard to the age, maturity, and culture of the child or young person;
- (e) Endeavours should be made to obtain the support of—
 - (i) The parents or guardians or other persons having the care of a child or young person; and
 - (ii) The child or young person himself or herself—

¹ See 1989 United Nations Convention on the Rights of the Child (“UNCROC”), United Nations Guidelines for the Prevention of Juvenile Delinquency (“The Riyadh Guidelines”), G.A. res. 45/112, annex, 45 U.N. GAOR Supp. (No. 49A) at 201, U.N. Doc. A/45/49 (1990), United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), G.A. res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985), United Nations Rules for the Protection of Juveniles Deprived of their Liberty, G.A. res. 45/113, annex, 45 U.N. GAOR Supp. (No. 49A) at 205, U.N. Doc. A/45/49 (1990)

² G. Maxwell and A. Morris “Youth Justice in New Zealand: Restorative Justice in Practice?” *Journal of Social Issues*, 2006, 62(2) 239-358.

³ Children, Young Persons and Their Families Act 1989 (NZ), s 5.

to the exercise or proposed exercise, in relation to that child or young person, of any power conferred by or under this Act;

- (f) Decisions affecting a child or young person should, wherever practicable, be made and implemented within a time-frame appropriate to the child's or young person's sense of time.

The CYPF Act provides the following statutory protections for the rights of children and young people subject to its youth justice provisions:

- Children and young people must be informed of their rights in language and in a manner that they can understand;
- Police powers of arrest are strictly limited;
- A nominated person must be present at any interview;
- Children and young people may decline to make a statement; and
- There is an entitlement to legal representation.

There is an emphasis on accountability in the CYPF Act and a separation of welfare and justice matters. Young people are to be held accountable but must also be dealt with in a way that acknowledges their needs and gives them opportunities to develop "in responsible, beneficial, and socially acceptable ways."⁴

The New Zealand Youth Justice system deals with all children (aged 10 to 13 years old inclusive) and young persons (aged 14 to 17 years old inclusive) whose behaviour leads the police to have reason to believe they have committed a criminal offence. The Youth Court, however, only has jurisdiction in respect of young persons. Whether a person is a child or a young person for the purposes of the Act is determined by the age he or she was at the time of the offending.

There is an ongoing debate in New Zealand as to when 'children' ought to be considered old enough to face the consequences of criminal offending entirely on their own. A private Members Bill is currently before the New Zealand Parliament which proposes a legal change allowing children as young as ten to face charges for all serious offences.⁵ His Honour Judge Andrew Becroft, Principal Youth Court Judge, in an address to the XVII World Congress of the International Association of Youth and Family Judges and Magistrates in Belfast 2006 entitled "*Children and Young People in Conflict with the Law: Asking the Hard Questions*" noted that

"Youth justice can all too easily become a societal and political football. Youth justice is also a victim of fashion in that the pendulum swings from "get tough" to "welfare" approaches over time - often in response to a particular crime being highlighted in the media. Shocking crimes by children may lead to calls for the legal system to get tough on young offenders and knee-jerk responses are likely to be inevitable."

Currently, in New Zealand, the age of criminal liability is 10 and no person can be convicted of an offence by reason of any act done or omitted by him when under the age of 10 years.⁶ The only criminal offences with which a child (aged 10 years or over but less than 14 years) can be charged are murder and manslaughter.⁷ When a child or young person faces charges for murder or manslaughter the charge is laid, and the preliminary hearing held, in the Youth Court. If the Youth Court finds there is sufficient evidence to

⁴ Dr G. Maxwell, *Achieving Effective Outcomes in Youth Justice: Implications of New Research for Principles, Policy and Practice*, Paper presented at AIC Conference, Sydney, December 2003.

⁵ Ron Mark *Young Offenders (Serious Crimes) Bill* available at <www.nzfirst.org.nz> (last accessed 11 May 2007).

⁶ Crimes Act 1961 (NZ), s 21.

⁷ In all other cases of child offending (not manslaughter or murder), the matter must be dealt with by the Family Court under the care and protection provisions of the CYPF Act by way of FGCs. This reflects the philosophical assumption that children who offend are not capable of appearing in Court as autonomous, responsible individuals in their own right. Their offending must be viewed in the context of their family environment and should be dealt with on the basis that care and protection issues are the primary cause of their offending. The Family Court, in dealing with child offenders, has a wide array of orders and responses it can make. For instance, the Family Court (but not the Youth Court) has power to make custody and guardianship orders, and also counselling orders, in respect of parents, guardians and any person who is made the subject of a restraining order in respect of a child.

proceed to a full trial, the matter is transferred to the High Court.⁸

Youth Justice under the CYPF Act is governed by the following set of statutorily expressed principles that guide the exercise of any power conferred under the youth justice provisions in the Act:⁹

- (a) Unless the public interest requires otherwise, criminal proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter;
- (b) Criminal proceedings should not be instituted against a child or young person solely in order to provide any assistance or services needed to advance the welfare of the child or young person, or his or her family, *whānau*, or family group;
- (c) Any measures for dealing with offending by children or young persons should be designed—
 - (i) To strengthen the family, *whānau*, *hapu*, *iwi*, and family group of the child or young person concerned; and
 - (ii) To foster the ability of families, *whānau*, *hapu*, *iwi*, and family groups to develop their own means of dealing with offending by their children and young persons;
- (d) A child or young person who commits an offence should be kept in the community so far as that is practicable and consonant with the need to ensure the safety of the public;
- (e) A child's or young person's age is a mitigating factor in determining—
 - (i) Whether or not to impose sanctions in respect of offending by a child or young person; and
 - (ii) The nature of any such sanctions;
- (f) Any sanctions imposed on a child or young person who commits an offence should—
 - (i) Take the form most likely to maintain and promote the development of the child or young person within his or her family, *whānau*, *hapu*, and family group; and
 - (ii) Take the least restrictive form that is appropriate in the circumstances;
- (g) Any measures for dealing with offending by children or young persons should have due regard to the interests of any victims of that offending;
- (h) The vulnerability of children and young persons entitles a child or young person to special protection during any investigation relating to the commission or possible commission of an offence by that child or young person.

The CYPF Act provides a legislative emphasis for addressing the needs and reintegration of youth offenders into their communities and promoting the active participation of young people and their families in matters affecting them. The CYPF Act also provides for a comprehensive statutory diversion scheme as evidenced by the guiding principle of the Act in relation to youth justice which states that criminal proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter and unless the public interest otherwise requires.¹⁰

B. Diversionary Emphasis

Diversion away from the formal criminal justice system is a key mechanism of the Youth Justice System in New Zealand.¹¹ Diversion has been described as the avoidance of harmful interventions but also includes the minimization of negative impacts in circumstances where more harmful interventions cannot be avoided.¹² Diversion can result in the avoidance of formal court proceedings in favour of informal action or in

⁸ The doctrine of *doli incapax* applies in New Zealand to children charged with manslaughter or murder. This means that the prosecution must prove, in addition to the proving the essential elements of the offence, that the child understood their act or omission to be wrong or contrary to law in order for a child to be found criminally liable for manslaughter or murder: see Crimes Act 1961 (NZ), s 22.

⁹ Children, Young Persons and Their Families Act 1989 (NZ), s 208.

¹⁰ Children, Young Persons and Their Families Act 1989 (NZ), s 208.

¹¹ The steps in the Youth Justice and Youth Court process are set out at pp 43-44 of this paper.

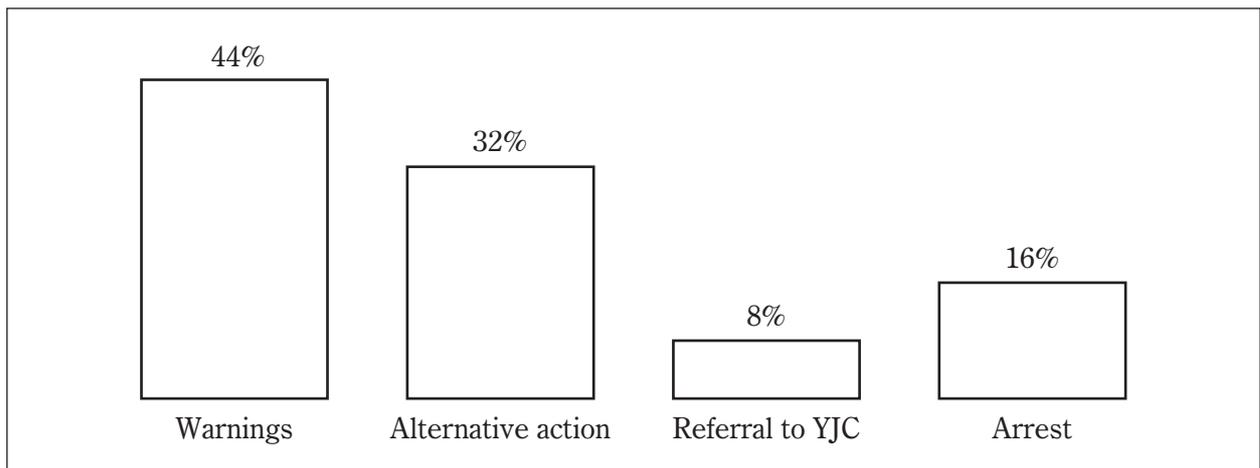
¹² M. Doolan, "The Youth Justice – Legislation and Practice" in B.J. Brown and F.W.M. McElrea (eds), *The Youth Court in New Zealand: A New Model of Justice* (1993).

the least serious of matters it may be that no action is taken at all, although this is unlikely where behaviour suggests some risk of criminal offending. A further practical outcome of diversion is the avoidance of custodial sanctions in favour of community-based sanctions.

Diversion recognizes that charging young people and bringing them before the Court increases their opportunity to mix with other young offenders and to become familiarized with the Court procedures to such an extent that it then becomes difficult to deal with them in any way other than through the Court-based formal process of the criminal justice system. Diversion also recognizes that most offenders can be considered low risk and hence there is no need for Court-based intervention.

The Youth Justice process under the CYPF Act takes effect from when the police detect behaviour by a child or young person that is suggestive of criminal offending. The following responses, depending primarily on how serious the alleged offending is, are available to the police:

- *Warnings*: often given by the attending police officer and followed up by a letter from the Youth Aid Officer acknowledging the warning;
- *Alternative Action*: a diversion plan put in place by a specialist Youth Aid Officer that may include an apology, reparation and/or community work;
- *Family Group Conference*: after referral to a Youth Justice Co-ordinator, for offending that cannot be dealt with by way of warning or diversion and where police intend to lay a charge and there has been no arrest (an 'intention to charge' FGC);¹³ and
- *Arrest*: in restricted circumstances (as discussed further below).



1. Warnings

For relatively minor offending by first time offenders the most common action taken by the police is usually to give an immediate warning to the child or young person concerned. Police deal with 44% of youth offending by issuing an immediate formal warning and then releasing the young person. This is in keeping with the principle that young offenders should be diverted from the formal justice system wherever possible.

In some instances a conditional warning is given. This could occur where the police officer who detects the alleged offending has no prior knowledge of the young person, or is not sure of his or her history of offending. A conditional warning is given and the young person is told that the matter will be referred to the Youth Aid Division to decide whether further action is necessary. Depending on the result of that referral nothing further may occur, alternative action may be required, a referral may be made to a Youth Justice Co-ordinator or the police may decide to arrest the young person.

2. Alternative Action

If a warning is considered insufficient or inappropriate the police must consider the appropriateness of an alternative action programme. Youth Aid, a specialist division of the New Zealand Police dealing primarily

¹³ About one third of the 8,000 FGCs held annually are of this type.

with youth offending, has responsibility in this regard.¹⁴ Factors taken into account include whether the nature of the offending is more serious than minor, or whether the police have dealt with the offender on prior occasions involving some form of offending. The Youth Aid Division must also bear in mind that the emphasis in the CYPF Act is on not instituting criminal proceedings. About 32% of all offences are dealt with through alternative action initiatives.

The CYPF Act does not expressly limit what may be used as a form of alternative action but initiatives should emphasize restoration and rehabilitation and further emphasize that accountability for actions should be achieved in ways that are offence related.¹⁵ The Youth Aid Division aims to work in partnership with other agencies, organizations, community groups and families to prevent youth offending. Youth Aid officers will often spend considerable time and effort creatively tailoring solutions that satisfy victims, prevent re-offending and reintegrate young people into their communities which can result in very creative plans or programmes directly responding to local youth offending. For this reason, amongst others, alternative action initiatives are usually locally based, involving members of the community and drawing on community strengths.

The aim of alternative action is to divert young people away from the Courts and initiatives are limited in scope only by the practicalities surrounding any given set of circumstances relevant to the offender, the offending and the victim. The goal is to achieve solutions, tailored to the individual circumstances of the young person, which satisfy victims, prevent reoffending and integrate or reintegrate young people into their communities. Alternative action might include an informal meeting with the young person and his or her family during which a contract is drawn up for the young person to fulfil. Common outcomes of alternative action include apologies to the victim(s) of the offending in writing or in person, payment of reparation for any damage caused and some form of community work. The Police Youth Aid Division oversees the completion of the decided upon tasks. If the agreed upon alternative action is successfully completed the police will not lay charges and the matter will go no further.

The decision on whether to institute alternative action or to refer the matter to a Youth Justice Co-ordinator in respect of any particular young person is discretionary. Youth Aid officers in New Zealand report that they base their decision as to the most appropriate level of intervention on factors such as the circumstances of the offence, the attitude of the offender, the amount and seriousness of the offending and the attitude of the victim and the offender's family.¹⁶ Officers must also consider the importance of holding the child accountable for his or her offending,¹⁷ the view of the victim,¹⁸ and the position of the family and whether the family can deal with the offending.¹⁹

Warnings and alternative action recognizes that many young people who offend while growing up will develop into responsible adults and go on to make a positive contribution to society. The availability of this more informal type of diversion enables young people to accept responsibility for their actions and, where alternative action initiatives are carried out, to alleviate the harm caused by the offending. It also allows young people to avoid formal involvement in the criminal justice system and to enter adult life without a criminal record. Warnings and alternative action accounts for approximately 76% of all youth offending.

(i) Outcome of an Alternative Action Plan

The following is written by a young person who was referred to a Youth Aid Officer after being reported to the police for doing 'burn-outs' in his car.²⁰ It represents an example of how one young person saw the justice system.

¹⁴ The diversion system relies on Youth Aid Officers who are trained to deal with the complex needs of young offenders.

¹⁵ Inspector C. Graveson, *Police Involvement in Juvenile Crime Prevention and Diversion – Australia and New Zealand*, Paper presented to the International Association of Youth and Family Judges and Magistrates, 26-31 October 2002, 4.

¹⁶ G. Maxwell, J. Robertson, T. Anderson, *Police Youth Diversion – Final Report*, Crime and Justice Research Centre, Victoria University of Wellington, Prepared for New Zealand Police and Ministry of Justice, January 2002, 88.

¹⁷ Children Young Persons and Their Families Act 1989 (NZ), s 4.

¹⁸ Children Young Persons and Their Families Act 1989 (NZ), s 208(g).

¹⁹ Children Young Persons and Their Families Act 1989 (NZ), s 5(a), s 5(b), s 5(e).

²⁰ "Court in the Act" December 2006 No. 26.

“My wheels were spinning. Rubber smoke pouring out from the wheels as I was gradually sacrificed to the merciless heat that was being produced from the massive friction. Me and my friend were laughing yet choking at the same time from the smoke. It was awesome!

After sitting in the police car with the policeman for a good 15 minutes, discussing the matter with him and generally getting belittled for my “stupid” actions, I walked out of the police car with a ticket in my hand. It stated that I had been charged with sustained loss of traction, to which I would be contacted by the traffic officer to attend court to discuss my punishment. I was pondering how to break the news to my parents. But to my surprise, the [police] had already rung them. My parents were very disappointed in me, making me feel ashamed and regretful for what I’d done, and I still had to go to court!

If you drive a car in an illegal race, accelerate in an unnecessary way on a road, if you do wheel spins, donuts, or drive a car on the road in a way that causes it to lose traction, you are in breach of many laws. The punishments for these acts include three months’ imprisonment, fines up to \$4,500, losing your license for at least six months, or community service ranging from 20 to 500 hours, and the police may impound your car for 28 days at your expense. Fortunately for me, I was 16 when I performed this burnout, meaning that I could go to Youth Aid instead of court, which is just sitting in a room with a police officer and your parents, and bringing forth a sentence from this conference.

The punishment from my parents was that I wasn’t allowed to drive at all until my court case had been resolved. I found this hard as I had to get to rugby trainings, rugby games, and parties when they were on. After my session with the Youth Aid Officer, I walked out with 20 hours community service, and a promise to do a defensive driving course within three months, a very light sentence, probably because of my very good presentation.

I have been doing my community service at my very own former primary school, doing gardening, sweeping bark, sweeping the turf, pulling staples out of classroom walls, and more gardening. I have now almost fulfilled my contract to do 20 hours, I just need to get on to the defensive driving course. This has been a very steep learning curve for me, but in the long run, a good one. Because it has helped me to realize that driving is a privilege, and shouldn’t be abused. And just remember, it may feel awesome at the time, kicking back, choking in the smoke, but think about the consequences. Pulling staples out of walls and watering gardens is definitely NOT awesome. Fast cars can mean big trouble for teens.”

3. Referral to Youth Justice Co-ordinator

Where there has not been an arrest but the police indicate an intention to lay charges (on the basis that neither a warning nor alternative action is the appropriate response) a Youth Aid officer will refer the matter to a Youth Justice Co-ordinator to convene an FGC. This occurs in 8% of cases. If the participants in the ensuing ‘intention to charge’ FGC all agree, the matter will be resolved as decided by the FGC and will not require Youth Court intervention unless the agreed upon actions are not carried out. Most often the police decide not to proceed with their initial intention to lay charges against a young person after participation in an ‘intention to charge’ FGC.²¹

4. Arrest

In the remaining 16% of cases, the young person is arrested and a charge is laid in the Youth Court. As already noted, diversionary mechanisms operate to keep young people away from the Youth Court except in cases of serious or persistent offending. This is achieved, in part, because of the stringent restrictions on the right of the police to arrest a young person. The CYPF Act strictly limits arrest and in most cases a young person cannot be arrested unless it is necessary, and a summons is considered not sufficient to:

- prevent further offending or prevent the loss or destruction of evidence or witness interference;
- ensure appearance before the Court, for example in circumstances where the young person refuses to provide his or her name and address to the police.²²

²¹ ‘Intention to charge’ FGCs will be discussed in greater depth later in this paper.

²² Children, Young Persons and Their Families Act 1989 (NZ), s 214.

These restrictions do not apply where an offence is purely indictable (a very serious offence such as aggravated robbery or sexual offending) and the arresting officer considers arrest is required in the public interest. Before arresting any young person the police must always have good cause to suspect the young person has committed a criminal offence.

Upon arrest, the police may:

- Release the young person without charge and refer the matter to a Youth Justice Co-ordinator who will convene an 'intention to charge' FGC if the police intend to lay charges; or
- Charge the young person, in which case he or she may be released with or without conditions to appear later in the Youth Court; or in some situations
- Charge and detain the young person in custody for longer than the standard 24 hour maximum, in which case he or she must be brought before the Court as soon as practicable.

III. FAMILY GROUP CONFERENCES: A RESTORATIVE JUSTICE FRAMEWORK

Family Group Conferences underpin the New Zealand Youth Justice system and were innovatively introduced in New Zealand by the CYPF Act in 1989. One of the most significant features of the Youth Justice system in New Zealand is the way that the statutory framework of the CYPF Act enables restorative justice principles to be implemented. The restorative justice model is not mandated by, or even specifically referred to, in the CYPF Act but has been adopted in practice through FGCs. The CYPF Act ensures supervision of the restorative justice approach by the Courts, an approach that is available to all young persons who come within the jurisdiction of the Youth Court. Family Group Conferences are used as a diversionary mechanism as much as is possible in the circumstances of both the young person and the offence. The CYPF Act also provides an alternative system of pleading which activates, where applicable, the necessity for an FGC. A significant feature of FGCs is the widespread use of community-based solutions to offending, with the corollary that numbers of incarcerations for young persons are reduced. The Youth Justice model in New Zealand therefore emphasizes both diversion and de-carceration.

His Honour Judge Fred McElrea, a leading judicial writer on the New Zealand Youth Court system, proposed the following three principal structural features of the Youth Court which underpin a restorative justice approach as being:²³

1. Transfer of power from the State, principally the Courts' power, to the community;
2. Family Group Conferences as a mechanism for producing a negotiated, community response; and
3. Involvement of victims as key participants, making possible a healing process for both offender and victim.

Family Group Conferences are organized by a Youth Justice Co-ordinator whose task is to ensure that as many key participants as possible are able to attend the FGC. There is an expectation that during FGCs Youth Justice Co-ordinators will facilitate, and achieve whenever possible, active participation by the young offender and his or her family in discussions about how best to deal with the offending.

The participation of young people in FGCs is expected, including any young person who is detained in custody unless it is impracticable for him or her to do so, and participation extends beyond simply being present.

Young offenders (primarily at 'intention to charge' FGCs or Court ordered FGCs where the charges have not been denied) are given the opportunity to:

- Discuss the offence and accept responsibility for it;
- Discuss possible causes of the offending;
- Participate in the formulation of a plan to rectify the causes of the offending and repair the harm caused by it;
- Present the plan to other FGC participants;

²³ Judge F.W.M. McElrea *New Zealand Youth Court: A Model for Development in other Courts?* National Conference of District Court Judges Rotorua, New Zealand 6-9 April 1994.

- Apologize and express remorse to the victim;
- Answer any questions posed by the victim; and
- Where relevant, present the plan to the Judge when the matter returns to the Youth Court.

A. Types of Family Group Conferences

1. Child Offender Care and Protection Conference

If the police believe, after inquiry, that an alleged child offender is in need of care and protection, this must be reported to a Youth Justice Co-ordinator. The YJC and police must consult, after which, if the police believe an application for a declaration of care and protection is necessary in the public interest, an FGC must be held²⁴ to address the child's offending. At a care and protection FGC, the group must determine whether the offence is admitted, and, if so, what steps should be taken, including whether a declaration that the child is in need of care or protection should be filed in the Family Court.²⁵

2. 'Intention to Charge' FGC

This is required whenever a young person is alleged to have committed an offence and has not been arrested (or has been earlier arrested and released) and the police intend to lay charges. The police must first consult a Youth Justice Co-ordinator. If, after consultation, the police still wish to charge the young person, an FGC must be convened.²⁶ This is the second most common type of FGC, and accounts for between one third and one half of all FGCs annually. At an 'intention to charge' FGC, the participants must determine whether the charge is admitted and, if so, decide what should be done. This may include completion of an agreed plan or a decision that a charge should be laid in Court.²⁷ If the charge is not admitted, the 'intention to charge' FGC will be concluded and the matter will proceed to a defended hearing. If an 'intention to charge' FGC results in a formal plan being devised and the young person successfully completes his or her responsibilities under the plan, he or she will not be charged. If no consensus as to the plan can be reached the matter must be considered in the Youth Court.

3. Custody FGC

Where a young person denies a charge, but, pending its resolution, the Youth Court orders the young person be placed in CYFS or police custody, an FGC must be convened.²⁸ At custody FGCs, the group must decide whether detention in a CYFS secure residence should continue and where the young person should be placed pending resolution of the case.²⁹

4. Court Directed FGC: "not denied"

Where a (non-purely indictable) charge is not denied by the young person in the Youth Court, the Court must direct that an FGC be held.³⁰ "Not denied" is a somewhat odd, but very useful, mechanism. It triggers an FGC without the need for an absolute admission of guilt. It may indicate the young person's acceptance that he or she is guilty of something, although not necessarily the charge as laid. Invariably, in such cases, the details can be resolved at the FGC. This is the most common type of FGC and accounts for at least half of all FGCs. At a Court ordered FGC, the group must determine whether the young person admits the offence, and, if so, what action and/or penalties should result.³¹

5. FGC on the Orders of the Youth Court

Where a charge is admitted or proved in the Youth Court and there has been no previous opportunity to consider the appropriate way to deal with the young offender an FGC must be held.³² The participants must decide what action and/or penalties should result from a finding that a charge is proved or admitted.³³

²⁴ Children, Young Persons and Their Families Act 1989 (NZ), s 18(3).

²⁵ Children, Young Persons and Their Families Act 1989 (NZ), s 258(a), s 259(1).

²⁶ Children, Young Persons and Their Families Act 1989 (NZ), s 245.

²⁷ Children, Young Persons and Their Families Act 1989 (NZ), s 258(b), s 259(1).

²⁸ Children, Young Persons and Their Families Act 1989 (NZ), s 247(d).

²⁹ Children, Young Persons and Their Families Act 1989 (NZ), s 258(c).

³⁰ Children, Young Persons and Their Families Act 1989 (NZ), s 246.

³¹ Children, Young Persons and Their Families Act 1989 (NZ), s 258(d), s 259(1).

³² Children, Young Persons and Their Families Act 1989 (NZ), s 281.

³³ Children, Young Persons and Their Families Act 1989 (NZ), s 258(e).

6. FGC at Youth Court Discretion

A Youth Court may direct that an FGC be convened at any stage in the proceedings if it appears necessary or desirable to do so.³⁴ An example of where this might happen would be where a young person indicates a desire to plead guilty to a purely indictable charge and there is a possibility that Youth Court jurisdiction will be offered. An FGC would then be ordered to consider whether such an offer should be made. If the FGC recommends that jurisdiction should be offered, it will usually also recommend how the Youth Court should dispose of the matter. When the Youth Court exercises its discretion to order an FGC, it may also make directions as to the decisions to be made there.

B. Key Participants in Family Group Conferences

The following key participants are integral to the restorative justice approach adopted through the FGC mechanism mandated in the CYPF Act.

1. Young Persons

The CYPF Act recognizes that young people are developmentally different from adult offenders and recognizes that there is an imbalance of power between young people and adult professionals in the criminal justice system. Young people often have difficulty in understanding the operation of the legal system and often assume that the professionals within the system, because of their greater familiarity with and knowledge of the decision-making process, will and sometimes should, make the decisions. The Act recognizes that young people have a different perspective of their own identities, as individuals and as a group, which includes using different language to give meaning to their experiences and to represent their needs. Judges must communicate their decisions to young people in a manner and language that they can understand and judges must encourage the participation of young people in the proceedings.

The CYPF Act expressly requires that young offenders are involved in making decisions that affect them and must be allowed to express their views and have these taken into account. The key formal mechanisms for this are FGCs and the right of a young person to make representations in the Youth Court. Children and young persons are expected to actively participate in FGCs, to apologize to the victim where it is possible to do so, to raise possible courses of action, and to agree to and promise to carry out specified activities designed to address their offending.

The young person is involved in the sanctioning process of his or her own free will.³⁵ At an FGC a young person is given the autonomy to participate in a decision-making process and the freedom to accept or reject a particular decision. Allowing the young person to have some control over sanctioning procedures can be empowering rather than shaming. Importantly, it offers a sense of ownership in the outcome and engenders respect not only for the outcome itself but also for the parties who have worked together to achieve a resolution.³⁶

One of the aims of FGCs is to facilitate an expression of genuine remorse by the young person. Accepting responsibility for the offence and acknowledging the harm caused provides the first steps towards the integration/reintegration of a young person within his or her community.³⁷

Family Group Conferences allow a young person to participate in the fundamental questions and decisions that face the prosecuting authorities and the Court as a result of the young person's behaviour. The type of decision to be made depends, naturally, on the reason for convening the FGC and the type of FGC being held. All decisions made by an FGC are still subject to the Court's scrutiny and control. In summary, the issues and decisions in which the young person is able to participate are:

³⁴ Children, Young Persons and Their Families Act 1989 (NZ), s 281B.

³⁵ Children, Young Persons and Their Families Act 1989 (NZ), s 251(1)(a), outlines an entitlement to attend a Family Group Conference, not a requirement.

³⁶ Erik Luna, *Restorative Justice*, NZIDR Lecture, 5 July 2000

<<http://www.scoop.co.nz/archive/scoop/stories/51/19/200007051755.74daa57b.html>> (last accessed 13 May 2007).

³⁷ Erik Luna, *Restorative Justice*, NZIDR Lecture, 5 July 2000

<<http://www.scoop.co.nz/archive/scoop/stories/51/19/200007051755.74daa57b.html>> (last accessed 13 May 2007).

1. In respect of an alleged child offender, whether the offences have been committed and what steps should be taken as a result, including whether a declaration that the child is in need of care or protection should be filed in the Family Court.
2. In respect of an 'intention to charge' conference, whether the offence was committed, what should be done as a result, and if a charge should be laid in Court.
3. In respect of a custody conference, where the young person should be placed pending resolution of the case.
4. In respect of a charge before the Youth Court that is not denied, whether the offence was committed, and what action and/or penalties should result.
5. In respect of a charge that has been proved before the Youth Court after a defended hearing, what action and/or penalties should result.
6. In the case of "purely indictable" charges, whether Youth Court jurisdiction should be offered and, if so, whether the offence has been committed and what should be the result.

2. Victims

Governing the Youth Justice provisions of the CYPF Act is the principle that "any measure for dealing with offending by children or young persons should have due regard to the interests of the victims of the offending".³⁸ This principle is given effect through consultation with victims by the police and by Youth Justice Co-ordinators and, where it occurs, by victim participation at FGCs.

A key feature of FGCs is the opportunity they may afford a victim to confront a young person with the impact of what he or she has done. A face-to-face meeting with the victim(s) means that the young person must confront the effects of his or her conduct in human terms. This is a significant aspect of the FGC in that the young person is able to both see and hear from their victim about the consequences of their offending and the impact the offending has had on the victim.

Victims, and their support persons, are entitled to attend FGCs but are not obliged to. In some cases a victim may ask a representative to attend the FGC on his or her behalf. Where they do attend, it can be an invaluable aid to the rehabilitation of a young person for them to see and speak with the person they offended against, and to understand the effect of their offending. Thus, victims are central to the process and are given a meaningful opportunity to express their views and contribute to outcomes involving the young person. Victims (where there is a clearly identifiable victim³⁹) participate in 51% of FGCs.⁴⁰ This low figure is unfortunately a weakness in the current system and many of those involved in the youth justice process would like to see an increase in the number of victims attending FGCs.

When the victim does not attend it is more difficult, if at all possible, to achieve a direct, honest account of the effects of offending, and the consequent remorse of the young person. It is understandable that high proportions of victims⁴¹ do not attend FGCs, having already suffered the effects of a traumatic incident. While in some cases victims may not attend due to lack of encouragement from overloaded Youth Justice Co-ordinators, other barriers include fear of further victimization, lack of confidence in the system, and public perceptions about the effectiveness of FGCs. In some cases a victim may simply not be able to take time off work to attend the FGC.

In some cases it might be possible to substitute a victim's representative or a letter from the victim to be read out by the Youth Justice Co-ordinator. Most (approximately 80%) of the victims that do attend find the

³⁸ Children, Young Persons and Their Families Act 1989 (NZ), s 208(g).

³⁹ For example, in cases of drug offending, there may be no immediately or clearly identifiable victim.

⁴⁰ Source: Neil Cleaver, National Manager FGC Co-ordinators, New Zealand.

⁴¹ Of a 100-person sample, 42 victims chose not to attend the FGC, Maxwell, Kingi, Robertson and Morris *Achieving Effective Outcomes in Youth Justice: Draft Final Report to the Ministry of Social Development* (Unpublished, 2002) 141.

process cathartic, positive and helpful.⁴² However, for a small number,⁴³ meeting with the offender is a negative experience that leaves them feeling worse: depressed, fearful, distressed and angry, most often because they do not feel the offender is truly sorry.

It is noted that despite the statutory directive to have due regard to the interests of victims, the Act does not include victims in the list of persons entitled to attend Youth Court hearings. Victims and their family members require leave of the judge to be present, however, in almost all cases leave to attend will be routinely granted to victims, their family members and legitimate close friends and supporters of the victim. Youth Court judges are required to balance the effect on victims and their families who are present at Youth Court proceedings and the focus on young people and their families. It is necessary for Youth Court judges to ensure that effect is given to the exigencies of the Act to strengthen families and rehabilitate young offenders and to ensure that victims' interests are both being taken into account and being seen by victims to be taken into account.

3. Families

One of the key principles of the CYPF Act, and a major shift in the Youth Justice system brought about by that legislation, is that families are to be involved in decision-making to address criminal behaviour by young people.⁴⁴ The Act offers an expansive definition of 'family group', which brings members of the young person's extended family into the Youth Justice system.

The key mechanism by which the principle that families should be involved in decision-making (and their views taken into account) is the FGC. Any parent, guardian, or member of a child or young person's family, *whānau, hapu, iwi* or family group is entitled to attend an FGC.

During the FGC, the family's role is to encourage a young person's participation, and, in many cases, to take some responsibility for the young person's actions and for making amends to the victim. Sometimes families can be very harsh on young people at FGCs, and the police or other participants may be required to intervene on the young person's behalf. The family is entitled to deliberate in private during the FGC process. Usually, it is expected that suggestions for resolving matters will originate from the family. "Family groups have proved capable of taking prime responsibility for their own young people despite initial scepticism about this."⁴⁵

In memos issued in 1997 and 1998, former Principal Youth Court Judge Carruthers, made the following remark about FGCs:

"where the only people present ... [are] ... the young person, one parent (usually the mother) and professionals, usually a co-ordinator, Police Youth Aid, and sometimes the Youth Advocate. In my view this is *not* a Family Group Conference. There is no real opportunity for accessing the strengths of the family or for confronting the young person with their wrong-doing and obtaining some concept of damage done to victims and remorse.

...

In future, I do not intend to accept such attendance as complying with the spirit of a Family Group Conference and I will be redirecting Conferences unless there is a good explanation why this should not happen."

[17 November 1997]

"I have recently finished sitting on circuit in Auckland and on several occasions have directed that Family

⁴² Maxwell, Kingi, Robertson and Morris *Achieving Effective Outcomes in Youth Justice: Draft Final Report to the Ministry of Social Development* (Unpublished, 2002) 141.

⁴³ Maxwell, Kingi, Robertson and Morris *Achieving Effective Outcomes in Youth Justice: Draft Final Report to the Ministry of Social Development* (Unpublished, 2002) 141.

⁴⁴ Four of the six general principles governing the Act are focused on involving families in decision-making and making provision for dealing with young people within a strong family framework: see s 5 of the Children, Young Persons and Their Families Act 1989 (NZ) as discussed above.

⁴⁵ M. Doolan, *Working with Young People who Offend*, Paper presented in Glasgow, Scotland, 2001, 2.

Group Conferences be reconvened when the only participants were the young person, a mother, or even both parents and a Police Youth Aid Officer, Co-ordinator and a Youth Advocate.

Unless there is a very good explanation I intend to continue to redirect Family Group Conferences when they are so badly attended. Sometimes there are good reasons for this. Sometimes however it is simply poor practice and I do not believe that it is a proper Family Group Conference when there is such a dismal gathering of family and no victim.”

The intention of the FGC model is that a young person’s family, in the broadest sense, should be involved in resolving the consequences of the offending and in providing solutions. In some cases, a young person may simply have no extended family members who participate in his or her life who could attend. Other factors which inhibit family attendance are ‘FGC burnout’, particularly with repeat offenders, and the fact that the FGC often comes some way down the track after police alternative action and hence families have lost interest or run out of ideas. However, where the absence of extended family is due to a lack of time or effort on the part of the YJC, the Youth Court will order that an FGC be reconvened to allow for better efforts to be made.

4. Youth Justice Co-ordinators

Youth Justice Co-ordinators are employees of the Children, Young Persons and Their Families Services (CYFS), the government department that administers the CYPF Act, and are often qualified social workers.⁴⁶ Youth Justice Co-ordinators have the following responsibilities under the Act:

- receive police referrals in relation to children whom the police believe to be in need of care and protection because the nature, number or magnitude of offences committed by the child give police serious concern for his or her wellbeing;
- where a child or young person is alleged to have committed an offence, explore with the police the possibility of dealing with the matter other than by criminal proceedings;
- convene FGCs under the Youth Justice provisions of the Act;
- record the decisions, recommendations and plans of any FGC convened under the Youth Justice provisions of the Act;
- notify interested parties⁴⁷ of such decisions, recommendations and plans; and
- perform any other duties prescribed elsewhere by legislation.

Youth Justice Co-ordinators are responsible for convening and facilitating all FGCs. In doing so, Youth Justice Co-ordinators are obligated to make all reasonable endeavours, as relevant, to consult with the young person’s family (including the extended family), the victim, the informant (usually the police), and if there are care and protection issues, to make a care and protection declaration. Consultation must concern the time, place and date for the FGC, who should attend the FGC and what procedure should be adopted at the FGC.

As a facilitator at the FGC, the Youth Justice Co-ordinator has no decision-making power, but ensures that the FGC follows as closely as possible the procedure adopted by the group. The Youth Justice Co-ordinator must ascertain the views of those entitled to, but unable to attend the FGC, and ensure those views are voiced.

The Youth Justice Co-ordinator must make all reasonable endeavours to ensure that all information and advice required by the conference to carry out its functions are made available to the participants of the FGC. This may include arranging for people other than conference participants (for example, psychologists or individuals willing to offer community work placements) to attend. Specific factual information provided through reports by social workers or by prominent members of the young person’s community and reports addressed to the specific issues faced by the young person (for example an assessment of his or her drug or alcohol problem) can be invaluable.

⁴⁶ A person will only be appointed as a Youth Justice Co-ordinator where, by reason of his or her personality, training and experience, he or she is suitably qualified to exercise or perform the functions, duties and powers required of a Youth Justice Co-ordinator under the CYPF Act.

⁴⁷ Listed in s 265 of the Children, Young Persons and Their Families Act 1989 (NZ).

The Youth Justice Co-ordinator also has to record any decisions, recommendations or plans made at an FGC and must inform any person who will be directly involved in implementing any decision, recommendation or plan of that outcome and get their agreement to it.

5. Youth Aid Officers

At FGCs the attending Youth Aid Officer is required to give a statement of the facts representing the basis of the offending. Where the victim does not attend or attends but does not wish to express his or her own views, the Youth Aid Officer may also express the views of the victim.

6. Community

As well as the innovative involvement of extended families in the Youth Justice process, the CYPF Act advocates the involvement of the general community. Community involvement is considered necessary to assist young people to recognize the broader impact of their offending and the fact that lawful behaviour is requisite to community. It is desirable to involve the community in the Youth Justice process to enable young persons to effectively integrate (or reintegrate) into their communities particularly where a young person may have no ongoing involvement with formal community structures (for example formal educational structures).

There is formal provision for certain members of the community to attend FGCs; however, representatives of agencies that will supervise (or are supervising) community work by the young person may attend an FGC. The Act also allows for community representatives to attend if requested to by the young person's family, *whānau* or family group. Additionally, the Youth Justice Co-ordinator can invite any persons who are able to provide relevant information to attend the FGC. Given that one of the policies of the Act emphasizes reintegration of the young person within his or her community, relevant information could include a community perspective on the young person, his or her offending and a proposed plan. From a practical point of view, it is also common for a young person's employer or perhaps a schoolteacher to attend an FGC.

7. Youth Advocates

A Youth Advocate is a specialist legal practitioner whose appointment is funded through a public fund. Funding is available regardless of the means of the young person and a Youth Advocate is appointed to represent the young person. Youth Advocates are appointed where a young person appears before a Youth Court charged with an offence and where no legal representation for the young person has been arranged, or will be arranged. In practice it is rare for a young person to instruct external counsel and a Youth Advocate is usually appointed.

A weakness of the present statutory framework is that Youth Advocates are not appointed until charges are laid although this sometimes occurs on an informal basis. In practical terms a young person may not have a legal representative at the time of an 'intention to charge' FGC even though the young person may be in need of legal advice.

Youth Advocates should have knowledge of, and experience as required, with:

- objects, principles and provisions of the Children, Young Persons and Their Families Act, of the Youth Justice system, including restorative justice principles and practice, and of the criminal law;
- specialist police practice as it applies to young offenders and the roles of the various participants in the Youth Justice system;
- ability to relate to and communicate with young persons and their families; and
- local cultural organizations, community groups, community resources and available education and training facilities.

A Youth Advocate's role is to:

- discuss the legal nature and implications of the charge and any possible defences with the young person and his or her family;
- liaise with police in relation to any amendments to the Summary of Facts and ensure the correct charge is laid;

- appear in Court on the young person's behalf, indicating whether or not the young person intends to deny the charge;
- defend the young person if a charge is denied; and
- attend an FGC if a charge is admitted; represent the young person there (including advocating decisions, recommendations and plans that are reasonable from the perspective of the young person and, in cases where families are very hard on a young person, afford him or her some protection).

8. Lay Advocates

As well as a Youth Advocate, the Court may, at its own discretion or in response to an application by anyone entitled to make representations in the proceedings, appoint a Lay Advocate to support a young person in Youth Court proceedings.⁴⁸ Lay Advocates are individuals of standing within a young person's culture and their representation is expected to be cultural rather than legal. To date, the appointment of Lay Advocates in the Youth Court has been rare.

9. Social Workers

Social Workers come into the Youth Justice process in most cases after the FGC has been held.⁴⁹ Their role involves:

- liaising with the community, education and training agencies (with a view to rehabilitation);
- arranging counselling for the young person (or for members of his or her family), where necessary;
- monitoring the outcomes of an FGC including, but not limited to, a young person's performance of any decisions, recommendations or plans; and
- preparing Social Worker reports if requested under the CYPF Act.

C. Family Group Conference Plans

An integral part of the decision-making at FGCs is to devise and come to a consensus about the contents of a plan which reflects the principles laid down in the CYPF Act.⁵⁰ There are no other legislative or formal or informal prescriptions for FGC plans. The established processes merely provide the platform on which creative and individualized resolutions are formulated. There are consequently no limitations on the imagination and ideas of the group and this is, in many ways, the strength of the system.

All members of the FGC (including the young person) are encouraged to agree to the proposed diversionary programme, and its implementation is essentially consensual. When designed by the offender, victim and community, the plan is most likely to be realistic and to reflect the resources and support available to the parties.⁵¹ For 95% of cases, FGC-recommended outcomes involve accountability measures of some kind.⁵² Plans commonly include an apology and/or reparation to the victim (whether financial or via work done for the victim), community service requirements, counselling and rehabilitation programmes and educational requirements. Plans may also include a curfew and/or an undertaking to not associate with co-offenders. The Court accepts most recommendations or plans and if the plan is carried out no formal Court order is imposed.⁵³ Formal orders are, however, available if the plan is not carried out.⁵⁴

Where the young person has been arrested the Court must refer all matters not denied by the young person to an FGC which recommends to the Court how the matter should be dealt with. Occasionally an FGC recommends a formal sanction to be imposed by the Court. The plan is supervised by the persons nominated in the plan, which can be any person, including a family member, with the Court usually being

⁴⁸ Lay Advocates are paid out of a public fund established for the purpose.

⁴⁹ Generally, a Social Worker may attend an FGC only at the invitation of the participants at the FGC, unless it is a care and protection FGC or the child or young person is already in CYFS custody.

⁵⁰ Children, Young Persons and Their Families Act 1989 (NZ), s 260(2); the principles are set out in s 208 of the same Act.

⁵¹ His Honour, (former) Chief District Court Judge of New Zealand, D. J. Carruthers *Restorative Justice and Juvenile Justice: A Comparison of the Singapore and New Zealand Experience*, 2002, 17.

⁵² Maxwell, Kingi and Robertson *Achieving the Diversion and Decarceration of Young Offenders in New Zealand*, Crime and Justice Research Centre, Victoria University of Wellington, 2003, 11.

⁵³ In this situation the young person is given an absolute discharge under the Children, Young Persons and Their Families Act 1989 (NZ), s 282.

⁵⁴ Children, Young Persons and Their Families Act 1989 (NZ), s283.

asked to adjourn proceedings, say for 3-4 months, to allow the plan to be implemented.

The Youth Court nearly always accepts these plans as it recognizes that the scheme of the Act places the primary power of disposition with the FGC. Where a plan is not accepted or where the FGC is unable to come to a consensus, a Youth Court judge will have to make the decision that the participants at the FGC could not agree on.

It is usually in very serious cases that the FGC may not be able to reach agreement. The Court can impose a range of sanctions. The most severe Court-imposed sanction is three months' residence in a social welfare institution followed by six months' supervision; or the Court may convict and refer the young person to the District Court for sentence, which could result in a sentence of imprisonment in certain cases.

As FGCs are a diversionary mechanism, where the plan is carried out as agreed the proceedings are usually withdrawn; however, if the plan is not carried out as agreed the Youth Court can intervene to impose its own sanctions. Thus the Court acts as both a backstop (where FGC plans break down) and a filter (for patently unsatisfactory recommendations).⁵⁵

There can be a tendency for Youth Court judges to be presented with uniform plans.⁵⁶ Similarity of plans devised at FGCs (apology, reparation payment, and community work) tends to suggest something of a 'cut and paste' approach by the Youth Justice professionals involved. Youth Court Judges can address this issue by sending plans back for a more creative application of participants' minds to the specific young person and his or her offending behaviour.

Other difficulties with FGC plans arise through a lack of proper psychological, psychiatric, education and health assessments to identify the complex issues that a young offender may face and a lack of resources such as comprehensive residential and other rehabilitative drug and alcohol programmes, youth forensic services, and special education services for the persistent truant or chronically non-enrolled young person.

Poor monitoring of FGC plans can result in unnecessary delays and repeat Court appearances. Young people may be left to 'get on with' plans that they are uncertain how to commence or require encouragement to fulfil. While Police Youth Aid is good at enforcement of its own diversion schemes, the same is not always true with regard to FGC programmes.⁵⁷ Most families need considerable help, for instance in identifying and arranging community work. When a plan provides for a Youth Justice social worker to assist with aspects of a plan, there can be difficulties and delays in appointing a social worker because of a lack of resources.

D. Plans in Practice

The attempt to specifically address a youth's offending can result in a very individualized plan. This is one of the strengths of the FGC. The following extract is from a report by a Youth Aid Officer charged with monitoring one of the components of an FGC Plan, namely to give a school talk:⁵⁸ "A young person involved in assaulting a boy along with two others agreed to give a school talk as part of his FGC plan. The talk, at Lower Hutt College, was given to around 400 junior school pupils. The school chaplain and youth worker asked the teen the following questions and the young person responded in his own words:

1. People deal with differences in many ways. Does violence achieve anything?
2. Is there anything wrong with being different? Why?
3. Why do you think it's hard to deal with differences?
4. You have, in the past, made some choices that haven't been helpful to you when faced with differences. Would you change some of your choices now looking back? Why?

⁵⁵ Judge F.W.M. McElrea, *The New Zealand Model of Family Group Conferences*, a paper prepared for the International Symposium "Beyond Prisons": Best Practices Along the Criminal Justice Process, March 15-18, 1998, Queen's University, Kingston, Ontario, Canada.

⁵⁶ Note this is also a recognized deficiency in some approaches to devising alternative action plans as discussed earlier.

⁵⁷ Principal Youth Court Judge Andrew Becroft *Children and Young People in Conflict with the Law: Asking the Hard Questions*, XVII World Congress of the International Association of Youth and Family Judges and Magistrates, Belfast 2006.

⁵⁸ "Court in the Act" November 2006 No 25.

His uncle, senior school staff, student leaders and the Youth Aid Officer supported the young person on stage. Members of the young person's Youth Group were also present. One of the victims was at the school talk and at the end, the young person apologized directly to him again. It was very effective and the school was able to witness genuine respect from both sides. The young person and the victim shook hands afterwards but the second victim had already left college and was not present at the talk. The Youth Aid Officer noted that the young person had his head up and was noticeably up-beat when it was over. She said: "All in all I would say it took five minutes, with the students listening attentively throughout. From observing this and other less formal situations, I have found speech-giving a really useful tool (given the right circumstances). It's good having some more creative ways to bring these kids through."

The boy is now almost 17 and has not re-offended. The Youth Aid Officer puts this down to good *whānau*/family support. The next extract is from a Youth Justice Co-ordinator reporting on an FGC:

"A young person is now under permanent "supervision" (at least morally) by his victim following a rather unusual and moving FGC. The teen is a 16-year-old who has been in CYFS care since an early age and who had previously appeared before the Youth Court. The teen was advised by his social worker that his recent behaviour had been so good that, if it continued, CYFS would discharge him from his custody order. Regrettably and inexplicably, a short time later the teen stole a handbag and ran away. He was chased and caught by a member of the public. A Youth Court appearance followed and an FGC was directed. The victim attended the FGC with her husband and two teenage daughters.

After the young person admitted the charge, the victim explained that the family had not attended the FGC to seek retribution but to explore the potential the youth had and how he could use it to better himself. The victim did not want any punitive sanctions and did not request any monetary reparation. The teen presented the victim with some flowers and genuinely and sincerely apologized.

After private family deliberations it was decided that the teen should pay \$100 to a charity of the victim's choice. The victim returned and refused the idea. She then took an envelope out of her handbag, walked across the room and asked the youngster if he would accept the contents of the envelope. She explained the envelope contained the money that had been in the handbag at the time it was stolen and that her family would be grateful if he would accept it as a gesture from them that there are more important things in life than money. Not surprisingly, the teenager was speechless. He then spent ten minutes alone with the victim's family and is now "tied" to the victim, who will be taking an ongoing interest in his life."

An Administrative Youth Court Judge reported on the following outcome of an FGC.⁵⁹ The young person had been facing charges of careless driving causing death and was over the legal limit for alcohol at the time of the accident.

"At a Family Group Conference the victim's *whānau* [family] heard how the 16-year-old driver had tried to drive home after drinking seven or eight large bottles of beer. His car struck the victim who was walking beside the road, throwing him ten metres through the air and he died a short time later at the scene. The youth stopped further down the road to inspect his car and, thinking he had hit a bank or a possum, continued on his way home.

The young person was charged with careless driving causing death - a charge with a maximum penalty of three months' imprisonment or a \$4,500 fine and disqualification for at least six months. Drivers found guilty of this offence do not usually receive a sentence of imprisonment. The young person was also charged with failing to stop and ascertain injury and failing to render assistance after the accident.

The resulting FGC was very emotional and charged with regret but, despite their huge loss, the victim's family insisted that the youth should not do community work but should instead continue working and complete his apprenticeship.

The young person read out a letter of apology that was to be typed and presented to the dead man's *whānau* for inclusion in memorabilia to be presented at the *Maumaharatanga* (unveiling) of his headstone. It

⁵⁹ "Court in the Act" October 2006 No. 24.

was agreed that the young person's family would pay the \$6,000 for the headstone for the "loving, hard working and respected father". The offender's *whānau* accepted an invitation from the victim's *whānau* to be present at the unveiling of the headstone.

The young person received a section 283(b) Children, Young Persons and Their Families Act 1989 admonishment and was formally disqualified from driving for a period of 12 months."

The following is a Youth Justice Co-ordinator's account of an effective Family Group Conference.⁶⁰

"Four Samoan boys who participated in serious offences against youths unknown to them were arrested and charged with wounding with intent to injure and robbery. The offences were completely unprovoked.

What was outstanding in this case was the way the boys decided to apologize to the victims and their families. In addition to making face-to-face apologies to the victims and their families at the FGCs, they arranged and prepared a dinner for the victims and their families, their own families, the Youth Aid Officer, Youth Advocates and CYF staff. They also put on a concert at the dinner. The songs they chose to sing were popular tunes but they changed and personalized the words to show the level of remorse and sorrow they felt for the victims and their families. The show was videotaped and many who have seen the tape are amazed by the efforts the four young people have put into their apology. Judge Becroft heard about the video and requested permission to play it in Youth Court.

The apologies were accepted by the victims and their families. The plan for each young person stipulated other activities such as anger management training, community service, reparation, and the provision of mentors to support change. As a result of the FGCs and the efforts the boys have put in, three of the four offenders have completed their plans and received a section 282 discharge. One has continued to offend and more effort is required to bring about change.

This is a story about how Youth Justice Co-ordinators can respond to innovative and creative ways young people have for addressing the hurt they have caused. The preparing and sharing of a meal is entirely relevant to the Samoan culture and enabled the boys to utilize the knowledge, experience and wisdom of their culture to show remorse for what they had done. It did not minimize the offences but required the boys to walk in the shoes of their victims to understand the hurt they inflicted."

The following account demonstrates the participation possible in FGCs.

"Thirty-two people including the young person, his family, five victims and their support people attended a Family Group Conference for a 15-year old facing eight charges of indecent assault. A further three victims did not attend but the young person and his parents had written apology letters to each of the victims.

All charges were admitted and the Court-directed FGC decided that the young person should complete 80 hours of community work and work with a psychologist to address his sexually inappropriate behaviours. Child, Youth and Family Services was requested to provide half the funding for a psychologist and the young person's parents were to provide the other half.

Because the offending took place at public swimming pools, the FGC decided that the young person should not attend public swimming pools for a specified period. Further, because one young victim had withdrawn from a swimming competition at short notice due to being indecently assaulted, and the swimming club had been forced to pay the competition fee of over \$300, the young person was to pay this amount plus pay a donation to a local swimming association. Money for reparations and donations was to come from \$500 the young person had saved towards buying himself a scooter and the securing of a part-time job. The young person also faced a ban on alcohol and non-prescribed drugs for the duration of the FGC plan and on-going monitoring as to his whereabouts outside school hours and family activities. Each factor agreed to included a detailed plan for implementation and monitoring."

The following extract provides an account of how the young person and the specialized professionals

⁶⁰ "Court in the Act" March 2006 No. 21.

experienced a Court-directed FGC after the young person admitted the charges against her.⁶¹

“A 16-year-old was arrested and charged with aggravated robbery. Potentially she could have faced a sentence of imprisonment and a criminal record. But today, thanks to her own efforts and the hard work of those who supported her, she now faces a bright future and is living offence-free in the community.

The Youth Justice Co-ordinator with Child, Youth and Family Services says the youth justice system aims to hold young people accountable while also helping them avoid reoffending and that “evidence shows that once young people have a criminal record they are much more likely to re-offend and have poor life outcomes. This young person is a very intelligent, resourceful young woman – she could be or do whatever she set her mind on and we wanted to help make sure she got the chance to do that, while still being accountable for her actions”.

The Police Youth Aid Officer in the region the young person is from says she was a first time offender who was not well known to Police Youth Aid before facing the serious charge of aggravated robbery. After being arrested by Police Youth Aid, the Youth Court appointed a Youth Advocate to represent the young person who commented that: “Youth Advocates are appointed by the Youth Court to represent young persons appearing before the Court. Youth Advocates ensure that due process is followed and are a check and balance on the youth justice system. A key part of that role is also to ensure that the interests of our clients (young persons), those most vulnerable participants in our criminal justice system, are protected. We must also ensure that they understand what is happening. The role includes a combination of advising in relation to the legal aspects of the particular case and also in relation to the process itself.”

The Youth Court ordered a Family Group Conference for the young person, her family, her victim and the various agencies involved. The young person said the Family Group Conference was one of the hardest experiences of her life. “The Family Group Conference was really hard; it was the first time I’d been through something like that. Before going to the conference I felt stuck, like I couldn’t see the way forward. One of my victims came to the conference. Seeing her was heart-pounding; I was really tense. I gave written apologies to my victims and a verbal apology to the one who attended the conference. For me, the verbal apology was the hardest thing ever. I didn’t want to do it but I knew I needed to, that it was the right thing to do. After the FGC we shook hands; that was pretty great.” And of the recommendations the FGC came up with she said: “The recommendations were there for me to show I was remorseful, to be accountable for what I’d done. They were really hard! I had to follow my bail conditions and go to counselling. I had to go live in another place and I had to pay reparation for the damage I’d done. Going away was really hard, I missed my family and home. But I felt really lucky with the people I went to stay with, they made me feel safe and welcomed. It was a hard thing but a good idea; it gave me time to think.”

The Youth Justice Co-ordinator says this particular FGC was an example of why FGCs work for young people. “Her family was prepared to hold her accountable for her offending, and to support her to not re-offend. Her family’s commitment made all the difference to the outcomes for her. At the conference she, her family, her victim and the agencies agreed to a plan for her. The plan was not an easy ride for her but she stuck to it.”

All the specialized professionals emphasize how important co-operation between the various agencies is in supporting young people to be accountable for their offending and to live law-abiding lives. “This case is an example of the youth justice system doing what it is designed to do. She was held accountable but was also given a chance. Youth Aid sees itself as part of the youth justice team, it’s about getting the right outcome for everyone - the victim, the young person, the family. The only way we can achieve this is by all the agencies working together.”

The young person was given several months to carry out the FGC recommendations and was monitored by the Youth Court during that time. After several months she appeared in the Youth Court for all the matters to be determined. The Youth Advocate explains: “The last appearance was very emotional. The outcome still needed to be determined and was not guaranteed. After detailed questioning by the Youth

⁶¹ Child, Youth and Family’s magazine, “Awhi Mai, Awhi Atu” reproduced in “Court in the Act”, December 2005, No. 20.

Court judge and confirmation that all matters had been completed the police consented to a discharge. After the discharge was granted and the young person was free to go, she took the opportunity to personally thank her family, those who had assisted her, and in particular, the Youth Aid Officer and the Youth Court Judge. This included a handshake for the judge.”

Principal Youth Court Judge Becroft was the presiding Youth Court judge and he acknowledged the enormous effort put in by the young person’s family and the youth justice agencies involved. He also commented on the commitment shown by the young person herself to follow her FGC plan to the letter. Judge Becroft stressed that this was just the beginning for her, not the end, and that the foundations had been laid for her to go on successfully.

The Youth Advocate saw this case as one of the many successes of the youth justice system but that “regrettably it is only the high profile failures that seem to make it into the news media. The outcome for this young person was the right outcome, and, without doubt, a successful outcome.””

IV. OTHER INITIATIVES IN THE NEW ZEALAND YOUTH JUSTICE SYSTEM

A. Christchurch Youth Drug Court Pilot

Alcohol and drug abuse are often significant factors underpinning youth offending. The Christchurch Youth Drug Court Pilot has been run through the Christchurch District Court and aims to facilitate better service delivery for young people with drug and alcohol dependencies in an effort to reduce their offending. The Pilot targets young offenders appearing at Youth Court who have been identified as having moderate to severe alcohol and/or other drug dependency that is linked to their offending (note that all sexual offending and some types of violent offending are excluded). The offences must have either been proved or not denied in the Youth Court to trigger participation and the offender must be regarded as a recidivist offender (having appeared two or more times in the Youth Court in the preceding twelve month period). The Youth Drug Court essentially provides an augmented Youth Court process in that it suspends the formal disposition of the case until the young person has successfully completed a drug and alcohol programme or has been discharged back to the Youth Court or to the District Court as applicable. Family Group Conferences are an essential part of the process and young people involved in the Youth Drug Court are expected to achieve the goals as set out in the FGC recommendations. Participation in the Youth Drug Court is voluntary and young people can choose at any time to withdraw from the scheme and to continue through the usual Youth Court process.

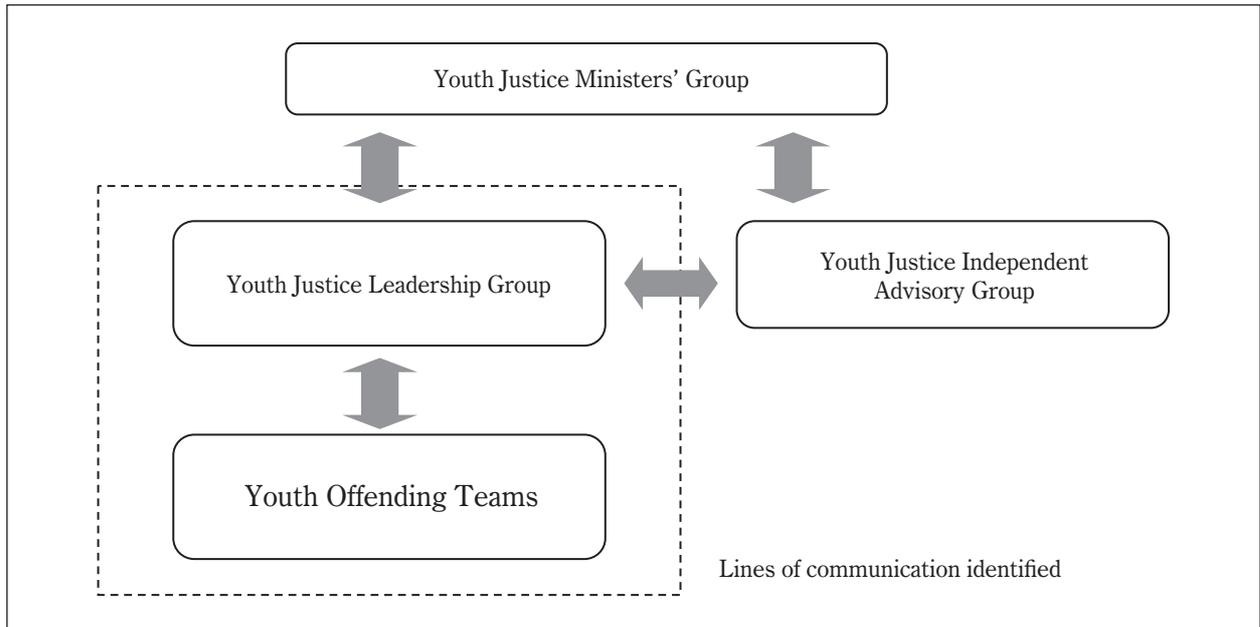
Evaluations of the Youth Drug Court⁶² have suggested that the following strong features would be applicable to and could be adopted in the Youth Court itself:

- The same judge deals with the young person at each of his or her Court appearances.
- Close monitoring of the young person to ensure compliance with FGC plans and any Court orders (normally in the form of bail conditions) by a multidisciplinary team including representatives of several government agencies.
- Involvement of the young person in a range of positive, socially normal activities that will replace alcohol and drug activity, such as education, work and sport.
- Involvement and training of families, partners and friends in effective supervision, discipline and communication so that the people closest to the young person can encourage and support them in changing their lives.

B. The Youth Offending Strategy

In April 2002, in response to the Ministerial Taskforce on Youth Offending conducted by then Principal Youth Court Judge David Carruthers, the New Zealand Government released a Youth Offending Strategy, which has an overall goal of preventing and reducing offending and reoffending by children and young people. The following groups, established at a national level, oversee youth justice service delivery:

⁶² Dr. Sue Carswell “Process Evaluation of the Christchurch Youth Drug Court Pilot”, Ministry of Justice, 2004.



1. The Youth Justice Leadership Group

This group comprises national policy and operational managers from the Ministries of Justice, Social Development, Health and Education; the Department of Child, Youth and Family; New Zealand Police; and the Department for Courts. The Group's key responsibilities are to monitor the implementation of the Youth Offending Strategy, to identify and promote best practice, to conduct data analysis and identify trends, to balance policy concerns with operational practicalities, to ensure community interests are heard and responded to, and to develop a strategic focus for the Youth Justice sector.

2. The Youth Justice Ministers' Group

This group receives regular reports from the Youth Justice Leadership Group on the performance of the local teams, on progress towards implementing the Youth Offending Strategy, and on any emerging strategic issues. The core Ministers of the Group are the Minister of Justice and the Minister of Social Services and Employment while the Ministers of Police, Courts, Education, Health, Māori Affairs, Pacific Island Affairs and Youth Affairs are consulted as appropriate.

3. The Youth Justice Independent Advisory Group

This group provides independent advice to the Ministers' Group and the Youth Justice Leadership Group. It is a small specialist group drawn from youth justice practitioners and community representatives outside Government, and is chaired by Principal Youth Court Judge Andrew Becroft.

4. The Youth Offending Teams

These aim to improve the operation of the Youth Justice system and to encourage the four core agencies, New Zealand Police; Child, Youth and Family Services; the Ministry of Health; and the Ministry of Education, to facilitate discussion, identify local issues, and to support best practice. Youth Offending Teams operate in most parts of New Zealand to co-ordinate the services that address offending by children and young people.

C. Youth Offending Teams (YOTs)

The following excerpts detail examples of initiatives and strategies adopted by various YOTs around New Zealand since the introduction of the Youth Offending Strategy.

1. Youth Justice Referral Form

To assist practitioners to get the 'big picture' in relation to young offenders' lives, one Youth Aid Division designed a youth justice referral form to collate details about the young person's offending history, living

arrangements, and employment and education situation. Initially, the referral form included standard questions, such as name and date of birth, and a series of risk assessment questions. Ongoing evaluation of the referral form resulted in modifications to reflect the Adolescent Risks and Needs Inventory (ARNI) Screening Tool developed by the Police National Office.

The referral form and the ARNI Screening Tool are filled out by Police Youth Aid for every young person referred to Police Youth Aid. “The screening tool provides us with a good indication of whether a young person is likely to continue offending or whether they are a one-off offender”, explained one Youth Aid Officer. “The screening tool complements and validates the instincts you develop as a Police Youth Aid Officer”.

When police believe a Family Group Conference needs to be held, the completed referral form and the ARNI Screening Tool are sent to the local Youth Justice Co-ordinator. The ARNI Screening Tool is a useful tool for assisting the Youth Justice Co-ordinator when consulting with family/*whānau* and other community and statutory agencies. By seeing which ‘risk factors’ exist in the young person’s life, the Youth Justice Co-ordinator is able to assess whether the young person is likely to continue to offend without some form of targeted intervention, such as drug and alcohol counselling.

At the same time as it is sent to the Youth Justice Co-ordinator, the referral form and screening tool are also emailed to the health and education members of the YOT. The health and education members are asked to provide any information that they may hold on the young person or their family to the Youth Justice Co-ordinator. This ensures that the Youth Justice Co-ordinator has a full picture of all the factors in the young person’s life and any services they may have received in the past prior to the family group conference.

2. Youth Court Practice

One of the issues identified by this YOT was a concern with the physical layout of the Youth Court. The Youth Court was originally set up with Youth Advocates on one side of the room, police and Child, Youth and Family Services staff on the other side, and the young person and his or her family in the middle. Whenever a Youth Advocate had to leave the courtroom (which regularly occurred), they were forced to shuffle past the young person and his or her family, which disrupted the proceedings.

The solution to the problem involved a simple redesign of the layout of the courtroom to make it more functional and family or *whānau* friendly. The Youth Advocate is now able to stand with the young person during proceedings and the judge has an unobstructed view of the young offender and his or her *whānau* who are seated in the public gallery at the back of the Court. This has enabled better dialogue between the judge and the *whānau*, and at the same time has not excluded the other Court participants from the process.

Timeliness of reports for the Court was also reported as a major concern in the YOT survey. It had been common practice for social worker reports to be delivered at 10am on the court day, leaving no time for the other parties to read the report and consider the findings. Child, Youth and Family Services accepted that delivering the reports within hours of the statutory timeframe was unacceptable practice, and the Social Worker Supervisor agreed to take responsibility for ensuring that all reports were delivered within a reasonable timeframe. The Supervisor set up a new system for monitoring completion of the reports, and now acts as a single point of contact for other agencies querying when a report will be available. The system has been very successful, and social worker reports are now consistently provided at least two days before the court day.

The YOT also identified an issue in relation to bail conditions imposed on young people appearing before the Youth Court. Concern had been expressed that some bail conditions were difficult to monitor and enforce. Commonly, this was in relation to curfew orders where the young person had to be at home between certain hours, unless with a particular relative. As a result, police sometimes had to drive to two or three different locations to determine whether the young person was complying with his or her bail conditions. The relevant members of the YOT resolved the issue by simply raising it at the Youth Court Liaison meeting, and bringing it to the attention of the presiding judge.

3. Truancy Initiative

This YOT identified truancy as a major concern of all YOT members. A Truancy Sub-committee was established and set up "Operation Educate". This programme focuses on 'hot spots' and involves police officers stopping and questioning children found out of school between 9am and 3pm. The YOT has asked for co-operation from local shops, including takeaway outlets, to refuse to serve school-age children during school hours.

Education representatives of the YOT identified the need to work with local principals, as there was no cohesion between high schools in dealing with school absences. Meetings were held with local principals and a local pass system was established. The pass system is an excellent example of local collaboration. Since the system has been established, police and truancy officers have had a far easier job of distinguishing between students who are legitimately out of school grounds, and those who are truant.

As the YOT developed these initiatives, members of the wider community increasingly came to realize that truancy is not the responsibility of any one organization or service, but rather rests with numerous agencies working collaboratively to address the diverse issues.

4. Anger Management Initiative

Anger management has also been a key concern for one YOT which identified that many of the young people appearing before the Youth Court or receiving police diversion have anger management problems that directly contribute to their offending.

After surveying the anger management programmes available in the area, the YOT concluded that there was nothing suitable for young people. The current programmes were generally not long enough and were too expensive.

In response to this the YOT called a public meeting, which was well attended, to seek support from local service providers to develop two new anger management programmes, specifically designed for young people. Two well-established providers were selected to develop proposals.

The first programme developed is targeted at young people with the highest level of need. The programme runs for 12 weeks. The first week of the programme is residential to allow for intensive work with the young person, and during the following weeks the young person attends the programme between 8am and 5pm. The programme takes a holistic approach, with anger management as one component of the overall programme.

The second programme is targeted at young people who have had their offending dealt with in a Family Group Conference or through police diversion. The programme runs for 22 weeks for approximately two hours per week.

5. Mentoring

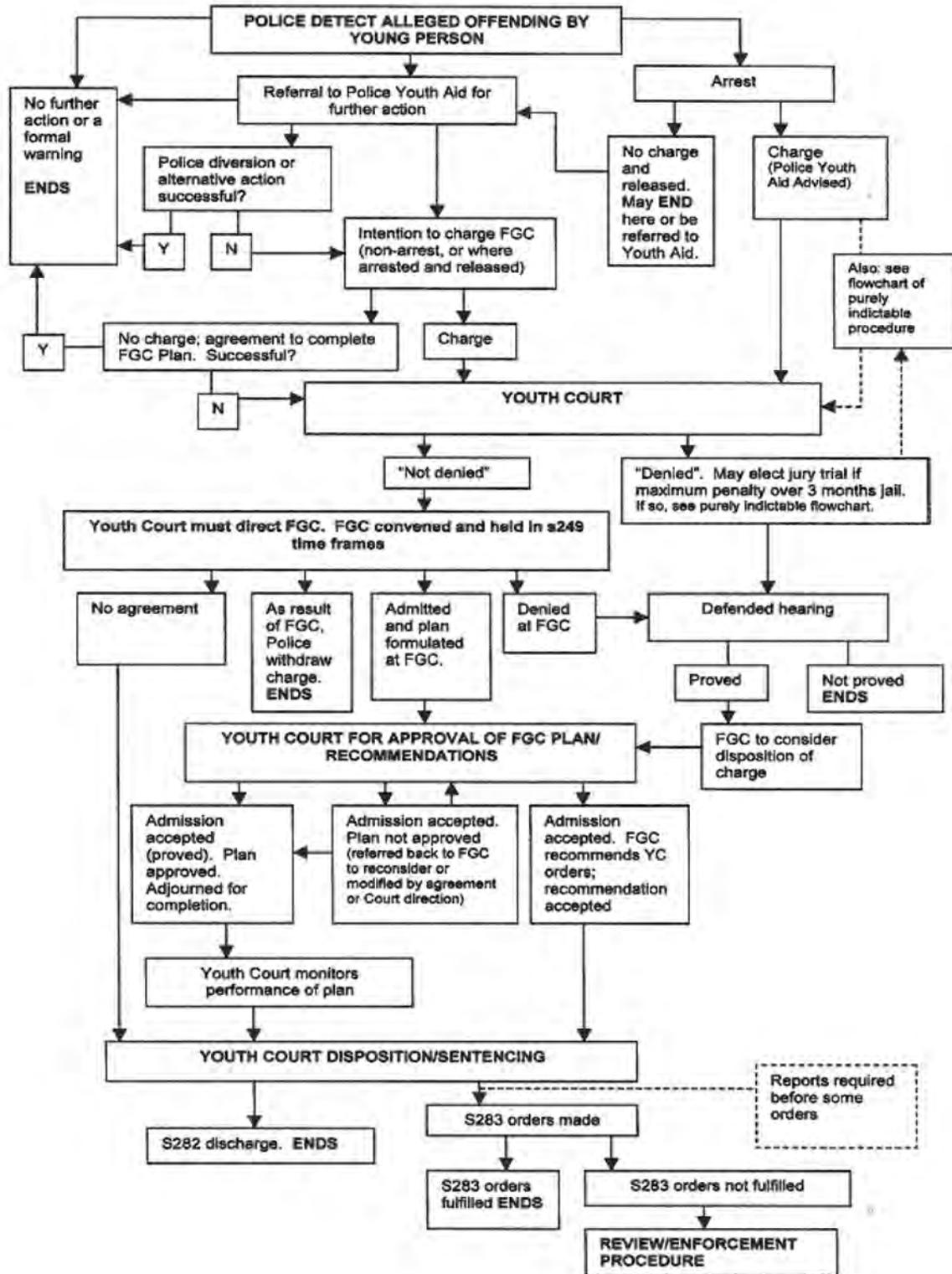
This YOT has initiated and continued to support a mentoring programme for young people who are offending or are at risk of offending and aims to provide these young people with a structured and supportive one-to-one friendship with an interested adult. Mentors are volunteers from the local community and are expected to be positive role models, who make time for the young person to guide, listen, and model consistent positive behaviour. Mentors identify the interests and strengths of the young person, encourage participation and link him or her to positive groups and activities in the community. Mentors must also communicate any concerns to the programme supervisors. Group events and activities are held either monthly or bi-monthly to enhance the mentoring relationship. These include adventure-based activities, and cultural, art, and music-based activities.

V. CONCLUSION

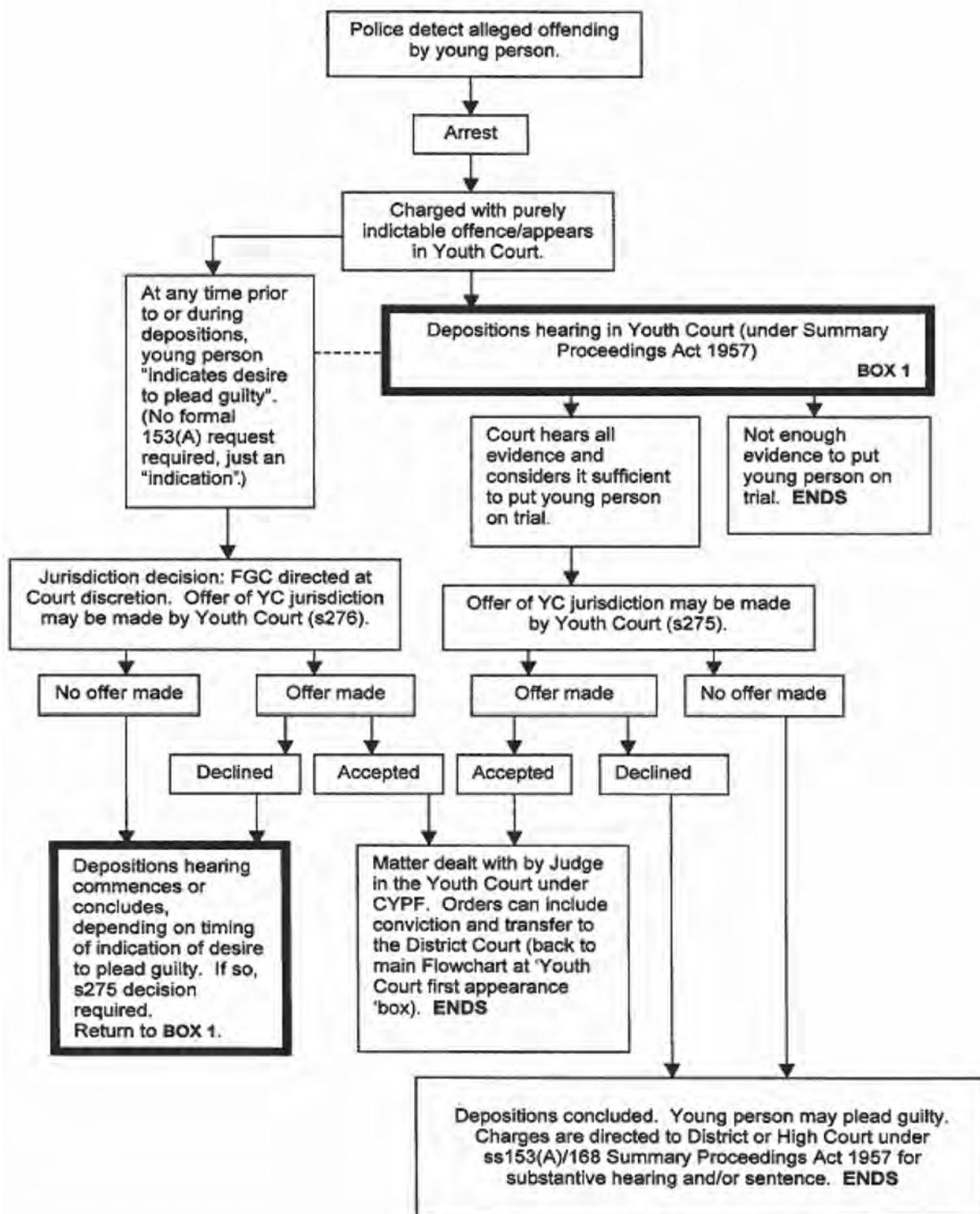
Different jurisdictions have different ways in which they attempt to deal with their young offenders. New Zealand has an emphasis on diversion, with particular attention being paid to having a youth offender being held accountable for their offending. There is a strong emphasis placed on restorative justice with an attempt

to put things right for the victim. This is carried out via the FGC. The belief in New Zealand is that where the offender admits their offending, attends an FGC, expresses remorse and gives an indication they will not re-offend, then there is a greater likelihood they will not re-offend. Statistics on this view are not at this stage compelling. However, on the other hand, there is more to life and preventing the risk of reoffending than bald statistics.

APPENDIX I
Flowchart of Youth Court/Youth Justice System



APPENDIX II
Youth Court Process – Purely Indictable Offences/Election of Jury Trial



ADVANCES IN THE ASSESSMENT AND TREATMENT OF JUVENILE OFFENDERS

*Dr. Robert D. Hoge**



I. INTRODUCTION

This paper provides an introduction to best practices in the assessment and treatment of juvenile offenders. Many of the guidelines presented in the paper derive from recent theory and research in criminology and psychology. Much of that research has been conducted in Western societies, and it remains to be seen to what extent conclusions from that research can generalize beyond those settings. However, clinical experience suggests that many of the principles of best practice do have application across a broad range of cultures.

This paper reflects a child welfare and rehabilitation orientation toward the treatment of the juvenile offender. As explained below, current theory and research from psychology and criminology support the position that juvenile justice systems focusing on the identification and amelioration of criminogenic deficits in youth and their circumstances produce more positive outcomes than other approaches, including those focusing on punitive sanctions. As well, the implications of the child welfare and rehabilitation model for the treatment of youth are fully consistent with the UNICEF Guiding Principles for Organizations and Individuals Dealing with Child Welfare and the United Nations Convention on the Child.

The paper begins with a discussion of alternative approaches to the treatment of offenders within juvenile justice systems. This is followed by a brief introduction to contemporary theory and research on the causes and correlations of youth crime and the most efficacious approaches for addressing this serious problem. A discussion of best practices in the assessment of juvenile offenders is then presented. This includes an identification of some useful assessment instruments and procedures as well as practical guidelines in the conduct of assessments. The following section presents a discussion of effective strategies for case planning and management, including the identification of evidence-based treatments.

II. ALTERNATIVE APPROACHES TO THE TREATMENT OF JUVENILE OFFENDERS IN JUVENILE JUSTICE SYSTEMS

Comparing juvenile justice systems across societies reveals considerable variations in philosophy, goals, practices, and attitudes (Winterdyk, 2002). Even within systems we often encounter variety and ambiguity about practices. For example, Canadian provinces, while all governed by the same federal Youth Criminal Justice Act, display some differences in the actual treatment of the offender.

While something of an oversimplification, juvenile justice systems can be characterized in terms of a continuum ranging from a child welfare and rehabilitation orientation to a crime control or punitive orientation (Corrado, 1992). The following is an elaboration based on that continuum.

A. Child Welfare and Rehabilitation Model

This model accepts controlling antisocial behaviour in young people as its goal, and the fundamental assumption of the model is that this can be best achieved by enhancing their behavioural and emotional competencies and by addressing deficits in their environment. This model is generally implemented within a formal justice system, but there may be less emphasis on legal processing and more concern with providing rehabilitative interventions. Legal sanctioning and punishment generally play a smaller role in systems guided by child welfare concerns than those located closer to the crime control end of the continuum. The system often reflects a *parens patriae* concept whereby the state reserves a right to assume responsibility for the well-being of the young person.

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B. Corporatist Model

This model has been presented by Corrado (1992), Corrado & Turnbull (1992), and Pratt (1989) as a variation on the Child Welfare Model. The model shares with the latter an emphasis on interventions aimed at specific deficits in the youth and his or her environment but departs from the Child Welfare Model by emphasizing the importance of integrating all services for children, whether they originate in the judicial or child welfare systems:

“The Corporatist Model emphasizes not the role of police (according to the Crime Control Model), nor the role of lawyers (according to the Justice Model), nor the role of social workers and other helping professions (according to the Welfare Model), but rather the role of *all* of these groups acting in an interagency structure which efficiently diverts minor offenders, requires less serious property offenders and violent offenders to participate in attendance programs and sentences the few serious offenders to custodial institutions.” (Corrado & Turnbull, 1992, p. 77)

The key to this model, then, is an emphasis on the integration of services for the young person and the diversion of youths from the justice system. The Corporatist Model represents an ideal type of system for those who embrace a child welfare and rehabilitation orientation and who are critical of the fragmented system of youth services seen in many jurisdictions. It is difficult to identify systems representing pure forms of a Corporatist Model, although the systems in Scotland and the Canadian province of Quebec at least approach this ideal.

C. Modified Justice Model

This model combines elements of both the Child Welfare and Justice Models. It reflects a child welfare orientation by recognizing that the control of youth crime depends ultimately on providing young people with the resources to lead a pro-social lifestyle, and that this is best achieved through the provision of prevention and intervention programmes. On the other hand, these rehabilitation efforts are delivered in the context of a legal system with its concerns for legal rights and judicial processing.

There is clearly an inherent tension within this model, and this concerns the relative emphasis placed on the child welfare and judicial processing components. There may also be pressure in this type of model toward the crime control end of the continuum, with its concern for immediate measures to control crime.

Manifestations of this tension may be seen in the American, Canadian, and British juvenile justice systems over the past 10 or 20 years. To illustrate, juvenile offenders in Canada were governed until 1984 by the Juvenile Delinquents Act of 1908. The latter reflected a modified justice orientation but with a strong child welfare component. It was based on a *parens patriae* orientation where the youth was denied basic legal rights and where it was assumed that the court would look after their best interests. There was some use of custodial sanctions for serious crimes, but the general approach was to attempt to intervene to remove whatever factors were contributing to the delinquency.

This act was replaced in 1984 by the Young Offenders Act which, while retaining some aspects of the child welfare and rehabilitation orientations, provided for protection of the legal rights of the youth and introduced judicial processing procedures similar to those of the adult system. Implementation of this act resulted in reductions in the use of rehabilitative interventions and increases in the use of legal sanctions, including probation and custody. This in turn has been supplanted by the Youth Criminal Justice Act (2003) which, while enhancing punitive sanctions for very serious crimes, places emphasis on diversion and rehabilitative services for less serious offenders.

D. Justice Model

The focus in this model shifts from a concern for the needs of the individual offender and towards the criminal act and appropriate legal responses to that act. The principal goals in this case are to ensure that the civil rights of the youth are protected, that prescribed legal procedures are observed, and that a disposition appropriate to the crime is achieved.

Juvenile justice systems reflecting this orientation will vary somewhat in terms of legal processing procedures, but the major source of variation probably concerns sanctioning procedures. The latter generally involves debates about the relative value of individual deterrence, group deterrence, or punishment as the

primary purpose of sentencing. Similarly, there is always debate in this type of system over the extent to which diversion, probation, or custody sanctions should be employed. There may be some provision for rehabilitation efforts in this type of system, but, because of the concern for due process, participation is usually voluntary.

E. Crime Control Model

This model shares with the previous model a dependence on formal legal processing procedures. However, while the focus in the Justice Model is on legal rights and procedures, the primary concern in this model is with the use of legal sanctions against offenders to ensure protection of society. There is, then, less concern with the individual offender in this model than in any of the others. Feld (1999), Schwartz (1992), and other observers have noted shifts in the direction of this orientation in many communities in the United States. It is also a model that guides the treatment of juveniles in many jurisdictions throughout the world (Winterdyk, 2002).

Both this and the preceding model derive largely from the Classical Theory of Crime. Criminal acts are viewed as willful, representing moral transgressions. The only appropriate response to these acts is to impose criminal sanctions, preferably involving incarceration. While more minor cases might be dealt with through diversion procedures, there is generally little concern in this approach with rehabilitation efforts.

F. Preferred Model

While arguments can be developed for and against all of the models described above, the fundamental assumption underlying this paper is that current theory and research supports a child welfare and rehabilitation orientation as the optimal means for addressing antisocial behaviour in youth. Ideally, this will be delivered in the larger context of the education, mental health, and social service systems (Corporatist Model), but it can be delivered in the context of a Justice Model as long as the primary focus is on addressing deficits and needs in the young person. Note that implementing such a strategy does not run counter to holding the youth accountable for his or her actions. Accountability does not require harsh punishment. It can take the form of close supervision, some restrictions of privileges, restitution, or other action that does not interfere with rehabilitation goals.

III. CONTRIBUTIONS FROM CONTEMPORARY THEORY AND RESEARCH

We are fortunate that we are now able to draw on a considerable body of theory and research from both criminology and psychology to guide us in our management of youthful offenders. One body of research derives from developmental psychology which is giving us valuable clues regarding the conditions contributing to the appearance of antisocial behaviour in children and adolescents (see Lahey, Moffitt, & Caspi, 2003; Rutter, Giller, & Hagell, 1998). Also useful are broad, integrative models such as those proposed by Andrews and Bonta (2006), Catalano and Hawkins (1996), and Elliott and Menard (1996). Research from criminology and forensic psychology is important because of guidance regarding factors specifically associated with criminal behaviour and evaluations of alternative strategies (see Guerra, Kim, & Boxer, forthcoming; Krisberg & Howell, 1998; Lipsey, 1995, 2006; Lipsey & Wilson, 1998). The following are discussions of some of the more important conclusions from this work.

A. General Conclusions from the Research and Theory

While there remain unanswered questions about youth crime and areas of controversy continue to exist, it is possible to state some general conclusions from this body of research.

1. Efficacy of Early Prevention Efforts

There is now ample evidence from evaluation research that early prevention efforts, as long as they are carefully targeted, begun early enough, and reflect best practices, can be effective in reducing negative outcomes in childhood and adolescence. The evidence is particularly strong in the case of early compensatory education and headstart type programmes. The best of these programmes can produce positive results regarding antisocial behaviour, school drop-out, and employment success many years after they are delivered (e.g. Schweinhart, Barnes, & Weikart, 1993). There is also evidence for the effectiveness of carefully targeted behavioural interventions for children at risk of criminal activity delivered during the early childhood years (Offord, Chimura-Kraemer, Kazdin, Jensen, & Harrington, 1998; Tremblay & Craig, 1995). For example, a group of Canadian researchers has shown that a family and school-based intervention

programme directed toward boys showing conduct problems during the pre-school years can be effective in reducing the likelihood they will continue to develop antisocial behaviour during later childhood and adolescence (Tremblay *et al.* 1995).

2. Ineffectiveness of Punitive Sanctions

Evaluation research demonstrates conclusively that punitive sanctions such as incarceration, shock incarceration, or boot camps do not have positive effects on reoffending rates (Andrews & Bonta, 2006; Lipsey, 1995; Lipsey & Wilson, 1998). This research shows that under some circumstances, and for some youth, incarceration produces small decreases in reoffending rates. In most cases, however, imprisonment is associated with increased reoffending rates. There are likely a number of reasons for this. For one thing, incarceration of youth is generally not accompanied by meaningful interventions directed toward the deficits placing them at risk of criminal activity. Second, congregating antisocial youth together will generally have the effect of increasing the risk level of lower risk youth.

3. Efficacy of Appropriate Interventions

The reviews and meta-analyses cited above clearly support the conclusion that interventions reflecting best practices and delivered with integrity can be effective in addressing youth crime and reducing the probability of reoffending. Note two important qualifications included in this conclusion. First, the intervention or treatment strategies we use must reflect proven intervention strategies. We will review these elements of best practice below. Second, the interventions based on best practice must be delivered with integrity. In many cases strategies proven effective in other settings do not work because they are not delivered well.

4. Cost Effectiveness of Interventions

A growing body of sophisticated cost/benefit research has become available and is showing that programmes reflecting best practice and empirically shown as effective can also be cost effective (Aos, Phipps, Barnoski, & Lieb, 2001). In other words, money spent on these programmes can produce significant savings later in reduced criminal activity, improved school and employment performance, better mental health, etc. For example, the Functional Family Therapy programme for addressing problems of parenting and family dynamics yields an average return of \$28.34 for every \$1.00 invested. Aggression Replacement Training, a cognitive programme for addressing violence issues, yields on average a return of \$45.91 for every \$1.00 spent.

B. Identification of Risk and Need Factors

Contemporary research has also made an important contribution by helping us identify the risk and need factors associated with youthful criminal activity (see Heilbrun, Lee, & Cottle, 2005; Lipsey & Derzon, 1998; Loeber & Dishion, 1983). This work is important because it forms the basis for much of the subsequent discussion of best practice.

Risk factors refer to characteristics of the youth or his or her circumstances that place him or her at risk of antisocial behaviour. *Need factors* refer to the subset of risk factors that can be changed through interventions, and, if changed, reduce the chances of future antisocial behaviour. These are sometimes referred to as dynamic risk factors. To illustrate, a history of conduct disorder constitutes a risk factor; youths who exhibit such a history are at higher risk of criminal behaviour than those who don't. However, this is a historical variable and can't be changed. Antisocial peer associations is another risk factor, but this can be considered a dynamic risk or need factor. We can intervene to reduce these associations, and, if we succeed, will reduce the youth's risk of reoffending (see Andrews & Bonta, 2006; Andrews, Bonta, & Hoge, 1990a; Hoge, 1999a for further discussions of these concepts).

Table 1 provides a summary of the major risk/need factors involved in juvenile criminal activity. These are divided into two groups: proximal factors are those having a direct impact on the youth, while the distal factors generally operate indirectly through the proximal factors.

Most research on risk and need factors has been conducted in Western societies, and a question can be raised about their generality across cultures. We do have support from research conducted in Western societies that the factors are relevant for both boys and girls and for various cultural groupings within those

societies. However, while their generality across geographically diverse cultures remains to be determined, clinical experience would suggest that they do have broad relevance.

Table 1
Major Risk/Need Factors

Proximal Factors

Antisocial attitudes, values, and beliefs
Dysfunctional parenting
Dysfunctional behaviour and personality traits
Poor school/vocational achievement
Antisocial peer associations
Substance abuse
Poor use of leisure time

Distal Factors

Criminal/psychiatric problems in family of origin
Family financial problems
Poor accommodations
Negative neighbourhood environments

The identification of risk and need factors is important because of two evidence-based principles of best practice (Andrews & Bonta, 2006; Andrews *et al.*, 1990a). The *risk principle of case classification* states that intensive intervention services should be reserved for high risk cases, while lower risk cases should receive less intensive services, or, in the case of youth with very few risk factors, no intervention at all. The *need principle of case classification* states that interventions should target the specific risk and need factors of the youth. In other words, interventions should be individualized and tailored to the youth. These principles will be explored more fully below.

One other concept should be introduced at this point, although there is less research on the issue. *Responsivity factors* refer to characteristics of the youth or his or her circumstances that, while not directly related to his or her criminal activity, should be taken into account in case planning. Examples include reading ability, motivation to change, and emotional maturity. We can also include here strength or protective factors, such as the availability of a co-operative parent or an interest in sport. The *responsivity principle of case classification* states that the choice of interventions should reflect these factors. For example, the youth's reading ability may not have an effect on his or her antisocial behaviour, but it would have to be taken into account in selecting a treatment programme requiring the comprehension of written materials.

C. Identification of Evidence-Based Best Practices and Evidence-Based Programmes

Evidence-based best practices refer to intervention strategies shown in evaluation research to be associated with positive outcomes, including reduced reoffending rates. For example, research has demonstrated that interventions targeting concrete behavioural and attitudinal problems are more effective than those that focus on vaguely defined personality problems. Information about these best practices provide us with general guidance in developing interventions. *Evidence-based programmes*, on the other hand, are specific treatment programmes shown by research to be effective in addressing the needs of the juvenile offender. An example is Aggression Replacement Training. Reviews and meta-analyses of both the evidence-based practice and evidence-based programme literatures are available from Andrews & Bonta, 2006; Guerra *et al.*, forthcoming; Krisberg & Howell, 1998; Lipsey, 1995, 2006; Lipsey & Wilson, 1998. These principles will be introduced in our discussion of assessment and case management issues.

IV. RECOMMENDED ASSESSMENT PRACTICES

The careful assessment of the youth, including his or her risk, need, and responsivity characteristics, is important, and it is unfortunate that in so many juvenile justice systems there are either no assessment procedures at all or, if they exist, they are based on very unsystematic clinical procedures. In fact, in most cases assessments are conducted through brief, informal interviews with the youth. However, the research cited above shows clearly that programmes employing structured and standardized assessment procedures are more effective than those that do not. More specifically, the research shows that effective programmes employ structured assessments of risk, need, and responsivity. This is an important evidence-based principle of best practice.

A. Purposes of Assessment

Assessment involves collecting information about the youth and his or her circumstances, whether through interviews, administration of formal tools, or reviews of file information. One purpose of this activity is to form a *risk assessment*. That is, we want to evaluate the likelihood that the youth will continue to engage in some sort of antisocial behaviour. Evaluation of the youth's level of risk is important because it can have a bearing on the level of supervision security we might impose on the youth and because, consistent with the risk principle, we should adjust the intensity of our interventions to level of risk. One problem we encounter is that many risk assessments are based on informal procedures and on a narrow range of risk factors (Hoge, 1999a, forthcoming; Hoge & Andrews, 1996; Wiebusch, Baird, Krisbert, & Onek, 1995). We will see below that considerable progress has been made in developing more valid risk assessment tools.

The identification of needs relevant to the criminal activity constitutes another purpose of assessment, and here we talk about *needs assessment*. Not only do we want to identify the factors placing the youth at risk of criminal activity, but we also want to identify those risk factors that we can address to reduce the propensity to engage in antisocial behaviour. These were identified earlier in Table 1. We will describe some risk/needs instruments below that are designed to provide a broad assessment of criminogenic risk and need factors.

B. Forms of Assessment Procedures and Instruments

Structured or standardized assessment procedures or instruments assume a wide variety of forms, but in general they employ structured format, scoring, and interpretation procedures. The Wechsler Intelligence Scale for Children and the Minnesota Multiphasic Personality Inventory – Adolescent are two standardized instruments many will be familiar with.

A variety of types of standardized tests and procedures are of potential value in assessing offenders. These include personality tests, behavioural checklists and rating scales, attitude measures, structured interview schedules, and test measures of cognitive and academic competencies (see Hoge, 1999b; Hoge & Andrews, 1996; Sattler & Hoge, 2006). Some of these measures require special qualifications and expertise and are normally used only by psychologists or other mental health professionals. These are appropriate where the youth exhibits evidence of serious emotional or behavioural disorder and where a full mental health assessment is recommended (see Appendix A for an example of a psychological assessment battery).

Other measures not requiring advanced mental health training can be useful in assessing the youthful offender. Measures of behavioural and emotional disorders such as the Child Behavior Checklist (Achenbach & Edelbrock, 1983) and the Massachusetts Youth Screening Instrument (Grisso & Barnum, 2003) and measures of antisocial attitudes such as the How I Think Questionnaire (Barriga, Gibbs, Potter, & Liao, 2001) are examples of measures that can be useful in gaining insight into the functioning of the youth. These do require some training in administration and scoring but do not require an advanced degree.

C. Comprehensive Risk/Needs Measures

Standardized risk/needs instruments constitute another category of assessment tools, ones particularly useful in juvenile justice systems. These are designed to evaluate the youth's risk of reoffending and to identify his or her needs (dynamic risk factors) to aid in case planning. A number of comprehensive risk/needs measures have become available over the past few years (see Borum & Verhaagen, 2006; Grisso, Vincent, & Seagrave, 2005). These represent advances over the earlier, more primitive risk measures

because they are based on a wider range of risk variables and provide a focus on needs as well as risks. Some of these are actuarial instruments yielding empirically based estimates of risk and need, while others are standardized clinical instruments. All of these help synthesize information about the youth and can help guide decisions about appropriate community or residential placements, level of supervision, and appropriate treatments. These are designed for use by a range of service providers, including mental health professionals, probation and parole officers, and child care workers. All do require some specialized training in administering, scoring, and interpreting the measures. To illustrate, two of these measures will be described.

The Youth Level of Service/Case Management Inventory (YLS/CMI; Hoge, 2005; Hoge & Andrews, 2002) is a standardized actuarial measure providing estimates of risk of reoffending and a framework for developing case plans based on a risk/needs assessment. The risk/needs section of the inventory contains 42 items reflecting characteristics of the youth (e.g., "truancy", "chronic drug use") or his or her circumstances (e.g., "parent provides inadequate supervision"). The section yields an overall risk/needs score and scores for the following domains: Prior and Current Offences/Dispositions; Family Circumstances/Parenting; Education/Employment; Peer Relations; Substance Abuse; Leisure/Recreation; Personality/Behaviour; and Attitudes/Orientation. An opportunity is also provided to indicate areas of strength. Subsequent sections provide formats for developing a case plan based on the risk/needs assessment. Reliability and validity research has been reported for the measure. An application of the measure will be described later in the paper.

The Estimate of Risk of Adolescent Sexual Offence Recidivism-2 (ERASOR; Worling & Curwen, 2001) is an example of a structured clinical assessment tool focusing on youthful sex offenders. It is designed to evaluate the risk of sexual reoffending on the part of individuals who have previously committed a sexual assault and to offer guidance in the development of treatment strategies. Twenty-five risk items are represented, including "deviant sexual interest," and "antisocial interpersonal orientation." The assessor categorizes the level of risk as low, moderate, or high based on the total number of items checked and the assessor's judgments about the pattern of risk observed. Psychometric research has been reported for the scale.

Other instruments in this category include the Early Assessment of Risk List for Boys (EARL-20B; Augimeri, Kogel, Webster, & Levene, 2001); Structured Assessment of Violence Risk in Youth (SAVRY; Bartel, Borum, & Forth, 2005); and the Washington State Juvenile Court Assessment (WSJCA; Barnoski, 2004). Borum and Verhaagen, 2006 and Grisso *et al.*, (2005) have provided extended discussions of these measures.

D. Some Practical Considerations in Conducting Assessments

While assessments of the youth are critical to the process of dealing with the youthful offender, there are a number of cautions to observe. First, it is important to employ the best standardized measures of risk, need, and responsivity available. This involves keeping current with the literature. Second, and related, care must be taken to ensure that individuals administering, scoring and interpreting the measures have the required competencies and expertise. We have seen that some of the tools require advanced training in a mental health field. Others do not, but they do require specialized training in using the procedures.

Ensuring that assessment instruments and procedures are appropriate to the purpose of the assessment is also important. An instrument designed to estimate risk of general offending may not be useful in evaluating risk for violent offending. The appropriateness of the instrument for the youth being assessed should also be considered. A psychological test proven valid for children ages 6 to 10 may not be appropriate for an adolescent. Assuming that measures that work for adults will also apply to children is a common error. Similarly, instruments appropriate for one cultural group may not be of value for those from another group. This has to be established through research.

The sources of information on which the assessment is based must also be evaluated. An interview with the youth is nearly always required, and the more thorough and probing that interview the better. The following guides for conducting the interview are derived from Gratus (1988), Miller and Rollnick (2002), and Sattler and Hoge (2006):

- Establish rapport: Treating the youth with respect and expressing empathy will help in creating a positive relationship.
- Listen carefully: Eliciting good information from the client depends on listening carefully to what he or she has to say.
- Remain objective: While the interviewer should maintain a positive attitude and treat the youth's responses in a respectful manner, this does not necessarily mean endorsing the youth's responses.
- Facilitate communication: Ensure that questions and responses are clearly understood by the youth.
- Maintain control: The youth should be treated with consideration during the interview but not allowed to direct or divert the questioning.
- Avoid argumentation: Engaging the youth in lengthy arguments and confronting the youth in a hostile manner are usually counterproductive.

Interviews with collateral sources such as parents, teachers, or other professionals will be desirable as well, as is the use of information from the youth's school, the police, the probation office or other type of file information. In general, the more information collected the better, although you will often be challenged with the necessity of resolving contradictory data.

Ethical and legal issues are always involved in conducting assessments in juvenile justice settings (see Borum and Verjaagen, 2006; Grisso *et al.*, 2005; Hoge, forthcoming; Hoge and Andrews, 1996). Some guidelines will be imposed by professional associations within the jurisdiction. For example, the conduct of psychological assessments in the United States is governed by procedures of the American Psychological Association and state psychological associations. There will also be legal considerations. For example, the use of risk/needs assessments in adjudication and disposition decisions can be very problematic. Generally speaking, these assessments are most relevant to decisions about programming once a disposition has been imposed by the court.

V. SOME GUIDELINES FOR CASE PLANNING AND PROGRAMMING

This section will present some guidelines for case planning and programming with juvenile offenders. Some of the guidance is founded on the evidence-based principles of best practice and evidence-based programmes cited above. In other cases the guidelines will be based on clinical experience.

A. Evidence-Based Best Practices

Evidence-based practices or strategies identified in the reviews and meta-analyses cited above will be discussed in this section. One of the principles of best practice has already been discussed: Effective programmes utilize standardized assessments of risk, need, and responsivity. Other evidence-based principles are as follows:

1. Observe the Risk Principle

Effective programmes provide intensive services for high risk cases and less intensive services for lower risk cases. For example, in the case of probation, close and intensive monitoring should be reserved for those at greatest risk of continuing antisocial behaviour. Similarly, lengthy and expensive treatment programmes should involve those with high levels of need. The principle is important for a number of reasons. First, we have limited resources and should not waste them on youth who do not really require the services. Second, over-involvement of lower risk youth in the system may have negative consequences (see Dishion, McCord, & Poulin, 1999; Dodge, Dishion, & Lansford, 2006). This is illustrated where low risk youth incarcerated with high risk youth begin to show increased levels of risk.

2. Observe the Need Principle

Effective programmes target the specific needs of the youth concerned; that is, they focus on eliminating or ameliorating those factors placing the youth at risk of antisocial behaviour. If the youth's delinquency relates to inadequate parenting and associations with antisocial peers, then interventions should focus on those specific areas of need. There are two considerations underlying this principle. First, by observing the principle we make maximum use of our limited resources; we are going to target them where they are most needed. Second, research discussed in the reviews and meta-analyses cited above demonstrates that interventions have their greatest impact where they focus on the needs of the individual. Unfortunately, many juvenile justice systems are rigid in their programming and do not permit the needed levels of individualization.

3. Observe the Responsivity Principle

Effective programmes take account of responsivity factors in case planning; that is, characteristics or circumstances of the youth not directly related to their criminal activity are taken into account in planning interventions. For example, there is little point in placing a youth with limited reading skills in a cognitive behaviour modification programme requiring the reading of complicated material. As another illustration, consider a girl whose criminal activities are clearly related to her associations with an antisocial group of youths and drug abuse. However, she may also be suffering from depression and anxiety associated with past abuse, and those conditions would have to be taken into account in planning an intervention.

We have also included strength or protective considerations as responsivity factors, and it is important to consider these in case planning. For example, if a co-operative parent is available, they should certainly be involved in the intervention. Similarly, a risk related to poor use of leisure time could be easily addressed where the youth has an interest in a particular sport.

4. Utilize Community-based Interventions

Research demonstrates that delivering interventions to the offender in his or her community setting is more effective than intervening in institutional settings. This result should not be surprising. The young person's risk of criminal activities relates to conditions in their home, neighbourhood, and school, and efforts to address those conditions are best addressed in those settings. We will see below that wrap-around programmes such as Multisystemic Family Therapy are particularly effective, and one reason for this is because they are delivered in the youth's environment. The new Canadian law governing youthful offenders (Youth Criminal Justice Act) places considerable emphasis on diverting youth out of the criminal justice system and delivering interventions in community settings, and this is fully consistent with this particular principle. One caution though: the success of these efforts will depend on the availability of quality services in the community.

5. Address Needs in the Institutional Setting

Research demonstrates that, where institutionalization is necessary, success depends on providing interventions that will address the needs of the youth. Simply incarcerating youth without any efforts to address their behavioural, emotional, social, or educational needs does not reduce reoffending rates. In fact, it often has the opposite effect of increasing their anger and sense of alienation.

6. Treatments are Multimodal

Effective programmes address the entire range of interacting problems presented by the client. Youths do not come to us with isolated issues. Instead they often present to us a range of connected risk and need factors, and interventions that address the set of needs are more effective than those that have a narrow focus. This is why, for example, placing a youth in a substance abuse programme without acknowledging that the problem is linked with supervision problems in their home, an association with a substance abusing friend, and frustration with school failure, will not be very successful. The success of the wrap-around programmes can be explained by their goal of addressing the totality of the youth's situation.

7. Structured Programmes with Concrete Behavioural and Attitudinal Goals

The efficacy of juvenile offender interventions that are highly structured and directed toward altering specific behavioural and attitudinal deficits in the youth is strongly supported by research. The most effective goals entail social problem-solving and decision skills, moral reasoning, and the development of pro-social attitudes, values, and beliefs. Programmes based on behaviour modification, cognitive-behavioural patterns, and skill training procedures are particularly effective. Additional information about effective programming will be presented below.

8. Aftercare Following Institutional Treatment

Effective programmes provide continuing services to the youth after release from custody or other institutional settings. This is essential to ensure that any gains made in the institution transfer to the youth's home, community, and school environment. Release planning should be an important part of any residential programme.

9. Programme Delivery and Impact are Carefully Monitored

Effective programmes have in place formal procedures for describing and evaluating service delivery (process evaluation) and programme impact (summative evaluation). An expanding body of research demonstrates that the effectiveness of our interventions depends very directly on the care with which programmes are delivered. Ideally, evaluation efforts will be done internally and externally. The importance of independent external evaluations is particularly important.

B. Clinically-Based Best Practices

We can identify other principles of best practice which, while not empirically derived, have considerable support from clinical experience. These will be listed here without additional comment:

- Individuals responsible for the offender are selected with care and provided adequate training and support.
- The agency has clear guidelines regarding the treatment of clients.
- Treatment goals are realistic and attainable.
- Staff take care to ensure that they represent pro-social models.

One other potential guideline that has received relatively little attention concerns the use of strengths or protective factors within the youth or his or her environment in case planning. It is the risk factors that have received the most attention, but it is also very important to identify and utilize strengths in the youth. For example, the young person may confront problems in the home environment and be associating with a negative peer group, but the fact that they are bright and actually like school can be leveraged to help address their risk factors.

C. Evidence-Based Programmes

A growing body of research is focusing on the identification of effective programmes for the juvenile offender (Andrews & Bonta, 2006; Greenwood, 2005; Guerra *et al.*, forthcoming; Krisberg & Howell, 1998). Those considered effective generally reflect the principles of best practice identified above. More specifically, they tend to be multimodal, delivered in community setting, take account of the risk, need, and responsivity characteristics of the youth, and depend on behavioural and cognitive-behavioural techniques.

The following are some structured programmes for which there is evidence of effectiveness:

- Functional Family Therapy
- Multisystemic Family Therapy
- Multidimensional Treatment Foster Care
- Aggression Replacement Therapy
- Coping Course
- Time to Think
- Viewpoints.

However, it must be acknowledged that these programmes have not been evaluated for all situations and all types of youth. For example, we are still somewhat limited in our understanding of effective programming for female juvenile offenders (see Hoge & Robertson, forthcoming). As well, there is a dearth of data on programmes for delivery in custodial settings.

Some of the programmes identified above are designed for delivery in a community setting and are multimodal in focus. Multisystemic Family Therapy (Henggeler & Bordoin, 1990) is one example. This family-based intervention provides services to the youth and his or her parents in the family, neighbourhood, and school settings. There is an effort to address the entire range of interacting problems presented by the youth. Other programmes identified in the table are narrower in focus, generally addressing specific behavioural or attitudinal issues. For example, *Viewpoints* (Guerra & Slaby, 1990) is a cognitive mediation training programme designed to improve the youth's social problem-solving skills and develop more positive beliefs regarding aggression. The programme can be delivered in a community or institutional setting.

The research cited above also informs us of the types of programming that generally do not work with juvenile offenders:

- Client centred/non-directive therapies
- Psychoanalytic approaches
- Most drug education programmes
- Self-Help programmes
- Shaming strategies
- Enhancing self-esteem strategies
- Purely punitive strategies.

There may be individual circumstances where these approaches are appropriate, but generally speaking, they are neither effective nor economic in juvenile justice systems.

D. Case Planning and Implementation

Effective case planning depends on the careful matching of characteristics of the young person and his or her circumstances with appropriate programmes. As we have seen, assessment of risk, need, and responsivity are critical to this planning process. The recommended procedure is as follows:

- Assess risk, need, and responsivity in the client.
- Determine the level of service appropriate to the risk level of the youth.
- Identify goals of the intervention to reflect the needs identified.
- Identify barriers to achieving those goals.
- Identify strengths and incentives that will help in achieving the goals.
- Select interventions most likely to achieve the goals.

Appendix B illustrates an application of this procedure.

We now have some knowledge of best practices and information about the kinds of programming that works best for juvenile offenders. However, we will still encounter practical issues in implementing effective programmes. Guerra and Leaf (forthcoming) have identified political, economic, and practical barriers to implementing effective treatment programmes.

1. Political Barriers

Efforts to implement rehabilitative strategies for youth often run into pressure from some politicians and members of the public who advocate tough-on-crime policies. This is often associated with demands for use of incarceration and other forms of punitive sanctions, measures that run counter to a rehabilitation approach. The pressure is sometimes based on an exaggerated fear of crime and from a lack of understanding of the most effective ways of addressing youth crime. However, these fears are real and the only solution is to try to address the misapprehensions through education.

The political barriers may exist internally as well. Many employees in juvenile justice systems do not share an enthusiasm for a rehabilitative approach and may continue to advocate for harsh punitive measures. This can only be addressed through improved selection procedures and efforts to educate staff in the conclusions from recent research.

2. Economic Barriers

Economic issues become involved because many of the programmes effective in addressing the needs of the youth are expensive. Programmes such as Multisystemic Family Therapy are costly in terms of staffing and other resources. Similarly, implementing an intensive probation programme accompanied by interventions to address the youth's educational and emotional needs may require considerable resources. These costs will be the basis for resistance to the efforts from politicians and policy makers. There may also be economic barriers associated with funding policies. For example, funding for treatment efforts may be designated only for institutional placements, discouraging the use of more effective community-based placements.

Two responses to these economic barriers are appropriate. First, many of the community-based programmes, even the more costly ones, are often less expensive than incarceration. Second, many of the programmes are cost effective. In other words, if the interventions are implemented effectively, the costs

will be recovered through future reductions in offending rates, lower school dropout rates, fewer demands on adult mental health facilities and other such outcomes. Fortunately, we are beginning to obtain good information from cost/benefit analyses that provide actual figures on the economic returns of the programmes (see Aos *et al.*, 2001; Tyler, Ziedenberg, & Lokke, 2006).

3. Practical Barriers

There are a number of practical barriers to implementing effective programmes. First, the range of options may be limited by economic and resource considerations. We all have limited resources, and sometimes difficult choices must be made. The only response is to observe, as closely as possible, the principles of best practice. This also applies to those cases where the juvenile justice system contracts out services: efforts must be made to monitor the quality of services being delivered.

Another practical obstacle we encounter derives from the fragmented nature of many human service systems. Our youth often exhibit special needs in many areas and may have contacts outside the juvenile justice system, including special services in the schools, treatment in the mental health system, and services from child protection and other such service agencies. All of these systems must work together to effectively address the needs of the youth, but in too many cases barriers exist to that co-operation.

E. Examples of Integrated Programmes

The following are brief descriptions of some community and residential-based programmes that attempt to incorporate a variety of features of best practice in addressing the needs of specific communities.

1. A Different Street

A Different Street is a residential programme created by The John Howard Society of Ottawa and Eastern Ontario Youth Justice Services. The programme is designed for young men released from custody who would normally be homeless; a group at particularly high risk of reoffending. The goal is to ease their transition to the community and address their behavioural, emotional, social, educational, and vocational needs. The programme is located in an apartment building housing 24 clients. The professional staff of the facility are responsible for providing individual counselling and arranging referrals to community services. Considerable emphasis is placed on developing life skills and vocational competencies. Appendix C provides an example of the type of case planning utilized.

2. Boys Town USA, Staff-Secure Detention Programme for Female Offenders

Boys Town USA, Staff-Secure Detention Program for Female Offenders is a somewhat unusual programme since it is designed for high risk/need girls detained prior to trial. Although girls remain in the programme for relatively short periods of time, an intensive assessment is conducted at intake, and the plan developed on the basis of that assessment is designed to follow the client through subsequent placements. The plan encompasses both short and long term goals. The majority of the girls accepted for the programme are members of minority groups, come from high risk family environments, and exhibit a range of academic, social, behavioural, and emotional needs.

The staff of the programme is predominantly female, and all are provided intensive training in gender-specific programming. Individual and group treatment focuses on addressing mental health and behavioural issues as well as developing life skills counselling. Treatments involve families wherever possible. The ultimate goal is to address deficits in the young woman and assist her in reintegrating into society.

3. The Ottawa Police Service Diversion Programme

The Ottawa Police Service Diversion Programme, managed by the Boys and Girls Club of Ottawa and Ottawa Police Services, is designed to satisfy a provision of the Canadian Youth Criminal Justice Act requiring the diversion from the formal police and judicial system of youth committing relatively minor crimes. The initial referral is made by the police officer with initial contact with the youth and then an assessment of eligibility for the programme is made by programme staff. The latter involves an assessment of risk and needs of the youth. In many cases no further action is recommended beyond a warning, but in the case of youth exhibiting significant areas of risk or need, referrals are made to community agencies providing appropriate interventions. This is a prevention programme designed to address risks and needs before they lead to more serious antisocial behaviour.

4. Sexual Abuse: Family Education and Treatment Programme

The Sexual Abuse: Family Education and Treatment Programme was developed at the Thistleton Regional Centre for Children and Adolescents in Toronto, Ontario. This specialized community-based programme is directed towards children and adolescents with sexual behaviour problems, including those convicted of sexual offences. The treatment is based on individual, peer group, and family counselling, with therapeutic techniques based on cognitive-behavioural strategies. Emphasis is placed on altering dysfunctional cognitions and behaviour. The programme reflects the importance of beginning treatment of this condition early in development and the involvement of the family.

Examples of other exemplary programmes can be found in Howell (2003) and Loeber & Farrington (1998).

VI. SOME FINAL WORDS

This paper has emphasized the efficacy of a child welfare and rehabilitation approach to the treatment of youth in juvenile justice systems. I believe that this approach is supported by contemporary theory and research, is consistent with guidelines presented by the United Nations and other organizations concerned with youth, and reflects a humane concern for young people. However, it is important to acknowledge that this position represents only one of a number of positions regarding the appropriate treatment of youth in conflict with the law. Whatever position is favoured, the high personal, social, and financial costs associated with youth crime make it absolutely imperative that we recognize this as an issue of paramount concern and adopt a willingness to commit whatever resources are needed to address the problem. The potential profits from this commitment are immense.

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APPENDIX A
EXAMPLE OF A COMPREHENSIVE PSYCHOLOGICAL ASSESSMENT BATTERY

1. Review of File Information

2. Interviews

Semi-structured interview with youth
Semi-structured interview with mother
Telephone interview with school principal

3. Measure of Cognitive Functioning

Weschler Intelligence Scale for Children

4. Behavioural Adjustment Measure

Child Behaviour Checklist (Parent)

5. Personality Test

Basic Personality Inventory

6. Attitudinal Measures

How I Think Questionnaire
Criminal Sentiments Scale

7. Broad-based Risk/Needs Measure

Youth Level of Service/Case Management Inventory

APPENDIX B
EXAMPLE OF CASE PLAN
PREDISPOSITION REPORT

Date: xx/xx/2006
Name: Michael

Date of Birth: xx/xx/xxx

Officer: xxx

I. CASE SUMMARY

A. Sources of Information

This report is based on information from the following sources: review of file information (prior probation reports), interview with the mother, telephone interview with school principal, telephone interview with juvenile police officer, and a two and a half hour interview with Michael.

B. Background

Michael is a 17-year-old youth convicted of two felony assaults and one misdemeanor assault. He has a lengthy criminal history and has served periods of probation and custody. He has been held in detention since his arrest. As documented below, there are significant family problems in this case and associations with antisocial gang members.

There have been no disciplinary concerns during the current period of detention, and Michael seems to have adjusted well to this confinement. He presented as friendly and co-operative during the interview.

C. Prior and Current Offences/Dispositions

Michael has been convicted of two felony assaults and one misdemeanor assault. The assaults relate to two incidents where he was part of a group of four to five youths who forced themselves into homes and assaulted the occupants. Accused and victims are known to be involved in the drug trade in a small way. Michael neither admitted nor denied the offences.

Michael's criminal history began at 12 years of age. He has been convicted of assault (seven times), robbery, burglary, and disorderly conduct (four times). Most of the crimes have been in association with a loosely organized gang. There is no evidence that any of the assaults produced significant physical injuries. He claims that most of the assaults have resulted from efforts to protect family or friends.

Michael has received four probation and one secure custody (eight months' long) dispositions and has failed to observe court orders three times.

D. Family Circumstances/Parenting

Michael lives with his mother, three younger sisters, and two younger brothers. Although dysfunctional in many respects, the family members are close to one another, and Michael seems to have a very protective attitude toward his siblings. There has been no contact with the biological father for some years, and there are some indications that is Michael experiencing some psychological effects of his perception that the father deserted the family.

The mother is on probation for convictions for welfare fraud and possession of cocaine. She has a minor criminal history and a history of drug and alcohol abuse, although she has apparently been abstinent for several months. The two younger brothers have minor criminal histories and the biological father had served some time in prison. The family has been mainly supported through social assistance and has moved often because of evictions.

Although Michael and his mother appear to care for each other, the mother has provided very inadequate

parenting. Although she does try to set some rules, she rarely follows through consistently in enforcement. Her primary form of discipline is to yell at the children; their usual response is to ignore her and do what they please. On the other hand, the mother is committed to her children and is motivated to address family problems.

Special note should be made of the strong and cohesive bond that exists among the mother and siblings. This can be considered a potential strength factor in this case.

E. Education/Employment

Michael's academic performance has generally been rated as poor to adequate. School personnel have usually felt that he has performed significantly below his capacity. There are no indications of attention span problems or learning disabilities. He is able to stay on task and perform well when he chooses or when the environment is structured and supportive. He was frequently truant when enrolled in school.

While Michael has presented no serious problems in the classroom setting, his relations with other students in other school settings have been contradictory. On the one hand he is capable of exhibiting good social skills and relating easily to others, while on the other hand he has been involved in some serious physical confrontations with some students. He claims these fights have been justified to protect his "honour" and that of his family. He has been recently expelled because of his assaultive behaviour and the school zero tolerance policy. Since his expulsion he has been urged to seek either full or part-time employment but has shown no interest to date.

F. Peer Relations

Most of Michael's friends are three to four years older and are members of a loose-knit gang. Most of his friends and acquaintances have a criminal history. His most recent convictions resulted from actions carried out with this gang. He has virtually no positive associations. He claims he is not seriously involved with any girls at the present time.

G. Substance Abuse

Michael denies any problems with drugs or alcohol. Drug screens have consistently come back negative. He does admit to using marijuana on occasion. There are suspicions that he may be dealing drugs, but there is no evidence to support this.

H. Leisure/Recreation

Michael is not involved in any positive organized activities. Mostly he plays basketball with his friends or just hangs out with them. The family has limited funds and this has probably hindered efforts to involve him in organized sports or hobbies. Michael expresses some interest in sports, motorcycles, and photography but has not acted on those interests.

I. Personality/Behaviour

Michael has a history of verbal and physical assaults against youths. There are indications of poor frustration tolerance and the absence of skills for dealing maturely with perceived insults to himself and his family. He has shown little evidence of sympathy for his victims (feeling they have generally deserved what they got). On the other hand, Michael can behave in a pleasant manner and adults generally feel some sympathy for his condition and a willingness to help him deal with his problems. The latter could be considered a potential strength.

J. Attitudes/Orientation

Michael expresses a lack of respect for the police and judicial system. He feels that the system is biased against poor people. He feels that his assault convictions simply represented acts where he was defending the honour of his family or himself. While some of these attitudes and feelings may be justified, Michael must learn to respond to these situations with non-violent strategies. There is no evidence that he is incapable of feeling empathy; witness his attitude toward family members.

Michael is not actively seeking help, but he has generally seemed willing to participate in court directed programming. He has actually responded well to some previous intervention efforts.

II. YOUTH LEVEL OF SERVICE/CASE MANAGEMENT SUMMARY

Michael obtained a total score of 31 on the Youth Level of Service/Case Management Inventory (YLS/CMI), placing him in the High Risk category. He exhibits high needs with respect to: Family Circumstances/Parenting; Education/Employment; Peer Relations; Leisure/Recreation; and Attitudes Orientation. He exhibits moderate needs regarding Substance Abuse and Personality/Behaviour. Strengths are shown regarding Family Circumstances and Personality.

III. SUPERVISION PLAN

The Supervision Plan is based on the assessment of Michael's risk and need factors. It is based on a sentence of Intensive Supervised Probation with the condition of a custodial sentence if the conditions of the Probation Order are not observed. Condition: attend and successfully complete adult/junior day treatment programme.

A. Goal 1

- Address anger management issues

Barriers

- Deep-seated anger over father abandonment & discrimination issues
- Poor insight
- Peers who support aggression

Strengths/incentives

- Family supports for addressing issue
- Michael seems to be tiring of conflicts

Means of achievement

- Attend individual counselling sessions in day programme
- Complete anger management programme in day programme

B. Goal 2

- Address peer relations and leisure/recreation issues

Barriers

- Peer associations are important to him
- Little opportunity to engage in leisure activities

Strengths/incentives

- Some members of group moving on
- Michael is beginning to recognize costs with current peer associations
- Has some interests: mechanics, photography

Means of achievement

- Continued attendance at day treatment programme
- Enroll in motorcycle mechanics and photography programmes
- Join programme basketball league

C. Goal 3

- Improve home situation/parenting

Barriers

- Financial problems in home
- Mother has history of drug abuse
- Family somewhat isolated

Strengths/incentives

- Mother seems generally motivated to address problems
- Mother has been abstinent for three months; making good progress in treatment

- Family seems to have stabilized recently

Means of Achievement

- Mother will continue to attend drug treatment programme
- Mother and children will attend family service agency counselling programme

IV. OTHER CONDITIONS

- Submit weekend plans to probation officer or programme co-ordinator on Friday
- Observe all curfews
- Attend programme every weekday unless formally excused

The case plan is reviewed after three months.

APPENDIX C
EXAMPLE OF CASE PLAN FROM A DIFFERENT STREET PROGRAMME

I. CASE MANAGEMENT REVIEW PLAN

The information presented in this example is based on a review of case progress after three months.

Name: Samuel
Date of Admission: July 8, 2003
Client's age: 17 years

A. Background

Criminal Record

Current convictions/sentence

Assault and breach x 2
Mischief, breach x 2
Breach of undertaking
Uttering death threats
Eighteen months Secure Custody followed by six months' probation

Past convictions/sentences

Impaired driving, failure to remain at scene of accident and breach – 57 days pre-trial custody, three months' open custody, 18 months' probation.
Possession of controlled substance, possession of stolen vehicle x 2, breaches – 4 weeks' open custody.
Assault x 2, mischief – conditional discharge.
2000 - Probation for assault x 2 and mischief.

B. YLS/CMI Risk/Needs Assessment

Initial YLS/CMI Total Score Level – 29 – High Risk
Three-month update YLS/CMI Total Score Level – 27 – High Risk
Domain Scores

Criminal History – High
Family/Parenting – Moderate
Education/Employment – Moderate
Peers – High
Alcohol/Drugs – High
Leisure/Recreation – Moderate
Personality/Behaviour – High
Attitudes/Orientation – Moderate

C. Other Assessments

Other assessments completed during initial intake indicated significant problems relating to pro-criminal attitudes and substance abuse.

II. CASE SUMMARY EXPLANATION

The attached form is a *Case Summary* for a four-week period. *Overarching Goals* reflect the goals identified on the basis of the intake and review assessments and indicate what the treatment team plans to accomplish prior to the youth's release. The primary objective is to develop and implement interventions that will decrease the youth's propensity for recidivism, and promote the acquisition of self sufficiency skills in preparation for living independently. *Intermediary goals* (Means of Achievement) identify how we intend accomplish the overarching goals. These interventions are implemented until success is achieved or when all possible interventions to gain change have been tried but we are unable to achieve a higher level of success. These intermediary goals are modified as we identify barriers to success and when progress is made in an intervention area.

III. CASE SUMMARY

A. Over-arching Goals

1. Diminish *substance abuse*
2. Improve *anger management and impulse control skills*
3. Diminish *antisocial attitudes and beliefs*
4. Increase *prosocial structured time*
5. Improve *educational performance*
6. Increase *self sufficiency*

B. Previous Intermediary Goals (Met [M], Partially Met [PM], Not Met [NM])

1. Enroll and stabilize in school programme
 - i) enroll in remedial vocational education programme - **M**
 - ii) assist Samuel in obtaining necessary school supplies - **M**
 - iii) contact teacher, Mr. Omeara, and determine if he can assist in motivating Samuel to increase attendance - **M**
 - iv) determine if there is value to incentive programme - **NM**
2. Increase ability to anticipate high risk triggers and plan to avoid them
 - i) practice self management plans - **M**
 - ii) complete daily activity sheets the day prior to assist in structuring day - **M**
 - iii) enroll in Alternatives to Aggression group - **M**
 - iv) complete exercises that identify high risk situations, risky thinking and reframed thinking - **M**
3. Increase ability to cope with reduction in alcohol use
 - i) use coping skills exercises from Structured Relapse Prevention (SRP) - **PM**
 - ii) widen support network by encouraging attendance at NA - **PM**
4. Increase ability to cope with stress and anger
 - i) teach imagery techniques - **PM**
 - ii) teach deep breathing techniques - **PM**
5. Increase budgeting skills
 - i) use delay of gratification by holding money for him - **PM**
6. Increase understanding of thoughts, feelings, behaviour interaction, as well as pro-criminal beliefs
 - i) complete Cognitive Self Change programme- **postponed**

C. Barriers to Intermediary Goals

Continued rigid and distorted thinking, although some progress made in self management skills; poor motivation to address substance abuse issues; continued contact with gang members outside of the residence.

D. Advances in Treatment

Doing relatively well in the school programme; some progress in developing case management skills; positive visit from mother; early indications that he is beginning to recognize the harm he is causing himself with continued drug and alcohol use.

E. Revised Intermediary Goals

1. Continue attending vocational education programme
 - i) explore options around apprenticeship programme for mechanics
 - ii) introduce value to incentive programme
2. Increase ability to anticipate high risk anger/aggression triggers and avoid them
 - i) practice self management plans
 - ii) complete daily activity sheets the day prior to assist in structuring day
 - i) complete exercises that identify high risk situations, risky thinking and reframed thinking

3. Increase ability to cope with reduction in alcohol use
 - i) use coping skills exercises from SRP
 - ii) widen support network by encouraging attendance at Narcotics Anonymous (NA)
 - iii) provide pro-social alternatives to boredom as incentive to reduce alcohol use (e.g., participate in athletic equipment repair programme)
4. Increase Samuel's ability to cope with stress and anger
 - i) teach imagery techniques
 - ii) teach deep breathing techniques
 - iii) teach muscle relaxation techniques
5. Increase budgeting skills
 - i) use delay of gratification by holding money for him
 - ii) complete budget plan to distinguish wants verses needs and to prioritize costs per month
6. Increase understanding of thoughts, feelings, behavioural interaction, as well as pro-criminal beliefs
 - i) challenge distorted thought patterns when used in daily inventory sheets
 - ii) explore benefits and costs of distorted beliefs specific to high risk situation
 - iii) commence Cognitive Self Change

PARTICIPANTS' PAPERS

COUNTRY REPORT: CAMEROON

*Henry Asaah Ngu Ndama**

I. INTRODUCTION

Every society has laws that govern relationships between individuals. The violation of these laws leads to sanctions being meted out to defaulters. These violators, who are termed offenders, are generally of varied ages, from different social backgrounds and of both sexes. Offenders of different categories have problems which are peculiar to that category. Among these categories are young offenders, who are also termed minors.

Young offenders are generally considered in terms of their age at the date of commission of the crime. Every country has an age of penal majority below which any offender is termed a minor. Minors have always been considered to have special needs because of their relatively young age and immaturity and the impact of adverse socio-economic conditions which may drive them into crime. In addition, young offenders in custody are particularly vulnerable to poor conditions in correctional institutions such as overcrowding, poor nutrition, lack of access to adequate health care, bullying by older inmates and psychical and psychological disorders. The above situations, where they exist, necessitate planning for the special needs of this category in order to take appropriate action to ensure their protection and successful reintegration into society.

The protection of young offenders requires the formulation of government policies that take into account their particular needs and the effective implementation of same by all actors and stakeholders of the criminal justice system. Policy-making in this connection stipulates special procedures for the prosecution of young offenders, specialized probation services, legal assistance, and mitigation of sentences. On the other hand, correctional institutions which receive convicted minors have to adopt practices that will prevent minors from becoming victims of the negative effects of "prison culture" which generally result from poor custody conditions. It is only through an effective and efficient allying of these two aspects that successful social rehabilitation of the offender can be attained.

Social rehabilitation or reintegration of offenders has always been the difficult side of corrections. This is particularly true of young offenders who, before conviction, have relatively less developed criminal minds compared to their older counterparts. The prison environment can easily influence them and sometimes this takes a serious toll on them, making them worse at release. The question here is how can the prison environment be made more conducive to the social reintegration of young offenders, and all other offenders, as a whole? This question is particularly pertinent for developing countries who, because of the economic difficulties they face, allocate few resources for corrections. Correctional institutions in these countries generally face problems of overcrowding, a high rate of relapse and recidivism of offenders, resulting from poorly structured or insufficient rehabilitation programmes. Cameroon faces some of these problems today. Nevertheless efforts are being made within the context of penitentiary reform to reverse the situation.

II. LEGAL AND INSTITUTIONAL ENVIRONMENT FOR THE TREATMENT OF JUVENILE OFFENDERS

Legal and statutory instruments provide rules for the handling of juvenile offenders. These cover the specific definition of juveniles in the legal sense, regulations on their prosecution, and directives for their custody. In Cameroon these instruments are the Penal Code, the Criminal Procedure Code and the presidential decree bearing on the penitentiary regime in Cameroon.

A. Legal Instruments

These are the Penal Code and the Criminal Procedure Code.

1. Penal Code

The Penal Code of Cameroon in its section 80 sets the age at which a person attains full criminal

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responsibility at eighteen years. As such, a person aged eighteen years and over shall be responsible as an adult. It also provides that no criminal responsibility shall arise from an act or omission of a person of less than ten years. An offence committed by a person aged not less than ten years and not more than fourteen years may attract only such special measures as provided by law. Criminal responsibility is diminished for an offence committed by a person aged over fourteen and under eighteen. These ages are relevant at the date of commission of the offence. From the above, the age of penal majority in Cameroon is consequently eighteen years and there is no question of personal law. In practice, partial defence and mitigating circumstances may be applied to a young person under eighteen. A child over ten and under fourteen may be tried, but may not be sentenced to a penalty nor to a preventive measure provided by the criminal law for adults. He or she may be the subject only of such measures as are specially provided by the laws on juvenile delinquency. Finally, a child under ten has no criminal responsibility and may not even be tried for what he or she does. He or she may be the subject of special measures of care and protection but not of punishment nor of preventive measures applicable to older children.

Section 48 of the above code provides for parents, guardians or a person responsible under customary law for a person under eighteen who has committed an act defined as an offence to enter into recognizance to forfeit his right of guardianship over the said person if he or she shall commit a similar act within a space of one year, unless it is proven that he or she took reasonable steps to avoid the minor's committing the offence. It should be noted here that in the case where the right of guardianship over the minor is forfeited, his or her care becomes the responsibility of the State alone. Section 82 also provides for responsibility to be diminished for an offence committed by a person under eighteen years under compulsion of his or her parents or the person having charge of him or her, or responsible for him or her under customary law.

Referring to separation of minors under detention, section 29 provides that "An offender under the age of eighteen shall serve his sentence in a special establishment, or failing such establishment, shall be separated from offenders over that age."

2. Criminal Procedure Code

The law N° 2005/007 bearing on the Criminal Procedure Code promulgated on 27 July 2005, which entered into force on 1 January 2007, was unanimously acclaimed as a significant and decisive advancement in the protection of human rights and the consolidation of the rule of the law in Cameroon. This Code provides rules specific to the prosecution and trial of minors, beginning from the institution of prosecution proceedings to criminal record and costs arising from measures for the protection and treatment of juveniles.

The legal framework of arrest and police custody for juveniles is the same as that for adult offenders given that the Criminal Procedure Code makes no distinction between the two categories in this domain. Arrest is subject to the presentation of a warrant or by virtue of the law in case of *in flagrante delicto*. The law also provides for the respect of the physical and psychological integrity of the person arrested (sections 30 to 38).

In the case of police custody, persons are detained in a police cell for a period not exceeding forty-eight hours and a person cannot be remanded into police custody on Saturdays, Sundays or public holidays. A person in police custody is guaranteed the right to health, visitors and legal aid (sections 118-126).

Referring specifically to the prosecution and trial of juveniles, in the domain of institution of prosecution, the law provides that a preliminary inquiry shall be compulsory for a felony or misdemeanour committed by minors aged under eighteen. An infant shall not be prosecuted by direct summons except in cases of a simple offence. The state counsel or the examining magistrate shall inform the parents, guardian or custodian of the minor that proceedings have been instituted against him or her (section 700). Also, the state counsel has to investigate fully to reveal the personality of the minor. This covers the material and moral situation of his or her family, his or her character antecedents, his or her attendance at school and general behaviour, and his or her conditions of upbringing. This investigation is entrusted to the social welfare service or a medical officer as the case may be. He or she may also by reasoned ruling be placed in a welfare reception centre (section 701). The examining magistrate may also entrust the custody of a minor to his or her parents, guardian, custodian, any trustworthy person, welfare centre, observation home, specialized institution, vocational training or health centre, as the case may be, and may specify the duration of such

custody in the best interests of the juvenile (section 702). A certificate of apparent age may be delivered by a medical officer in the absence of a birth certificate (section 703).

As concerns the temporary detention of juveniles after the institution of prosecution, the law provides that a minor from twelve to fourteen years of age shall not be remanded in custody except when he or she is accused of capital murder, murder, or assault occasioning death. It continues that a minor aged between fourteen and eighteen may be remanded in custody only if this measure is considered indispensable (section 704 and 705). Detention of infants can only be carried out in a borstal institution or a special section of a prison meant for the detention of minors. He or she may be detained in a prison for adults where the above are absent but must be separated from them (section 706). When a minor is transferred or brought before an examining magistrate or before the court, steps shall be taken to prevent any contact with adult detainees or the public (section 707). In the case of release on bail, the examining magistrate or the court may require a written undertaking to be of good behaviour and appear before the court when he or she is required to do so, a recognizance entered into by his or her father, mother or guardian to guarantee his or her appearance in court or an oral engagement by a person worthy of trust guaranteeing this appearance (section 708).

In the domain of trial of the juvenile, the Criminal Procedure Code provides that the court shall be cognizant of the social welfare report drawn by the examining magistrate only after the infant has been found guilty (section 717). Also, the presiding magistrate shall explain to the minor in simple language the charges brought against him or her. Irrespective of the infant's reply, the court shall hear the testimonies of witnesses, enable the minor or his or her representatives to put relevant questions to the witness and hear any statement the minor may wish to make and in which case the presiding magistrate shall put questions to the witness, or to the minor as he or she deems fit (section 718).

In full trial the minor shall be assisted by counsel or by any other person who is a specialist in the protection of children's rights. This is different to the procedure for adults. Where the minor has no counsel, the court shall on its own motion assign one to him or her (section 719). Under pain of nullity the trial of the juvenile shall be conducted *in camera*. This notwithstanding, persons entitled to attend the hearing shall be the infant's parents, custodian or guardian, witnesses, counsel, the representatives of services or institutions dealing with problems relating to children and probation officers. The presiding magistrate may also authorize the presence of representatives of organizations responsible for the protection of human rights and the rights of the child at the hearing and read out the statement of the social welfare officer (section 720). The court shall stay trial only where the minor's age cannot be ascertained, where it is deemed necessary to proceed to further medical examination, psychological examination or other inquiry, or if it is deemed necessary to fix an observation period. Judgment shall be pronounced at a public hearing in the presence of the minor but his or her name or initials or those of his or her family members shall not be mentioned in it (section 721). A minor may also be tried in default if he or she has absconded or disappeared and the court can in this case order measures to ensure his or her appearance by a reasoned decision demanding the infant to be brought and detained in a prison (section 723).

In connection to applicable measures and penalties, a minor aged fourteen years or younger, if found guilty, can be subject to the following measures:

- Entrusting the infant to the custody of his or her parents, guardian, custodian or any trustworthy person;
- Placing him or her on probation;
- Placing him or her in a vocational or health centre;
- Placement in a specialized institution;
- Requiring him or her to enter into preventive recognizance (section 724).

In the case of a minor aged more than fourteen years but less than eighteen years, if found guilty, the court by reasoned decision shall pass sentence. In the case of a non-suspended term of imprisonment, only probation may be ordered in addition. The probation order takes effect after the term of imprisonment has been served (section 725). When delivered, the measures and judgment provided above shall place the infant in custody for a period as is necessary for his or her education until he or she attains civil majority. Before decision on the merits, the court may order provisional probation for a length of time as an observation period.

Probation of the juvenile is provided as a means of support, protection, supervision and education under the trust of parents, guardians, or custodians (section 730). Regular probation officers shall be appointed by joint order of the Minister of Justice and the Minister of Social Affairs. They shall co-ordinate the action of voluntary probation officers (section 731). A voluntary probation officer is designated either in the judgment or decision of the court (section 732). The law also provides that probation measures may be reviewed at any time and at the request of the legal department, the infant himself or herself, his or her parents or guardian or the probation officer (section 737).

In the domain of appeals, appeals in juvenile cases can be brought before the Court of First Instance sitting on cases of juvenile delinquency (section 739). All judgments delivered against minors are entered in the criminal record (section 741). It is also worth noting that imprisonment in default of payment does not apply to infants (section 736).

Mentioning costs arising from trial and measures of protection of juveniles, the Code provides that all judgments delivered by courts sitting in cases of juvenile delinquency shall be exempted from stamp duty and shall be registered free of charge (section 727). Also, travelling expenses incurred by regular and voluntary probation officers in the course of their assignments shall be refunded and the fees of counsel assigned by the court on its own motion shall be paid as expenses incurred in criminal matters.

B. Statutory Instrument

The statutory instrument is Presidential Decree N° 92/052 of 27 March 1992 on the penitentiary regime in Cameroon.

This instrument in its section 2 provides for the creation of five categories of prisons which are: orientation prisons, relegation centres, production prisons, school prisons and special prisons. School prisons and special prisons are of special interest to the correction of juveniles because the former are designed for the theoretical and practical training of minors in order to ensure their reintegration into society, while the latter are reserved for minors who are subject to a particular regime. Meanwhile, the application of this provision for the creation of the above correctional institutions for minors is still awaited.

Concerning custody within the penitentiary establishment, section 20 (4) provides that a special section be reserved for minors. They are not subject to the same punishment regime as adult offenders and they can only be assigned maintenance work within the correctional institution.

Other laws and rules and regulations exist for the treatment of juvenile offenders but these are applied by the social services of the Ministry of Social Affairs. Such juvenile cases are handed to them by the victims of the crime after negotiation with the parents or guardians. These are cases which are not under prosecution.

III. THE CARE OF JUVENILE OFFENDERS AND THEIR REHABILITATION

The Cameroon government has been taking measures to ensure care and reintegration of juvenile offenders, although these are usually limited by economic difficulties. These actions can be perceived at the level of policy-making and penitentiary practice. These notwithstanding, there still exist problems and challenges for the amelioration of juvenile corrections.

A. Policy-Making

Before December 2004, the Penitentiary Administration in Cameroon was attached to the Ministry of Territorial Administration and Decentralisation. This situation created many administrative bottlenecks and delays in the criminal justice system because files had to move between the Ministry of Territorial Administration and Decentralisation and the Ministry of Justice. The former managed convicts while the latter managed those awaiting trial and appellants. This situation led to discriminatory management of inmates in the same prison in favour of convicts. Minors with special needs were also sometimes neglected. This situation has been reversed since 8 December 2004, when the Penitentiary Administration was attached to the Ministry of Justice. Delays in justice, poor treatment of offenders and violation of prisoners' rights have declined in penitentiaries.

The government has elaborated a five year plan (2007-2012) for increasing assistance to female and

juvenile offenders. In the case of juveniles, although financial resources are limited, partnership with civil society organizations, philanthropists and other persons of goodwill has greatly contributed to ameliorating the custody conditions of juveniles. An example is the recent commitment of the Cameroonian football star Samuel Eto'o to provide beds and bedding to minors in all ten central prisons in the country. This has already been done for the central prisons of Yaounde and Douala. The commitment by the government to create elementary, secondary and high schools in all prisons in the near future as need arises is another case in point. These will be used for the academic training of juveniles.

An important aspect of reintegration is professional training. In Cameroon most young offenders who find themselves in prison are from poor social backgrounds and/or broken homes; most lack elementary education and their involvement in crime basically stems from poverty and lack of care. They need professional training in order to acquire skills which they can use to make an honest living after release or probation. Not all prisons in Cameroon have workshops for this purpose but efforts are being made, with the help of stakeholders, to create them in all prisons.

B. Penitentiary Practice

Since minors are mostly first time offenders and victims of broken homes and peer pressure, their treatment in penitentiaries has to relate to their mentality and psyche as teenagers. Minors need psychosocial care, material assistance, educative talks, training, legal assistance and links with their families. Prisons should therefore have facilities for compulsory education and training given the fact that at their age, minors are untrained and most do not have basic education. In addition to the above they must be separated from adult offenders.

In Cameroonian prisons, minors are always separated from other inmates. In cases where there is no separate section in the prison reserved for minors, a ward is set apart for them and is specially guarded. This is to avoid bullying by older inmates, theft, drug abuse, etc. It should be noted that these illicit activities are perpetrated by some adult inmates. Superintendents in charge of prisons always have a 'special eye' on the minors' section because they are particularly vulnerable. It is also worth mentioning that the practical application of discipline and punishment of minors is different from that of adult offenders. More emphasis is placed on sensitivity and education than on repression.

Cameroonian prisons have a Bureau of Socio-cultural, Educative and Leisure Activities and a Bureau of Training. Teaching and educative talks are provided for all inmates with particular attention given to minors. They are given lectures on topics such as the prevention of sexually transmissible infections and HIV/AIDS, personal hygiene, responsible behaviour, etc. Also, training in carpentry, masonry, and tailoring is carried out where workshops for these skills exist.

C. Problems and Challenges in the Care and Reintegration of Juveniles

Many problems plague corrections as a whole, and juvenile corrections in particular, in Cameroon. Among these are overcrowding in prisons and insufficient human, material, and financial resources to effectively and efficiently carry out penitentiary activity. Also, the government faces the challenges of setting up a correctional system adapted to political, economic, social and legal evolutions.

Overcrowding is a major problem in Cameroonian prisons because many prisons were constructed before independence, which was more than 47 years ago. Prisons built for 1,000 inmates today have 3,000 or more inmates. Although minors constitute a small quota of the number of inmates in Cameroon (2,600 out of 22,564 or 11.52% of the total number of inmates), they suffer from this situation because of the absence of special prisons for them. Overcrowding creates poor living conditions and facilitates the spread of contagious diseases. There is a need to build new prisons.

The insufficiency of human, material and financial resources affects the functioning of penitentiary establishments. There is a quantitative and qualitative shortage of penitentiary personnel. This has been caused by the prolonged lack of recruitment due to economic difficulties. The economic problems faced by the country makes it difficult to provide sufficient material for the functioning of vital penitentiary structures such as schools, playgrounds and training workshops. Also, the budgetary provisions for prisons are usually limited.

In recent years, corrections as a discipline has evolved, especially its legal framework and respect of human rights. The government has taken up the challenge to adjust the correctional system to these evolutions by elaborating a new penitentiary regime which will lay more emphasis on reintegration measures rather than the security of penitentiary establishments. The new regime will take particular care of the special needs of each category of offenders, of which juveniles are the most vulnerable. This falls within the reforms envisaged by the government.

IV. ENVISAGED REFORMS IN THE CORRECTION OF JUVENILES AND RECOMMENDATIONS

Under the auspices of the President of the Republic, a certain number of reforms of the penitentiary system as a whole and correction of juveniles in particular have been envisaged. These cover the areas of prison infrastructure, capacity building of penitentiary personnel, reform and organization of the National School of Penitentiary Administration and the development of a collaborative relationship between the Penitentiary Administration and stakeholders.

A. Reforms

Reform efforts are being undertaken in four initiatives.

1. Infrastructure

The need for new infrastructure has been emphasized as a means of solving the major problem in prisons, which is overcrowding. By building operational structures for the custody of inmates, conditions of detention shall be improved. This will offer inmates better living conditions and increase possibilities for the carrying out of activities favourable to reintegration. Some of these penitentiary structures will be used for the custody of minors and women, who represent special categories. The problem of the negative effects of the incarceration of juveniles with adult inmates will consequently be solved.

2. Capacity Building of Penitentiary Personnel

The training of Cameroon's penitentiary personnel emphasizes the security aspects of their jobs and places less emphasis on resocializing activities. This has always led the Penitentiary Administration to resort to personnel of other ministries such as social workers, teachers, nurses, guidance counsellors, and clergy in order to carry out activities of resocialization such as training, counselling, education etc.

Proposed reforms in the above area are the improvement of performance through the reinforcement of the institutional capacities of the Penitentiary Administration, the reinforcement of the capacities of its human resources so as to enable them to respond to the demands of its missions, the modernization of management practices and methods and the development of a resocializing dimension of penitentiary activity.

In this connection, penitentiary personnel shall be trained in methods of treatment of prisoners which respect human rights, ensure discipline, and work towards social rehabilitation. This is necessary because the strength and major resource of any institution is its staff and the capacity building of personnel is instrumental in the attainment of objectives. Many penitentiary workers do not understand the job of corrections. They view their jobs as keeping inmates inside the prison so as to protect public safety. They do not understand that they have to work with inmates and be role models so as to encourage and assist them to correct their criminal behaviour. Juveniles in particular can be resocialized through this approach.

3. Reform and Organization of the National School of Penitentiary Administration

In Cameroon the National School of Penitentiary Administration is in charge of the training of penitentiary personnel. This institution therefore plays an important role in the orientation and application of the government's penitentiary policy. The reform of the school covers the building of new structures in order to make it a sub-regional institution for central Africa, the adjustment of teaching syllabi to the evolution of knowledge, and the creation of specializations. Personnel will be better trained in human rights, vocational activities, social sciences, psychology, security, etc. With this we can expect greater responsibility and accountability from prison staff. The existence of specializations will also permit some personnel to train in the treatment of juveniles.

4. Collaboration Between the Penitentiary Administration and Stakeholders

Such collaboration existed in the past but it was insufficient because of the limited access to prisons generally allowed by the government to civil organizations who want to get involved in resocialization activities. One of the objectives of penitentiary reform is the development of collaboration between the Penitentiary Administration and other stakeholders involved in the care of inmates so as to favour collective action in the execution of penalties, promote mechanisms to evaluate the impact of treatment on the inmate, and from this, orientate criminal policy. In this perspective, the introduction of alternative forms of punishment as a means of reducing overcrowding in prisons has been envisaged. In addition, since public opinion is generally hostile to prisoners and even penitentiary personnel, sensitization of public opinion and the community is necessary. This can only be achieved with the help of stakeholders. Community complaints of lenient actions and procedures for particular categories will be reduced since the community will be made to understand the importance and necessity of such actions. It should be noted that complaints of lenient treatment of some offenders, most of the time minors, which in Cameroon usually take the form of public manifestations of dissatisfaction, lead judges to become harder on offenders so as to please the public. Increased collaboration will also facilitate community based care and reintegration programmes for juveniles. Such activities are presently absent in Cameroon.

B. Recommendations

Several recommendations can be made to complete the reforms to ameliorate penitentiary activity. These involve individualization, premature release measures (probation, parole, and release on licence), identification and computerization of information and indeterminate sentencing.

1. Indeterminate Sentencing

This does not exist in Cameroonian penal law. Indeterminate sentencing gives authority to judges to give a sentence range (minimum and maximum) to a criminal, within which, if he or she is of good conduct in prison, he or she serves the minimum period and in the contrary circumstance, serves the maximum period. The law here should be clearly defined to fix a sentence range for each offence. Judges will pronounce the specified sentences and prisoners will make an effort to change positively so as to spend less time in prison. If he or she feigns an improvement and goes on to repeat his or her crime when released, he or she will then be given the maximum penalty for the offence committed. This measure is particularly useful for juveniles who may have been lured into crime by peer pressure or psychological imbalance.

2. Identification and Computerization of Information

To effectively fight criminality there should be a mastery of information relating to it. The government should make sure convicted prisoners' files have pictures and finger prints and these should be computerized. The manual calculation of sentences and keeping of files in Cameroonian prisons does not favour an effective follow up and monitoring of criminality. Record services in prisons should be computerized and there should be a network link between all prisons. With this, it will be easier to sort out recidivists and control the execution of penalties. Also the registry of the court should be computerized and linked to the computer network of prisons so as to ensure that all certificates of non-conviction delivered are given to persons whose criminal records are clean as provided by law.

3. Early Release Measures

These are probation, parole and release on licence.

Probation is provided by law in Cameroon but its effective application is limited because of the financial resources required. It is exclusively directed towards juveniles. Nevertheless there is a need to involve more penitentiary personnel in probation work in the future given that they, most of the time, have a better knowledge of the criminal, social and character antecedents of the juvenile. This is especially applicable when he or she is a recidivist.

Parole is not provided by law in Cameroon, but it can be introduced as a measure for adult inmates. Release on parole should be accorded to adult inmates who exhibit good conduct in prison. In such circumstances, they should promise to be of good behaviour. If they do not abide by that undertaking, they will be reincarcerated.

Release on licence is provided by Cameroonian penal law. Its grant and revocation is by presidential decree. This makes it a difficult process for the inmate. There is a need to create regional commissions for the grant and revocation of release on licence to ease the process.

4. Individualization

In order for custody and reintegration to succeed, they should take into account the individual capacities, abilities, behaviour and antecedents of each prisoner. All prisoners do not have the same needs. The case of minors shows that their age makes them more vulnerable to prison culture. Individualization can only succeed if there is a good observation strategy within the prison to identify inmates of good behaviour and allow them to benefit from early release. It is also necessary to adapt the education and training provided within the prison to the needs of each prisoner.

V. CONCLUSION

The legitimate objective of penitentiary activity is reintegration. In order to achieve this, individual situations and capacities should be taken into account. Juveniles constitute a particular category within the prison milieu. The issue of accomplishing a positive character change through immersion in the 'criminal society' that is prison has always been raised. Any reforming or reshaping under such circumstances will probably be in a negative direction. Most of the time, when inmates begin to behave in a socially acceptable manner, it is largely as a result of their own initiative and not because of the system. Ideally, the factors that lead to these circumstances should be understood and controlled. Poor individualization is one of them. In the case of minors, rigorous separation and discipline is necessary in order that probation and other special measures of protection can lead to reintegration.

EFFECTIVE MEASURES FOR THE TREATMENT OF JUVENILE OFFENDERS AND THEIR REINTEGRATION INTO SOCIETY

*Shu-kan Kenny Cheung**

I. INTRODUCTION

This paper aims to give an overview of the core treatment programme components provided by the Correctional Services Department (CSD) of the Government of the Hong Kong Special Administrative Region in the correction of young offenders. It is prefaced by a brief definition of a young offender and the spectrum of sentencing options for this particular group of offenders. The discussion then focuses on the major components of the programmes catering for young offenders and the role of the community in rehabilitation work and concludes by offering a glimpse of the way ahead.

II. DEFINITION OF YOUNG OFFENDERS

According to Article 1 of the United Nations Convention on the Rights of Child, a “child” means every human being below the age of 18 years. The Interpretation and General Clauses Ordinance defines “adult” as a person who has attained the age of 18 years. The legal age of criminal responsibility in Hong Kong is seven years and a “child” is interpreted as a person under the age of 14 years. A “young person” refers to a person of between 14 years and 16 years of age.

The CSD of Hong Kong considers those under the age of 21 years to be young offenders. The Criminal Procedure Ordinance specifies that no court shall sentence a person of or over 16 years and under 21 years of age to imprisonment unless it is of the opinion that no other method of dealing with such person is appropriate. In the management of penal institutions, the Commissioner of Correctional Services has the statutory duty and power to set aside a prison or a portion of a prison to accommodate inmates under 21 years of age. The Prison Rules and the newly enacted Long-term Prison Sentences Review Ordinance require a regular review of sentences of prisoners who are under 21 at the date of conviction. Prisoners under 21 may be required to attend compulsory educational classes. Persons sentenced to imprisonment of three months or more before attaining the age of 21 years and released before attaining the age of 25 years are subject to statutory post-release supervision. Only persons aged not less than 14 and not more 21 years of age may be sentenced to detention in a training centre. Those under 25 years of age may be sent to a detention centre. Accordingly, the term “young offender” is generally adopted to include offenders aged seven to 20. In Hong Kong, the CSD and the Social Welfare Department (SWD) are responsible for providing services for this group, but no person under the age of 14 years shall be placed in the custody of the CSD. Notwithstanding the slight variation in definitions, it is manifestly clear that the legislature intended to provide differential treatment in the correction of young offenders.

III. SENTENCING OPTIONS FOR YOUNG OFFENDERS

The criminal justice system of Hong Kong provides the courts with a wide range of options in dealing with offending youths, each of them operated by the CSD or the SWD under different ordinances. Due to the limited length of this paper, only the programmes under the purview of the CSD will be discussed in the following sections.

A. Pre-sentencing Assessment

For any programme to be effective, whether institution-based or community-based, an essential factor is giving a young offender an appropriate sentence. To determine the appropriateness of a particular programme, or to match the rehabilitative needs of a young offender to a programme, the court obtains and considers information about their circumstances, taking into consideration any data which is relevant to the character of the young offender and his or her physical and mental condition. In the case of the CSD, any young offender who is considered for training in a detention centre, a training centre, or a drug addiction treatment centre must be remanded for a period not exceeding three weeks to undergo assessment.

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In the process of pre-sentencing assessment, an intake officer interviews the young offender and conducts field and home visits before compiling a report on the social history of the young offender. In 2006, a total of 4,633 assessment reports were written for the consideration of the courts. The major criterion for admission to a drug addiction treatment centre is drug dependence at the time of admission. For the detention centre, the young offender must be physically fit to take part in rigorous physical exercises, mentally sound and intellectually able, with no previous experience in a prison or a training centre. Those who, for a variety of reasons, are found to be unsuitable for the detention centre or drug addiction treatment centre, primarily due to their criminal sophistication or physical, mental, or intellectual deficiencies, which require a longer period of comprehensive correctional training, may be considered for admission to a training centre. Though the law stipulates explicitly that no court shall sentence a person under 21 years of age to imprisonment unless it is of the opinion that no other method of dealing with him or her is appropriate, a considerable number are still sentenced to a term of imprisonment because of the gravity and seriousness of their offences.

In other words, the CSD runs an informal system of first receiving the young offenders at the detention centre at the earliest stage of their deviation from the law, their graduation from the training centre, perhaps a diversion to a drug addiction treatment centre due to drug dependence, and eventually prison, mainly in accordance with the advancement of their criminal careers and incorrigibility.

In recognition of the significance of pre-sentencing assessment and the need for a comprehensive enquiry into the most appropriate programme of treatment for convicted young offenders between 14 and 25 years of age, the CSD and the SWD jointly established the Young Offender Assessment Panel in 1987. With the services provided by the Panel, the lower courts of law (magistrates) may first refer a convicted young offender to the Panel for comprehensive assessment before passing sentence. In 2006, the Panel received a total of 194 referrals from magistrates and 82% of its recommendations were accepted.

There are five major correctional programmes catering for the treatment of young offenders, all of which are of institution-based residential modality.

B. Treatment Programmes

1. Sentence-oriented Main Programmes

The CSD is managing a detention centre, rehabilitation centres, training centres, drug addiction treatment centres and prisons, i.e. a spectrum of criminal sanctions and correctional programmes for offenders aged 14 or over, who cannot be otherwise dealt with in the community. Tailor-made sentence-oriented treatment programmes are devised to cater for the different needs of offenders with different backgrounds. They are briefly illustrated below.

(i) Detention Centre

An alternative to imprisonment for male young offenders aged between 14 and 25, who do not have a long string of previous convictions and whose offences are not serious in nature. The rigorous programme provides young offenders with 'short, sharp, shock' treatment emphasizing strict discipline, hard work, physical training and foot-drill. It aims to teach offenders respect for the law, self respect, an awareness of neglected capabilities in legitimate pursuits, and an ability to live with other people in harmony.

(ii) Rehabilitation Centre

This is another alternative to imprisonment for young offenders aged between 14 and 21, particularly those who are not physically fit for the Detention Centre programme. Discipline training in Phase I (2-5 months) is followed by a period of residency in a half-way house setting in Phase II (1-4 months).

(iii) Training Centre

This is an intermediate sanction between imprisonment and the Detention Centre or a Rehabilitation Centre for young offenders aged between 14 and 21. The orderly and structured training programme aims to develop the character of a young offender. It combines with the personal influence of members of staff and education and vocational training to form the basis of the programme. All inmates undergo half-day education classes and half-day vocational training in accordance with their levels of educational attainment and vocational skills. They are also encouraged to take an active part in indoor and outdoor extra-curricular

activities, for example, Scouting, Guiding, Outward Bound courses, the Hong Kong Award for Young People (the former Duke of Edinburgh's Award Scheme), etc. Offenders shall be subject to three-year statutory supervision after discharge.

(iv) Drug Addiction Treatment Centre

This is for drug addicts who are convicted of minor criminal offences. The aims of this programme are threefold: detoxification and restoration of physical health; treating the inmate's psychological and emotional dependence on drugs; and preparation for the inmate's reintegration into society.

After admission, every inmate is given symptomatic treatment for drug withdrawal syndrome. The treatment of psychological dependence is effected through the work programme as well as individual and group counselling aimed at improving the inmate's health and courage, cultivating positive work habits, and establishing self confidence and a sense of responsibility. Inmates also attend compulsory remedial educational classes and participate in various recreational activities. A specially designed Relapse Prevention Programme, aided by tailor-made videos, assists inmates in gaining better insight into their drug problems and prepares them psychologically prior to their release.

A progressive system is devised for the above programmes and a Board of Review assesses the progress, attitude, effort and response of each inmate every month. An inmate must have secured suitable employment or a place in a school before he or she is determined by the Board to be released, to be followed by a 12-month statutory aftercare supervision period (except Training Centre supervisees). During the post-release supervision period, the ex-offender can be recalled for a further period of detention if any of the supervision conditions are breached.

(v) Imprisonment

Young offenders, male or female, sentenced to imprisonment are accommodated in institutions purposely set aside for them. These institutions operate a programme based on half-day education classes and half-day vocational training with the term of imprisonment subject to good conduct and industry. Their sentences are regularly reviewed to ensure that they are receiving treatment in their best interests. A supervision order with provision for recall is made against a young prisoner who, before his or her 21st birthday, is sentenced to serve a term of imprisonment of three months or more and is released from prison before his or her 25th birthday.

2. Needs-oriented Supplementary Programmes

Apart from the aforementioned sentence-oriented treatment programmes, the CSD has also developed a variety of needs-oriented supplementary programmes to cope with the unique rehabilitative needs of specified groups of offenders. Some such programmes are explained below.

(i) Substance Abuse Awareness and Recidivism Prevention Programme

This programme aims to encourage offenders with substance abuse problems to receive necessary intervention and to facilitate their reintegration into the community.

(ii) Violence Prevention Programme

The purpose of this programme is to provide violent offenders with comprehensive psychological treatment services to reduce violent reoffending, tailored according to an evidence-based, specialized risk-needs assessment.

(iii) Offending Behaviour Programme for Young Offenders

This course helps young offenders to develop positive attitudes and skills instrumental to rehabilitation.

(iv) Relapse Prevention Course for Inmates Undergoing Drug Addiction Treatment

This programme focuses on improving inmates' efficacy in dealing with problems of substance abuse and minimizing relapse through increasing their motivation to change their drug-taking behaviour, identifying high risk situations relating to drug-taking, and developing skills to deal with these high-risk situations.

(v) Sex Offender Evaluation and Treatment Programme

This programme aims to provide comprehensive and systematic psychological evaluation and treatment services for sex offenders in a therapeutic environment with a view to enhancing their motivation for treatment.

(vi) Educational Programme

This programme is to provide offenders, both young and adult, with opportunities to better themselves through education and to assist them in participating in public examinations.

(vii) Vocational Training

This programme is to assist offenders in acquiring vocational skills which may help them seek gainful employment after discharge and thus start a new healthy life.

IV. FACTORS CRITICAL TO THE SUCCESS OF TREATMENT PROGRAMMES

The various treatment programmes mentioned in the last section have been devised to cope with the different rehabilitative needs of different groups of offenders. How successful these programmes are depends on to what extent they are able to achieve the community expectations or their pre-set aims. In this section, the critical success factors of treatment programmes are to be elaborated, which naturally form the basis or standard of measuring their success. We thereafter take a look at the measures currently used and then try to see if there is any inspiration to be taken from this review.

A. Reoffending Behaviour

The ultimate objective of all treatment programmes is to assist rehabilitated offenders to reintegrate into the community as law-abiding citizens. Leading them not to reoffend is the core critical success factor of treatment programmes. Should this mission not be achieved, the longer the interval between discharge and reoffence, the more successful is the concerned treatment programme.

Certain treatment programmes are tailor-made to help offenders change their offending behaviour and promote their psychological wellbeing, such as those targeting sexual offenders and violent offenders. Whether these rehabilitated offenders recommit crimes of a similar nature determines the effectiveness of these treatment programmes.

B. Other Rehabilitative Needs

Believing that having a healthy lifestyle impacts positively on rehabilitated offenders, the Department has been introducing various educational and vocational training programmes to assist their rehabilitation. Therefore, public examination results and vocational training that helps rehabilitated offenders to seek employment after discharge are ways of measuring the programme's success.

C. Stakeholders' Perspective

Our existence is to satisfy stakeholders' needs or to meet expectations of various parts of the community. If this is true, how our stakeholders, such as the public and even the offenders, assess the success of our treatment programmes seems to be of paramount importance.

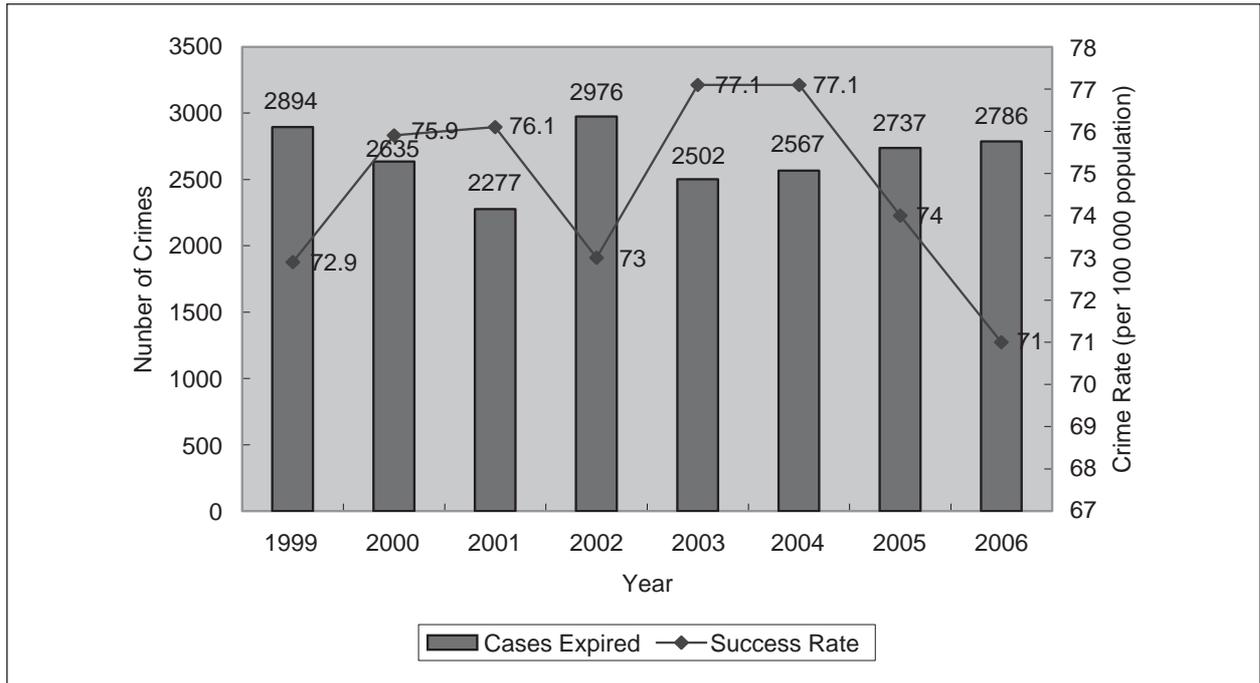
D. Current Measures to Ensure the Effectiveness of Treatment Programmes

1. Success Rates

Persons released from the detention centre, rehabilitation centres, training centres and drug addiction treatment centres, certain young prisoners, and prisoners released under various supervision schemes, are required to receive statutory supervision from CSD aftercare officers. Such requirement is to ensure continued care and guidance, thus is conducive to their rehabilitation. The success rate of these aftercare services is defined as the percentage of supervisees who have completed the statutory supervision without reconviction of a criminal offence. Drug addiction treatment centre supervisees must also remain drug free. The following figures reflect the success of various treatment programmes.

As shown in Figure 1, a total of 2,786 persons completed statutory supervision in 2006 and the overall success rate was 71%. Success rates for various programmes were 95% for detention centres, 96% for rehabilitation centres, 70.8% for training centres, and 56.3% for drug addiction treatment centres.

Figure 1: Success Rates



2. Recidivism Rates

The recidivism rate refers to the percentage of readmission within three years of discharge of all local convicts released from CSD custody. Different time spans may sometimes be used to take a look at the time it takes the recidivist to reoffend after discharge. It provides a simple and easy-to-understand figure to summarize the performance of local offenders in leading a law-abiding life after discharge from CSD custody. Apart from providing timely feedback to facilitate CSD programme planning and monitoring, it helps other criminal justice components monitor the recidivism trend so that prompt action can be taken to contain the problem and fight crime, thereby contributing to keeping Hong Kong a safe city.

In order to better reflect the actual reoffending behaviour of rehabilitated offenders, we compare the recidivism rates of different categories such as by gender, age and type of offence. This is to allow administrators to better allocate scarce resources and to identify room for improvement. The recidivism rate in 2005 was 45.1% and in 2006 was 43.3%.

3. Target Achievement of Various Needs-oriented Programmes

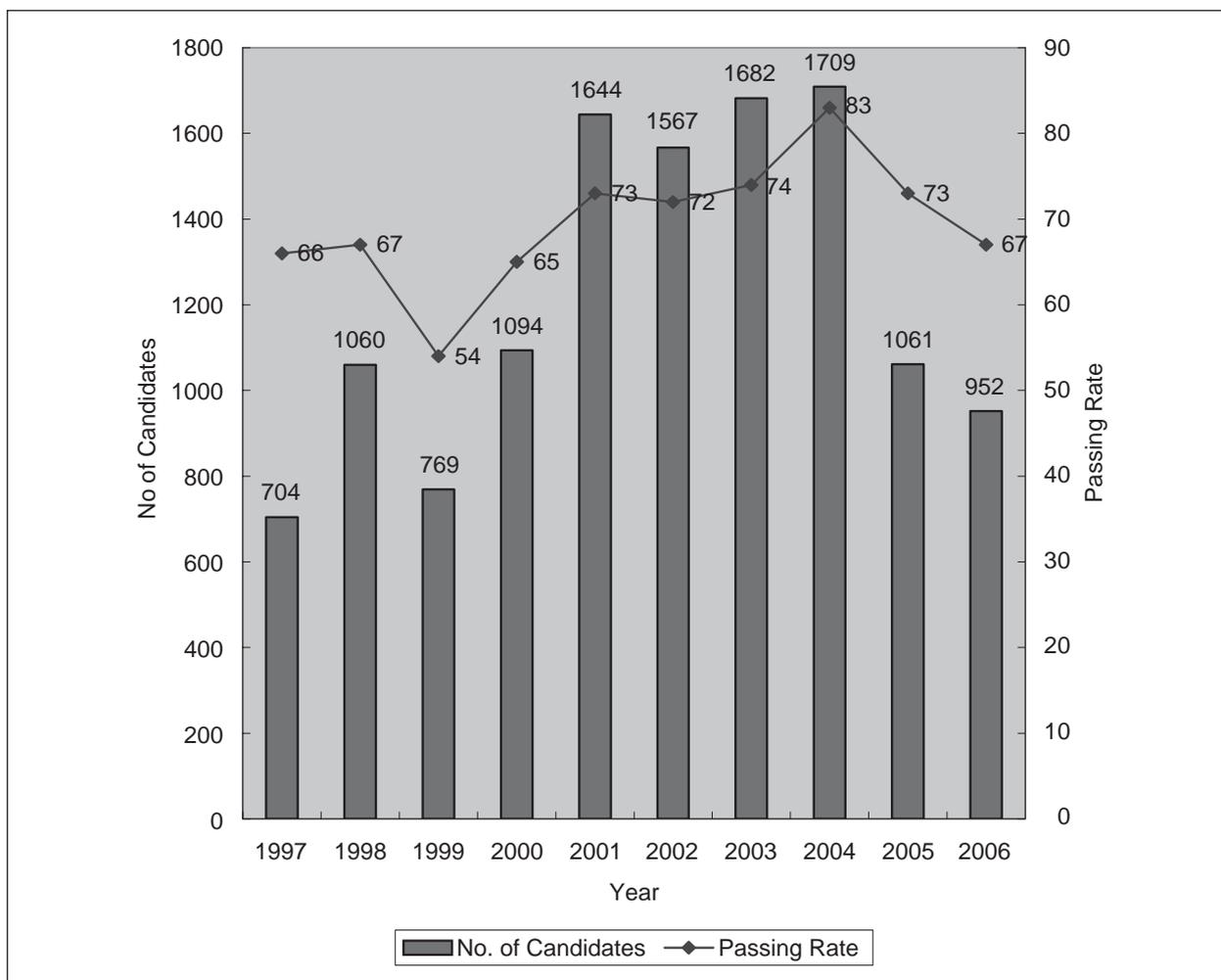
Thus far, this paper has described various needs-oriented treatment programmes devised to achieve different rehabilitative targets. The CSD has developed different measurement tools to check their effectiveness. Basically, for the programmes aiming at changing offending behaviour and promoting offenders' psychological wellbeing, the tools used may be classified into two categories. One is to compare the recidivism rates of those who have attended the treatment programme with those who have not. The other is to check whether rehabilitated offenders re-commit the offences for which they underwent treatment e.g. sex offender treatment. The observations greatly assist in refining our programmes.

4. Education

Education helps offenders improve their academic standards and interpersonal skills, and restores their self-esteem and confidence, i.e. it is good for their future reintegration. The CSD provides half-day compulsory education programmes for young offenders (under 21) and guidance to adult offenders who participate in educational studies on a voluntary basis. They are encouraged to sit external and public examinations such as the Hong Kong Certificate of Education Examination, the Hong Kong Advanced Level Examination, the London Chamber of Commerce and Industry Examinations and other public examinations required by distance learning courses at degree, diploma or certificate level.

Thus, their examination results, shown in Figure 2 below, tell how successful the educational programmes are. In 2006, offenders attempted a total of 952 public examination papers and obtained an overall passing rate of 83%.

Figure 2: External and Public Examination



5. Vocational Training

Young offenders (under 21) receive compulsory half-day vocational training in industrial or commercial skills to facilitate their smooth reintegration into the community after discharge. Vocational training is also extended to adult offenders on a voluntary basis. A wide variety of courses keeping pace with developments in the community are conducted to prepare offenders to obtain accredited qualifications by taking the City & Guilds International or the Pitman Qualifications Examinations.

Apart from the examination results, whether rehabilitated offenders may apply the skills acquired through vocational training to obtain job opportunities in the same field reflects, at least to a certain extent, the success of the vocational training programmes. Such data are therefore maintained.

6. Inspiration

It is vital to listen to stakeholders in order to address the problems we face. Although we have constant contact with the public and have been listening to their expectations of correctional work, a more in-depth or scientific approach, i.e. survey, may help us understand the community more and inspire us to further develop our stakeholder-oriented treatment programmes. If we can accommodate possible unpredictable outcomes and unfavourable comments, conducting public surveys to understand community expectations of us and the public assessment of our performance is useful.

The Department has also collaborated with the School of Continuing and Professional Education of the

City University of Hong Kong in embarking on a new project entitled "Continuing Education for Offenders" with the intent to stimulate participants' interest in pursuing further studies. A further two programmes, comprising a reading programme to promote reading culture and a mentor scheme providing learning support to individual offenders, will be launched soon.

The family, as an important agent for change and a powerful protective factor for offender rehabilitation, is well-recognized by the CSD, especially in the treatment of young offenders. An Inmate-Parent Centre opened in 1999, and with the launch of the Inmate-Parent Programme in the same year, demonstrates the scope of family work in an educational as well as interactional format. The programme aims at facilitating the reintegration of young inmates into their families by enhancing communication between them and their parents.

Besides video seminars on communication and parenting with complementary VCD, other measures are also implemented. Some examples are using posters and reminder cards; talks on enhancing children's self-efficacy; emotional handling and understanding children's substance abuse; and reducing inmates' risks of reoffending by strengthening their parents' capability in supervising their children. Familiarization visits are arranged for family members to acquaint themselves with the institutional training programme. The *Never Again Programme* aims to cultivate a rehabilitative relationship between inmates and their families through the work of group dynamics. Birthday gatherings for young inmates are held in correctional institutions with the inmates' immediate family members.

For the convenience of aged, pregnant or physically disabled family visitors, a video visit system was introduced in 2001. This video conferencing equipment links centres in the city with a number of institutions in remote areas.

V. FOSTERING REINTEGRATION

A. Staged Release to the Community

According to existing legislation, all young offenders, drug addicts, those who have committed offences related to violence, sex or triad activities and been sentenced to two to six years in jail, as well as prisoners whose term of imprisonment exceeds six years, are required to be put under CSD supervision for a period of several months to a few years after release, during which time the Department will provide supervision services for them. In preparation for effective supervision, rehabilitation officers on supervision duties strive to foster a trustful relationship with inmates as well as their families and significant others during the period of detention. They also provide inmates with appropriate support and guidance to adapt to the institutional programme, and to become aware of their inadequacies and the difficulties ahead. Through regular contact and visits, prisoners discharged under supervision are assisted in leading law-abiding and decent lives.

The *Halfway House Programme* of the CSD is an extension of the rehabilitative efforts carried out within the penal institutions. Following release, supervisees in need of a period of transitional adjustment reside in a halfway house from which they go out to work or school during daytime and to which they return at night. The programme seeks to cultivate a sense of self-discipline and positive work habits within a structured and supportive environment.

B. Removing Hurdles

A gainfully employed ex-offender is much less likely to commit crimes. However, some prospective employers may harbour misunderstandings about rehabilitated offenders and their lives during incarceration. To overcome such obstacles, in 2001, 2003 and 2004, the CSD organized, in conjunction with the Centre for Criminology of the University of Hong Kong, three symposia on employment for rehabilitated offenders. Through experience-sharing by rehabilitated offenders and their employers, we have been able to cultivate a deeper understanding of rehabilitated offenders in employers of various trades and appeal to them to provide equal job opportunities for rehabilitated offenders.

In addition to a number of employers contacting the CSD after the symposia to make enquiries about the employment of rehabilitated offenders, some enthusiastic organizations in the private sector have promoted the "One Company, One Rehabilitated Offender" campaign since 2004 in three local districts, whereby job placements are made feasible for some rehabilitated offenders. This worthwhile campaign will be extended

to all 18 districts in the territory. As of 30 June 2006, we have a database of some 300 employers who have offered to rehabilitated offenders more than 600 job vacancies in 100 different trades resulting in 300 rehabilitated offenders having been successfully employed.

Being the major employer in the territory, the Hong Kong Government has established guidelines in taking the lead in employing rehabilitated offenders so long as this is not inconsistent with the public interest. The question on criminal convictions in the application form for government posts was deleted in 2003 and all applicants are subject to the same set of open and fair selection procedures. Candidates are selected based on their ability, potential and performance, as well as the qualifications, experience and level of integrity required for the post under recruitment.

As regards legislation, the Rehabilitation of Offenders Ordinance (Chapter 297, the Laws of Hong Kong) provides for the conditions under which a conviction will be spent. Such conditions include situations where:

- a) the person was not sentenced to imprisonment exceeding three months or to a fine exceeding HK \$10,000 in respect of a conviction in Hong Kong;
- b) he or she has not been convicted in Hong Kong previously; and
- c) a period of three years has elapsed and he or she has not been convicted in Hong Kong of a further offence.

The term “spent conviction” means the following:

- a) the conviction is not admissible as evidence in any proceedings save for the exceptions set out in sections 3 and 4 of the Ordinance;
- b) there is no obligation to disclose that previous conviction if asked; and
- c) failure to disclose that conviction cannot be a ground for dismissing or excluding the person from any office or employment.

It is considered that the above approach, encompassing both public education and legislation, strikes a proper balance between helping rehabilitated offenders return to the community and protecting the public interest.

C. Preparing the Community

A survey covering some 1,600 discharged offenders and serving prisoners was conducted in 2000 by the CSD to heighten public awareness of the problems and needs of rehabilitated offenders and to facilitate effective planning and delivery of rehabilitative services. The survey revealed that the most immediate problems at the initial stage of their release were securing employment, improving family relationships, seeking financial assistance and looking for a dwelling place. Measures and initiatives that have been put forward to address these needs include:

- conducting suitable training to assist offenders in securing employment after release and soliciting employers to offer fair job opportunities to them;
- organizing more structured activities for offenders and their families to rebuild their relationships;
- establishing a telephone hotline manned by social workers to provide timely guidance and crisis intervention services for discharged offenders;
- providing information on non-government organizations (NGOs) and trust funds which discharged offenders with pressing financial needs can approach for short-term cash assistance;
- identifying those offenders in need of longer-term aid and referring them to the Social Welfare Department (SWD) for support under the Comprehensive Social Security Assistance scheme;
- providing financial assistance to discharged offenders to pursue education programmes and employment-related courses.

While the CSD is committed to providing the best possible opportunity for all offenders to make a new start in life upon release, the efforts made by the government and the offenders themselves are not adequate. The potential for success largely depends on how ready the community is to help and support them. Common misconceptions about offenders and, to a certain extent, the prison regimes, are mainly due to lack of information and public education. This not only creates obstacles to the smooth reintegration of

rehabilitated offenders but also leads to wastage of resources devoted to the rehabilitation of offenders.

Recognizing that community acceptance and support are essential to the successful reintegration of rehabilitated offenders, we set up the Committee on Community Support for Rehabilitated Offenders in late 1999, comprising community leaders, employers, education workers, professionals, and representatives of NGOs and government departments to advise on rehabilitation programmes and reintegration and publicity strategies. On the advice of the Committee, a series of publicity and public education activities have been organized to help the community better understand the needs and problems of rehabilitated offenders and to appeal for their support. These include community involvement activities jointly held with various District Fight Crime Committees, special TV and radio programmes, roving exhibitions, uploading the well-received and prize-winning TV docu-drama on rehabilitated offenders "The Road Back" to the CSD website for public viewing, the appointment of local celebrities and public figures as Rehabilitation Ambassadors, etc.

To assess the effectiveness of the publicity strategies, we carried out opinion polls in 2002 and 2004. The findings were encouraging, revealing that 59.5% of the respondents in 2004 agreed that publicity activities could enhance their understanding of rehabilitated offenders, and that 91.9% considered it worthwhile for the Government to continue to conduct publicity activities to appeal for community support for rehabilitated offenders. In 2002, the percentages were 43% and 83.6% respectively.

A new initiative to enhance public understanding and support of our work is the Hong Kong Correctional Services Museum. Opened in late November 2002, the museum serves to preserve and showcase the history of the Department and the evolution of local corrections from a closed system that focused on punishment to the present one that emphasizes rehabilitation and community partnership. The museum helps lift the veil on correctional work, dispel the misconceptions held by the public about prisons, enhance the Department's public image and serve as an interactive platform for our staff to share with visitors their experience in helping prisoners start afresh and the difficulties they encounter in their daily work. Up to April 2007, over 370,000 people had visited the museum.

The Department values partnership with community organizations and continues to receive support, both financial and in kind, from them to take forward projects for the benefit of offenders and rehabilitated offenders. These organizations include the Lions Clubs, Rotary Clubs, Zonta Clubs, Yan Oi Tong, Lok Sin Tong Benevolent Society, Pok Oi Hospital, Yuen Yuen Institute, Care of Rehabilitated Offenders Association, International CICA Association of Esthetics and Tung Sin Tan.

To further encourage the involvement of the general public in our rehabilitation work, we formed the CSD Rehabilitation Volunteer Group in 2004 to conduct interest groups on languages, computers and other cultural pursuits for offenders in various correctional institutions and on occasion, to assist in publicity campaigns to promote the message of acceptance of rehabilitated offenders. The Group now consists of more than 180 volunteers who are mostly university students and serving teachers, and has conducted some 270 classes and served over 3,000 inmates.

D. Continuity and Inter-Agency Collaboration

Community participation in various aspects of the correctional and rehabilitative process builds a bridge between the community and the offenders. As a result, community attitudes towards offenders begin changing and supportive connections are formed that are more conducive to an offender's re-entry to society. At present, there are more than 60 religious bodies and non-government social services agencies working with us in providing services to help prisoners reintegrate into the community. These organizations, through the employment of social workers, peer counsellors and volunteers, render counselling, employment and accommodation assistance, and recreational and religious services for persons under our custody as well as rehabilitated offenders. Also, the Continuing Care Project implemented in early 2004 engages seven NGOs to follow up on supervisees who, after completing the statutory supervision, are still found to be in need of, and are willing to receive, counselling services.

With a view to strengthening co-operation amongst NGOs and providing all NGO partners with an opportunity to exchange views on matters relating to rehabilitation services, forums with NGO representatives have been held in the past. Besides, a web-based messaging platform has been set up to provide users with an interactive site to post up topics for open discussion.

E. Outreach Approach for Juvenile Crime Prevention

Apart from detaining offenders in a decent and safe environment, the CSD also strives to provide comprehensive rehabilitative services and programmes to offenders with the long-term objectives of protecting the public and reducing crime. In line with the Department's outreaching strategy to support the District Fight Crime Campaign, the CSD has undertaken a number of public education initiatives for youth over the years. The purposes of these initiatives are two-fold, namely to help prevent juvenile delinquency through better understanding of the harmful effects and untoward consequences of committing crimes, and to promote youth support for offender rehabilitation through encounters with rehabilitated offenders who have determined to turn over a new leaf in life. Some such initiatives are outlined below.

1. Personal Encounter with Prisoners Scheme (PEPS)

The CSD has been running PEPS since 1993, with a view to generating attitudinal and behavioural changes among youth at risk. Under this Scheme, participants will visit one of the designated correctional institutions, and have face-to-face discussions with reformed prisoners. The objective is to prompt the participants to think about the consequences of committing crimes. At the same time, the participating prisoners can develop a positive self-image and build up confidence through the experience sharing sessions. In 2006, 207 visits were arranged for a total of 3,399 young people and students under PEPS.

2. Green Haven Scheme (GHS)

The Department started the Scheme in January 2001 to promote anti-drug messages and the importance of environmental protection among young people. Under the Scheme, participants will visit the mini drug museum at the Drug Addiction Treatment Centre on Hei Ling Chau and meet with young inmates there to learn about the harmful effects of drug abuse. They will also take part in a tree planting ceremony to pledge support for rehabilitated offenders and environmental protection, and as a vow to stay away from drugs. In 2006, 33 visits were arranged for 904 participants under GHS.

3. "Options in Life" Student Forum

To demonstrate the willingness of rehabilitated offenders to contribute to society, the CSD organized a series of student forums in all 18 districts from late 2003 to late 2005 to provide opportunities for secondary school students to interact with rehabilitated offenders, and to discuss with them the detrimental consequences of committing crimes. A total of 20 student forums have been organized with 3,300 participants. In line with the CSD's community involvement strategy, arrangements have been made for similar forums to be run by 12 non-government organizations (NGOs) since 2006. The CSD provides the necessary support and guidance to the NGOs.

VI. CONCLUSION

Societies are now focusing on how best to reintegrate offenders into society and to reduce their chances of reoffending, for the good of society and the offenders themselves. The young offender rehabilitation programmes of Hong Kong Correctional Services Department aim to help young offenders develop socially acceptable behaviour and improve their interpersonal skills; strengthen their confidence and abilities to cope with stress and difficulties arising from their reintegration into society; and enhance their potential for productive and decent employment. As responsible correctional administrators, we exercise care in putting the right proportion of discipline, sanction and constraints together with rights, privileges, and measures which facilitate the young offender to change for the better, while at the same time providing for him or her protection and security, and securing a way to re-enter mainstream society. The CSD will endeavour to become a pioneer in meeting society's expectations, fulfilling our mission in the correction of offenders, and rehabilitating them as law-abiding citizens.

It is most encouraging to see that an increasing number of community organizations and the general public share the view that the community as a whole would benefit from the successful transition of rehabilitated offenders, and many have expressed interest in rendering support to them after learning of their needs and rehabilitation efforts through our publicity activities. Notwithstanding this, the CSD will continue to focus efforts on cultivating the desired corporate culture in order to match our VMV statements, empowering prisoners and rehabilitated offenders to face the challenges of reintegration into the community and enlisting community support in the rehabilitation of young offenders.

EFFECTIVE MEASURES FOR THE TREATMENT OF JUVENILE OFFENDERS AND THEIR REINTEGRATION TO SOCIETY

*Loupua Kuli**

I. INTRODUCTION

The Kingdom of Tonga (also known as “The Friendly Islands”) is a monarchy with King George V as the Head of the State. It is comprised of three main island groups, Tongatapu, Vava’u and the Ha’apai group. There are minor islands such as ‘Eua and the two Niua located further to the North.

The 1875 Constitution of Tonga is still the country’s Supreme Law and is also one of the oldest Constitutions in the world. The Criminal Offences Act (COA) governs criminal activities within the Kingdom. This law applies equally to everyone regardless of their age, race, religion or status. The law of Tonga does not stipulate the youngest age at which a person may be charged with a crime.

The Kingdom still has no Probation Act to guide the work of its probation officers. However, those within the Crown Law Office who are responsible for drafting legislation are addressing this matter. Therefore the probation officers’ duties are authorized and guided by the following directives:

- (i) Court Orders, particularly under section 25A of the COA. This is in relation to Community Service Orders;
- (ii) Cabinet Decisions, particularly the new rehabilitation programme for youth known as the “Youth Diversion Programme”;
- (iii) Traditional procedures formulated by Ms. Grigg, a volunteer from the UK who founded the probation service in 1994;
- (iv) Legal advice from the Crown Law Officers.

The Probation Division in Tonga handles adult and youth (juvenile) cases, both through the justice system and outside it.

In addition, the Probation Division is under the supervision of the Secretary for Justice and it employs five officers. This is a major development because last year, there were only three officers. These five officers are based at the main island, Tongatapu. The Probation Service is yet to be extended to the outer islands. There are five Magistrate Courts as well as the Supreme Court in Tongatapu, two Magistrate Courts at Vava’u and one at Ha’apai. The Supreme Court has Court Circuits to Ha’apai and Vava’u, once and twice respectively every year. There are also monthly Magistrate Court Circuits to ‘Eua from the Tongatapu Magistrate’s Court and the Niua from Vava’u Magistrate’s Courts. The Probation Division’s work is limited to the courts on the main island unless there is an urgent need for an officer on the other islands.

As a result of the riot in Tonga on 16 November 2006, the implementation of the now major youth rehabilitation programme commenced. The name of this programme is the Youth Diversion Programme. First time offenders aged seventeen and under are diverted to this programme at the discretion of the Prosecution Service. The details of this new programme will be discussed later in the paper.

With the limited staff and infrastructure of the Probation Division, we do our best to cope with the increasing workload and to provide the highest quality service possible.

II. SERVICES PROVIDED BY THE TONGA PROBATION DIVISION

A. General Services

The following are the services provided by the Probation Division in Tonga in relation to juvenile rehabilitation and reintegration into Tongan society:

* Probation Officer, Probation and Youth Justice Division, Ministry of Justice, Tonga. Please note: the use of the word “youth” in this paper also refers to juveniles.

- (i) Preparation of pre-sentencing reports as directed by the Court;
- (ii) Arrangement and supervision of Community Work;
- (iii) Co-ordination and Supervision of the Youth Diversion Programme;
- (iv) Counselling;
- (v) Supervision of Probation Orders;
- (vi) Outreach programmes for youths e.g. "Youth Crime Awareness".

Services (i), (ii) and (v) have been implemented since the establishment of the Probation Division in Tonga. Service (iv) began in April 2007 with the recruitment of an Officer with knowledge of counselling. Service (iii) commenced in early December 2006 after the riot in Tonga. This is a new development in the rehabilitation of youths and will be discussed in detail later in the paper. Service number (vi) is currently in formulation and is to commence in July 2007.

B. Youth Diversion Programme (YDP)

This is the first time this rehabilitation programme has been implemented in Tonga. After the riot in November 2006, the Honourable Minister and Attorney General decided that it was time for Tonga to allow offending youths a second chance, starting with the youths who were involved in the riot. The objectives of this YDP are:

- (i) To divert criminal issues from the courts in cases where young people are involved;
- (ii) To enable those who played a role in causing the damage to develop a full understanding of the harm they have caused and acknowledge their responsibility for it;
- (iii) To enable those who played a role in causing the damage to contribute to repairing the harm;
- (iv) To increase community involvement in the justice process, and community commitment to restoring peace and harmony in Tonga.

These incorporate some of the core objectives of the criminal justice system. The YDP also intends to resolve matters quickly, and to avoid imposing a life-long record of conviction on youths which could prevent travel and limit employment opportunities. The Prosecution Service has the discretion to nominate eligible youths to be diverted to the YDP and the qualifications are:

- (i) That he or she is 17 years old or under;
- (ii) That he or she is a first time offender; and
- (iii) That the case in which he or she is involved is a minor one (under the jurisdiction of the Magistrate's Court).

III. TREND OF YOUTH OFFENDING IN TONGA

There has been a gradual increase in youth crime in the last four years. The following table is taken from the Tonga Police Force's statistics and shows what type of criminal activities youths have committed from 2002 to 2005.

Major offences committed by young offenders (15-24 years) in Tonga (2002-2005)

<i>Offences</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>
<i>Grievous Bodily Harm</i>	2	5	4	5
<i>Bodily Harm</i>	15	11	24	11
<i>Common Assault</i>	106	102	82	74
<i>Indecent Assault on a child</i>	7	2	6	2
<i>Theft</i>	57	113	191	39
<i>Receiving</i>	3	7	–	–
<i>Robbery</i>	1	–	3	–
<i>Embezzlement</i>	1	4	1	–
<i>Forgery</i>	–	–	99	–
<i>Obtain money by false pretences</i>	2	6	68	–
<i>Housebreaking</i>	5	15	8	7
<i>Unlawful entry into a building</i>	9	12	17	9
<i>Willful damage to properties</i>	13	9	13	12
<i>Disturbance</i>	24	36	59	30
<i>Abusive language</i>	40	31	45	39
<i>Drunkenness</i>	348	274	443	417
<i>Total</i>	633	627	1063	645

The trend indicates a gradual change with a significant increase in 2004. In 2005, the average age for using any type of alcohol was 17, which correlates to the increase in drunkenness in Tonga for that year.

In general, the PYJD works closely with non-governmental organizations (NGOs). These NGOs include the Tonga Salvation Army, the Tonga Center for Women and Children, the Tonga National Youth Congress, and Legal Literacy. The referral of youths from the PYJD to each NGO for appropriate rehabilitation programmes is based on the probation officer's assessment of what kind of the guidance and assistance the youth needs. For example, a youth who stole something to trade for liquor will be referred to the Alcohol and Drugs Awareness Course of the Salvation Army and perhaps the Life Skills Training course also.

For the PYJD to use the NGOs' allowances, each NGO must seek permission from the Chief Justice of Tonga by submitting an application. The Chief Justice must also endorse their respective rehabilitation programmes.

**IV. CHALLENGES FACING THE PROBATION DIVISION IN RELATION TO
YOUTH REHABILITATION SERVICES**

A. Financial

Because the national budget is limited, the PYJD can barely meet the existing costs of manpower and equipment. This prevents the extension of services to the outer islands. The equipment required includes a reliable vehicle, maintenance tools such as lawnmowers, and administrative tools such as computers, etc. This is the greatest challenge in the work of the PYJD.

B. Cultural

It is the traditional belief of Tongans that a criminal will be punished by a court. Society is therefore questioning the effectiveness of this new YDP programme. Some Tongans challenge the YDP and say that it is unfair that prior to the establishment of the YDP some youths were sentenced to hard labour whilst present offenders are not.

C. Social

Youths who were committing offences are still mingling with other members of society and may have a negative influence on their peers. There have been a few cases where a young offender living with peers has encouraged the others to commit further offences. There are also a few cases where young offenders have been before the Courts since the age of 12 for stealing and housebreaking. Having attained the age of 21 and been to prison a number of times, their behaviour has not improved. Despite attending various NGOs' rehabilitation programmes, the offenders still are not employed.

D. Lack of Legal Infrastructure

First of all, Tonga is yet to establish a separate court for juveniles and is yet to enact a separate Juvenile Act. Discussion of this very important issue is currently proceeding. It was only in April 2007 that the Convention for the Rights of Child was launched in Tonga.

The arresting procedure of a juvenile is the same with that of an adult. There is no difference whatsoever. The juvenile is also detained in exactly the same way as adults. After the 16 November riot in Tonga, many people, including juveniles, were arrested. In fact, these juveniles were detained with the adult offenders from overnight to a week or more.

Additionally, the same prosecution procedure is applied to juveniles in Tonga and the same sentences are also applicable.

E. Problem Families

The number of juveniles from broken families is increasing. In some cases, both parents have migrated overseas leaving the juvenile with relatives who equally neglect their guardianship of these minors. There is also a lack of guidance for parents who have difficulty raising their children. In some cases, juveniles have been known to commute between both parents, finally ending up living with a peer group from whom he or she can pick up all sorts of criminal activities.

There are also some juveniles who left school at a very young age; some are engaged in hard labour to earn a living whilst others roam the streets seeking other ways to earn an income.

Some interviewees lie to the probation officer when questioned about the juvenile, making it very difficult for the probation officer to make a correct risk assessment of the juvenile.

F. Specific Challenges in Introducing the Youth Diversion Programme

There are no additional staff to co-ordinate this newly established diversion programme, nor has the salary scale increased to reflect the extra workload. There is also a lack of funds for resources such as vehicles. There is an absence of any official regulation or law for the guidance and protection of the Diversion Programme.

So far the repayment of victims' losses is via compensation ordered in the Courts. Attempts have been made for some offenders to execute their Community Work hours to the victim's benefit, but in most cases there is lingering ill-feeling between the two parties.

V. EFFECTIVE MEASURES IN THE TREATMENT OF JUVENILE OFFENDERS

So far, Tonga lacks the facilities for institutional treatment. However, the close relationship and co-operation of the NGOs makes the rehabilitation and reintegration of juvenile offenders much more possible. Below is a sample of the Tonga Salvation Army rehabilitation programmes for juveniles:

- Assessment
- 12 Step Comprehensive Treatment Programme
- 12 Steps to Good Health
- Life-Skills
- Healthy Anger
- Smoking Cessation Programme
- Psychology of Winning
- Family Focus Group

- Parental Information Group
- Recovery Group
- Community Based Programmes
- Recreational Programme
- Recovery Group

A. Community-based Treatment of Juvenile Offenders

An unofficial restorative justice programme is in practice in one of the villages in Tongatapu. In this restorative justice system, the complaint is verbally submitted by the complainant to the Noble or his representative and the elders in the village at the *fono* meetings. There is an apology from the person who is the subject of the complaint and some kind of agreement is negotiated by that person and the offended party as to how the relationship will be restored.

The main objective of this unofficial restorative justice is to maintain peace and harmony in the village by the efforts of the community members themselves. According to the members of the village, it is very effective.

B. Effective Measures to Promote the Reintegration of Juveniles into the Community

The best method practiced in Tonga is when parents and elders include young offenders in their community gatherings, such as *kava* parties, and give them good advice and let them know they are not outcasts.

In the YDP, there is a family conference where the parents are present and involved in the discussion of what is best for their child. With the 16 November cases, the victims were not invited, mainly because of the political unrest in Tonga. Inviting the victims may have caused more problems for everyone rather than finding a peaceful solution to what happened.

There is still a lack of hostels and other rehabilitation aid places in Tonga. There are however some people who take in delinquents and try to help them become better people and citizens. Some are successful and some are not.

VI. CONCLUSION

In conclusion, Tongans have now realized that sending people to prison to punish them for their crimes is not the only way to create a better Tonga. The introduction of the YDP proves this. Parents and community members are surprised that the Government who passed the law is now giving another chance to criminals, especially the youth, to realize what they did was wrong and to save them from any limitations on future employment and travel opportunities. It is the foremost duty of the Tonga PYJD to oversee any rehabilitation programmes within the Ministry and NGOs and to oversee the reintegration of youths into the community.

The main task of the Probation Division is to make youths feel accepted by including them in rehabilitation programmes so that they will understand the causes and the consequences of their wrongful actions and will make better choices.

This is also why the Tonga PYJD is formulating and will implement the Crime Awareness Programme to inform juveniles of what they should and should not do in order to abide by the law, because most juveniles admitted that they did not know that by perpetrating a specific act, they actually committed an offence.

In summary, the Tonga PYJD is doing its best with present staff and infrastructure to assist the vision of the Ministry of Justice for a "Better Tonga Tomorrow".

HANDLING JUVENILE OFFENDERS UNDER CRIMINAL LAW IN VIETNAM

*Chu Thanh Quang**

I. INTRODUCTION

In Vietnam, juveniles¹ committing crimes are not handled by a separate court system, but the general criminal court system. However, as well as many other countries, Vietnam has special provisions, stipulated in the Penal Code² and Criminal Procedure Code,³ which are applicable to juvenile offenders. They provide the age subject to penal liability, principles for handling juvenile offenders, judicial measures and penalties applicable to juvenile offenders, the order and procedures of investigating, prosecuting, and adjudicating juvenile offenders and executing judgments. These provisions ensure that the handling of juvenile offenders aims mainly to educate them and help them redress their mistakes, develop healthily, and become citizens who contribute to society.⁴

Within the scope of this paper two main points will be presented. In Section I, the statistics of the Supreme People's Court of Vietnam will be outlined to show the situation of juveniles committing crime and the handling of same in recent years in Vietnam. In Section II, the current legal framework applicable to juveniles committing crime as well as challenges and disadvantages arising from legal proceedings will be discussed. My personal opinion on more effective measures will be given in the conclusion.

II. STATISTICS OF JUVENILE OFFENDERS IN VIETNAM

According to the statistics of the Supreme People's Court of Vietnam, the number of juveniles committing crime has not declined in recent years, but has continuously increased; specifically:

- In 2004 there were 2,540 juvenile offenders;
- In 2005 there were 5,305 juvenile offenders (twice as many as 2004);
- In the first nine months of 2006 there were 4,438 juvenile offenders.

The figures show that the number of juvenile offenders adjudicated each year constitutes from 6.5% to 6.9% of the total number of defendants adjudicated by the Vietnamese Courts. The majority of them were between 16 and 18 years old. Although there is no exact data on the application of penalties to juvenile offenders (warning, fine, non-custodial reform, termed imprisonment) recorded by the courts, in practice, many of them were sentenced to fixed terms of imprisonment.⁵ Also, the statistics show that juvenile offenders usually commit certain crimes, namely: intentionally inflicting injury on or causing harm to the health of other persons; plundering property (robbery); extortion of property; robbery by snatching; stealing property (theft); and breaching regulations on operating road vehicles. Specific figures are given in the following chart.

* Legal Specialist, Supreme People's Court of Vietnam.

¹ Article 18 of the Civil Code of Vietnam, "juveniles" are individuals under eighteen years of age.

² This Code was passed by the National Assembly of the Socialist Republic of Vietnam, Xth Legislature, at its 6th session on 21 December 1999, replacing the Penal Code of 1985.

³ This Code was passed by the National Assembly of the Socialist Republic of Vietnam, XIth Legislature, at its 4th session on 26 November 1999, replacing the Criminal Procedure Code of 1988.

⁴ Article 69(1) of the Vietnamese Penal Code.

⁵ Juvenile offenders who are given less than three years' imprisonment may be entitled to a suspended sentence if they meet the requirement of Article 60 of the Penal Code.

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Crime	2004	2005	First Nine Months of 2006
Intentionally inflicting injury on or causing harm to the health of other persons	374	653	527
Plundering property	552	822	772
Extortion of property	65	150	72
Robbery by snatching	117	380	312
Stealing property	650	1649	1259
Breaching regulations on operating road vehicles	99	179	144

According to a 1994 survey carried out by the Institute of Law Research of the Ministry of Justice, among 1,983 juveniles prosecuted, there were 377 recidivists; in 1995, the number of recidivists was 302 of 2,269 juveniles prosecuted; in 1996 the number of recidivists was 287 of 2,337 juveniles prosecuted. There is no exact data on the recidivism of juveniles in recent years recorded by the Vietnamese Courts. However, in practice, it is clear that the number of juveniles offending in recent years has risen. Also, many of them are drug addicts or alcoholics.

III. PROVISIONS APPLICABLE TO JUVENILES COMMITTING CRIMES

A. Age Subject to Penal Liability

Article 12 of the Penal Code stipulates that:

- “1. Persons aged 16 or older shall have to bear penal liability for all crimes they commit.
2. Persons aged 14 or older but under 16 shall have to bear penal liability for very serious crimes intentionally committed or particularly serious crimes”.

The very serious crimes mentioned in Article 12 above are those which cause very great harm to society and the maximum penalty bracket for such crimes is fifteen years' imprisonment. Also, particularly serious crimes are those which cause exceptionally great harm to society and the maximum penalty bracket for such crimes shall be over fifteen years' imprisonment, life imprisonment or capital punishment.⁶

In accordance with Article 12 of the Penal Code, Article 302(2) of the Criminal Procedure Code requires that in the process of investigation, prosecution and trial, the exact age of the juvenile offenders shall be identified. The identification of a juvenile offender's age can be based on his or her personal documents such as a birth certificate or a family household book. If the exact age cannot be found in such documents, the identification can be made in the locality where he or she was born or resides.

However, a problem arising from practice is that, in some cases, juvenile offenders do not have any type of personal documents. Also, the local authority does not have evidence to confirm the age of such juveniles. In order to deal with this problem, the Supreme People's Court issued the Official Letter No: 81/2002/TANDTC on 10 June 2002 to guide as follows:

- (i) If a specific month is identified, but not a specific day, his/her date of birth shall be determined as the last day of such a month;
- (ii) If a specific quarter of a year is identified, but not a specific day and a specific month, his/her date of birth shall be determined as the last day of the last month of such a quarter.
- (iii) If the first half or second half of a year is identified, but not a specific day and specific month, his/her date of birth shall be determined as the 30 June or 31 December respectively.

B. Principles for Handling Juvenile Offenders

The principles for handling juvenile offenders are provided in Article 69 of the Penal Code, accordingly:

⁶ Article 8(3) of the Penal Code.

1. The handling of juvenile offenders aims mainly to educate and help them redress their wrongs, develop healthily and become citizens useful to society.

In all cases of investigation, prosecution and adjudication of criminal acts committed by juveniles, the competent State agencies shall have to determine their capability of being aware of the danger to society of their criminal acts and the causes and conditions relating to such criminal acts.

2. Juvenile offenders may be exempted from penal liability if they commit less serious crimes or serious crimes which cause no great harm and involve many extenuating circumstances and they are received for supervision and education by their families, agencies or organizations.
3. The penal liability examination and imposition of penalties on juvenile offenders shall only apply to cases of necessity and must be based on the nature of their criminal acts, their personal characteristics and crime prevention requirements.
4. The courts, if deeming it unnecessary to impose penalties on juvenile offenders, shall apply one of the judicial measures prescribed in Article 70 of this Code.
5. Life imprisonment or the death sentence shall not be imposed on juvenile offenders. When handing down sentences of termed imprisonment, the courts shall impose on them lighter sentences than those imposed on adult offenders of the corresponding crimes.

Pecuniary punishment shall not apply to juvenile offenders who are from 14 to under 16 years old. Additional penalties shall not apply to juvenile offenders.

6. The judgment imposed on juvenile offenders aged under 16 years shall not be taken into account for determining recidivism or dangerous recidivism.”

The judicial measures set out in Article 69(4) include: education at communes, wards or district towns, or sending juveniles to reformatory school. However, in reality, these measures are rarely applied. Why judges decide not to use these measures is a controversial issue. There are some who state that these measures are often applied to less serious cases by the executive before the legal proceedings.⁷ Others suppose that some judges impose a penalty instead of judicial measures as they are afraid of taking a risk. Whatever the reason, this fact reduces the effectiveness of Article 69(4) and Article 70.

C. Arrest, Custody, Temporary Detention and Other Deterrent Measures

Article 303 of the Criminal Procedure Code provides:

1. Persons aged between 14 years and under 16 years may be arrested, held in custody or temporary detention if there are sufficient grounds prescribed in Articles 80, 81, 82, 86, 88 and 120 of this Code, but only in cases where they commit very serious offenses intentionally or commit especially serious offenses.⁸
2. Persons aged between 16 years and under 18 years may be arrested, held in custody or temporary detention, if there are sufficient grounds prescribed in Articles 80, 81, 82, 86, 88 and 120 of this Code, but only in cases where they commit serious offenses intentionally or commit very serious or especially serious offenses.
3. The bodies ordering the arrest, custody or temporary detention of juveniles must notify their families or lawful representatives thereof immediately after the arrest, custody or temporary detention is effected”.

Besides the provisions on arrest, custody and temporary detention, the Criminal Procedure Code allows

⁷ Under Vietnamese administrative law, juveniles violating laws may be subject to a form of sanctioning, administrative violation or other administrative handling measures, including: warning; fines; education at communes, wards, or district towns; sending to reformatory schools, educational establishments, or medical treatment establishments; or administrative probation. These sanctions and measures are decided by the executive.

⁸ Articles 80, 81, 82, 86, 88 and 120 of the Criminal Procedure Code are applied to criminals in general.

the investigating bodies, procuracies or courts to assign juvenile offenders to their parents or guardians for supervision so as to secure their appearance in response to summonses of the procedure. Persons assigned to supervise the juvenile offenders are required to do so closely, to oversee their behaviour and ethics and to educate them.⁹ This measure can be seen as a special deterrent measure applicable to juvenile offenders. It also increases the responsibility of juvenile offenders' parents and guardians to educate and help juveniles to redress their wrongs.

D. Defence

Under Article 57(2) of the Penal Code and Article 305 of the Criminal Procedure Code, juvenile accused or juvenile defendants must be assisted by defence counsel. Where they or their lawful representatives refuse to select defence counsel, the investigating bodies, procuracies or courts must request bar associations to assign lawyers' offices to appoint defence counsel for them or propose the Vietnam Fatherland Front Committee or the Front's member organizations to appoint defence counsels for their members. Where defence counsel is assigned, the counsel's fee shall be paid by the investigating bodies, procuracies or courts.

Although the provisions mentioned above ensure that the juvenile offenders are assisted by defence counsel in proceedings, the legal interests of juveniles may not be well protected. The problem arising is that, due to the low fees paid by the investigating bodies, procuracies or courts, the defence of juvenile offenders is often assigned to inexperienced lawyers. Also, in some cases, such lawyers may work irresponsibly. This fact badly affects the defence of juvenile offenders.

E. Trial

At first-instance, the trial panel shall be composed of one judge and two people's assessors.¹⁰ For serious and complicated cases, the trial panel may be composed of two judges and three people's assessors. According to Article 307 of the Criminal Procedure Code, where the defendants are juveniles, the composition of a trial panel must include a people's assessor (juror) who is a teacher or a Ho Chi Minh Communist Youth Union cadre. In addition, Article 302(1) requires that judges who handle juvenile defendants must possess the necessary knowledge of the psychology and education of juveniles as well as knowledge of activities to prevent and fight crime committed by juveniles. However, currently, there are no judges specializing in handling juvenile offenders in Vietnam. Therefore, personally, I think the provision of Article 302(1) is ineffective.

F. Participation in the Procedure by Families, Schools and Organizations

Under Article 306 of the Criminal Code, participation of families, schools and organizations in the criminal procedures of juvenile offenders is not only a right, but also an obligation; accordingly:

- “1. Representatives of the families of persons kept in custody, the accused or defendants, teachers or representatives of schools, the Ho Chi Minh Communist Youth Union or other organizations where the persons kept in custody, the accused or defendants study, work and live shall have the right as well as obligation to participate in the procedure under decisions of the investigating bodies, procuracies or courts.
2. Where the persons kept in custody or the accused are between 14 years and under 16 years old or juveniles with mental or physical defects, or in other necessary cases, the taking of their statements and interrogation must be attended by their families' representatives, except for the cases where their families' representatives are deliberately absent without plausible reasons. The families' representatives may inquire about the persons kept in custody or the accused, if the investigators so agree; they may produce documents, objects, make requests or complaints, and read the case files upon the termination of the investigation.
3. At the court sessions to try juvenile defendants, the presence of their families' representatives, except for the cases where their families' representatives are deliberately absent without plausible reasons, of their schools' and/or organizations' representatives is compulsory.

⁹ Article 304 of the Criminal Procedure Code.

¹⁰ A people's assessor, selected by the courts, is a person who meets the requirements set out in Article 29 of the Ordinance on Judges and Assessors of the People's Courts.

Representatives of the defendant's family and representatives of their school and/or organization attending the court sessions shall have the rights to produce documents, exhibits, to request or propose to change the procedure-conducting persons; to join in the arguing process, and lodge complaints about procedural acts of the persons with procedure-conducting competence, and court decisions".

G. Penalties Applicable to Juvenile Offenders

According to Article 71 of the Penal Code, juvenile offenders shall be subject to one of the following penalties for each offence:

- (i) Warning
- (ii) Fine
- (iii) Non-custodial reform
- (iv) Termed-imprisonment.

The Penal Code also has special provisions relating to fines, non-custodial reform and termed imprisonment applicable to juvenile offenders. Accordingly, a fine shall be applied as a principal penalty to juvenile offenders aged between 16 years and under 18 years, if such persons have income or private property. The fine levels applicable to juvenile offenders shall not exceed half of the fine level prescribed by the relevant law provision.¹¹

In respect of the non-custodial reform penalty, Article 73 of the Penal Code stipulates that when applying non-custodial reform to juvenile offenders, the income of such persons shall not be deducted. The non-custodial reform duration for juvenile offenders shall not exceed half of the term prescribed by the relevant law provision.

In relation to the termed imprisonment penalty, Article 74 of the Penal Code provides as follows:

"The juvenile offenders shall be penalized with termed imprisonment according to the following regulations:

1. For persons aged between 16 and under 18 when they committed crimes, if the applicable law provisions stipulate life imprisonment or the death sentence, the highest applicable penalty shall not exceed eighteen years of imprisonment; if it is termed imprisonment, the highest applicable penalty shall not exceed three quarters of the prison term prescribed by the law provision;
2. For persons aged 14 to under 16 when committing crimes, if the applicable law provisions stipulate life imprisonment or the death sentence, the highest applicable penalty shall not exceed twelve years; if it is the termed imprisonment, the highest applicable penalty shall not exceed half of the prison term prescribed by the law provision".

As mentioned above, although the Penal Code provides four types of penalties applicable to juvenile offenders, in practice, a penalty of termed imprisonment is regularly applied. In some cases the courts decide to impose a warning, fine or non-custodial reform on juvenile defendants.

H. Augmentation of Penalties in Cases of Multiple Crimes

Under Article 75 of the Penal Code, for a person who has committed more than one crime, of which the most serious was committed before he or she reached the age of 18 years, the common penalty shall not exceed the highest level prescribed in Article 74 mentioned above. If the most serious crime is committed after such person has reached the age of 18 years, the common penalty is the same as that applicable to adult offenders.

I. Serving of Imprisonment Penalties

Article 308 of the Criminal Procedure Code provides:

- "1. Juvenile offenders shall serve their imprisonment penalties according to a separate detention regime prescribed by law.

¹¹ Article 72 of the Penal Code.

It is forbidden to keep juvenile offenders together with adult offenders.

2. The juvenile convicts must be provided with job training or general education while they are serving their imprisonment penalties.
3. If the juveniles reach the age of 18 years while serving their imprisonment penalties, they shall be moved to be subject to the imprisonment regime applicable to adults.
4. For juveniles who have completely served their imprisonment penalties, the superintendence boards of their prisons shall have to coordinate with the administrations and social organizations in the communes, wards or townships in helping them to lead a normal life in society.”

The Penal Code also stipulates a special provision to reduce penalties served by juvenile offenders as follows:

- “1. If juvenile offenders, who are subject to non-custodial reform or imprisonment, have made good progress and already served one-quarter of their term, they shall be considered by the court for a penalty reduction; particularly for imprisonment, their penalty can be reduced each time by four years but only if they have already served two-fifths of the declared penalty term.
2. If juvenile offenders who are subject to non-custodial reform or imprisonment have recorded achievements or suffered from dangerous illnesses, they shall be immediately considered for penalty reduction and may be exempt from serving the remainder of their penalty.
3. For juvenile offenders who are subject to a fine penalty but fall into prolonged economic difficulties due to natural calamities, fires, accidents or ailments or who have recorded great achievements, the courts, at the proposal of the directors of the procuracies, may decide to reduce or exempt them from the remainder of the fine penalty.”

J. Remission of Criminal Records

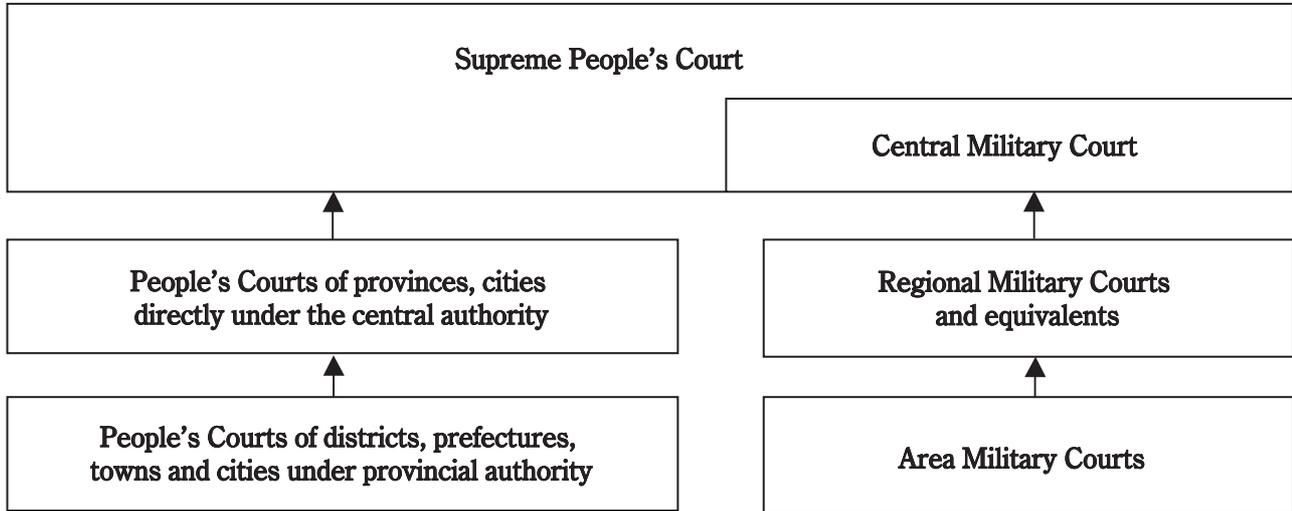
The time limit for criminal record remission for juvenile offenders shall be half of the time limits applicable to adult offenders. Juvenile offenders subject to judicial measures shall be considered as having no criminal records.¹²

IV. CONCLUSION

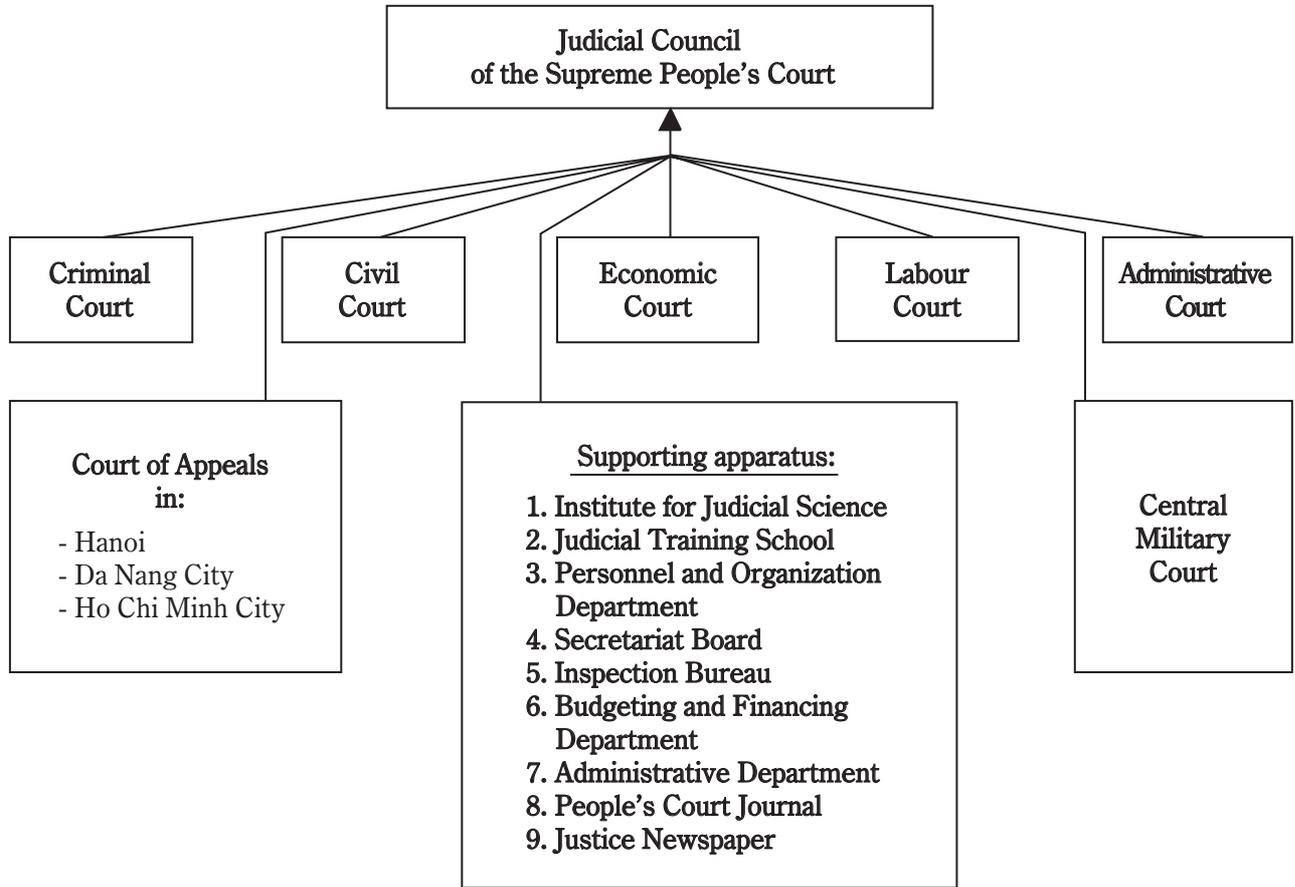
In spite of a quite good legal framework provided in the Penal Code and the Criminal Procedure Code, the number of juvenile offenders has continuously increased. It could be a result of poor implementation of existing relevant legislation. In my opinion, to make the juvenile justice system more effective, it is necessary to train the investigators, prosecutors and judges who specialize in handling juvenile offenders. Enlightening lawyers on their responsibility and necessary skills is also an effective remedy to protect juveniles' rights and prevent them from committing crimes.

¹² Article 77 of the Penal Code.

APPENDIX A
Court System of the Socialist Republic of Vietnam



APPENDIX B
Organization of the Supreme People's Court of Vietnam



REPORTS OF THE COURSE

GROUP 1

ENSURING DUE PROCESS IN THE JUVENILE JUSTICE SYSTEM AND THE APPROPRIATE ADJUDICATION OR DISPOSITION OF JUVENILES

<i>Chairperson</i>	Mr. Kapila Mudantha Waidyaratne	(Sri Lanka)
<i>Co-Chairpersons</i>	Mr. Masaomi Nakazawa	(Japan)
	Mr. William Antonio Parodi Pugliese	(Panama)
<i>Rapporteur</i>	Mr. Joseph Makwakwa	(Zimbabwe)
<i>Co-Rapporteurs</i>	Mr. Thanh Quang Chu	(Vietnam)
	Mr. Augustin Esperanza Senot	(Philippines)
	Mr. Hisami Katsuda	(Japan)
<i>Visiting Experts</i>	Judge O'Driscoll	(New Zealand)
	Dr. Robert Hoge	(Canada)
<i>Advisers</i>	Deputy Director Takeshi Seto	(UNAFEI)
	Prof. Kayo Ishihara	(UNAFEI)
	Prof. Jun Oshino	(UNAFEI)
	Prof. Shintaro Naito	(UNAFEI)

I. INTRODUCTION

Group 1 agreed to discuss the following agenda:

- (1) Current situation and challenges in regard to the legal framework of arrest, detention, transfer between related agencies, prosecution and trial.
- (2) Current situation and challenges in regard to (i) information gathering (legal investigations and social inquiry) of offences and/or the background of delinquency; (ii) information sharing; and (iii) co-operation amongst stakeholders.
- (3) Assessment of the degree of risk of reoffending and the factors important for the rehabilitation of each juvenile (i.e. their needs) before disposition.
- (4) Measures for ensuring the appropriate adjudication or disposition of juveniles, including the introduction of diversion programmes.
- (5) Adjudication or disposition considering the restitution or minimization of damage to the victim and/or community and effective measures to restore the damage caused by juvenile offenders.

The discussions of the group were mainly centred on ensuring due process in the juvenile justice system and the appropriate adjudication or disposition of juveniles through considering the current situation and challenges facing member countries. The group agreed that some member countries are already adhering to the United Nations standards, norms and guidelines.

II. CURRENT SITUATION AND CHALLENGES

The group discussed the following topics and agreed that they posed great challenges in ensuring due process in the juvenile justice system.

A. Arrest and Detention

The group observed that member countries had laws in place that provide for the arrest of offenders but noted that certain countries did not have specific separate laws dealing with the arrest of juveniles as distinct from adults. A further challenge was the issue of detention before a juvenile can be brought to court.

In some countries, where such laws exist, in certain circumstances or cases, they are not specifically followed by the courts and law enforcement agencies. Where the law provides that a juvenile must be detained for a minimum period of time, the juvenile is not brought to court in a timely manner. This can arise due to practical and individual reasons. Probation reports are not thorough or detailed and are not submitted on time. In certain instances, presiding officers consider the gravity of the offence more than the basic requirements of rehabilitating and reintegrating the juvenile into society.

B. Trial

Zimbabwe and Vietnam have fragmented legal provisions on juvenile justice such as the right to be represented by a parent or guardian when police record a caution and during trial. However, there are no specific courts to deal with juvenile offenders and insufficient facilities for their detention.

While educative measures are very effective for juvenile offenders, in Japan there is a social movement which criticizes the Family Court as being too lenient on juveniles and which calls for severe punishment. This is mostly attributed to the fact that there is a lack of awareness of the gains of the juvenile justice system.

In respect of the right to a speedy trial, the group agreed that justice delayed is justice denied. In certain circumstances, there is an inordinate delay before juvenile cases are disposed of and this causes actual prejudice in that a juvenile, due to the delay, is dealt with as an adult when matter is tried (Sri Lanka, Zimbabwe). Japan has strict time limitations for detention not only in the investigation stage (arrest and referral to Family Court must occur within a maximum of 23 days) but also in the juvenile hearing stage (the Family Court has to make a final disposition, usually within four weeks, but up to a maximum of eight weeks). These limits are provided for by law.

In relation to the right to legal representation, in some countries, it is available only at the juvenile's expense. The result is that most juvenile cases are disposed without them being properly represented by legal counsel. In Zimbabwe, legal representation is only provided by the State in indictable cases. In Panama, offices of public defenders of adolescents provide legal representation for juveniles. In Japan, an attendant (lawyer) will be appointed by the State for detained juveniles in felony cases by the 2007 amendment of the Juvenile Law.

C. Probation Officers and their Assessment

All participants explained the situations of probation officers in their respective countries. In Sri Lanka, probation officers are required to have a background in sociology. Japanese participants found it interesting that while in some countries probation officers do not have a background in juvenile psychology, in Japan they are expected to be specialists in psychology, sociology, and education.

In Vietnam the law does not provide for probation officers. Instead, police officers make an assessment during their investigations and send the information to the prosecutors who in turn place this information before the judge. The judge will proceed to deliver his or her judgment after considering this assessment.

In Japan, the law provides for the juvenile classification home officer and the Family Court probation officer to carry out assessment of juvenile offenders. Family Court judges must consider two aspects of the matter before them: the criminal facts of the case and the necessity for educative measures. The judge gives serious consideration to the report by the family court probation officer in his or her assessment of the risk of reoffending. The underlying principle is that since juveniles act out of immaturity, and because of their high placity, they may be corrected. The great challenge lies in educating citizens to understand the all-important role played by probation officers in juvenile justice.

A Japanese participant stated that in Japan, a challenge exists in the quality of probation officers. It is believed that the quality is not low. However, information gathering is a vital yet difficult task. Therefore, in his opinion, there is still room for Japanese family court probation officers to improve their ability.

The Zimbabwean position is that probation officers, who fall under the Department of Social Welfare in the Ministry of Labour and Social Welfare, are called upon by the police and the courts to carry out assessments of juvenile offenders. The police make such a request in all cases involving juveniles below the age of 14 years. The assessments are passed to the Attorney General in order for him or her to decide whether or not to prosecute a juvenile offender. If a docket is referred to the Attorney General without this report, it will be returned to the police to enable them to obtain the report. The courts request probation officers to provide an assessment report on the risk of recidivism and rehabilitation before passing sentence. Probation officers are professionals and presiding officers are accordingly guided by their recommendations in passing sentence.

In Sri Lanka, supervising police officers and probation officers assist judges in assessing the risk of re-offending by juveniles in minor cases. Since probation officers play a vital role in delivering juvenile justice, they must be given adequate time and resources to enable them to come up with comprehensive reports. Regarding rehabilitation, the chairperson's personal opinion was that Family Group Conferencing (FGC) of New Zealand and the Family Court of Japan were good models in minor cases. FGC allows the offender and the victim to come face to face and has a provision for restorative justice. As for serious offences, Sri Lanka is bound by national and international laws in such dispositions. Judges should consider probation officers' reports even in serious offences and mostly pass rehabilitative sentences.

D. Diversion

The group wanted to come up with a working definition of this word and adopted the international best practice of diversion as the channelling of juveniles away from the formal court system into reintegrative programmes. If a juvenile acknowledges responsibility for his or her wrongdoing, he or she can be 'diverted' to such a programme, thereby avoiding the stigmatizing effects of the criminal justice system. It gives juveniles a chance to avoid a criminal record, while at the same time aiming to teach them to take responsibility for their actions and to avoid getting into trouble again.

In Vietnam there are provisions in both criminal and administrative procedures in which courts play no part. In the administrative procedure, the police take the juvenile to the local government or authority for it to take appropriate measures to send the juvenile to a training school. Alternatively, the police can send the case to a prosecutor who may also decide to refer the matter to the local authority for the juvenile to receive treatment.

In Panama, other than in cases of murder, rape, kidnapping, terrorism and drug trafficking, a judge of adolescents deals with issues of diversion. A judge of adolescents can prescribe social or educative measures for a juvenile offender in non-serious cases. A prosecutor can also dispose of the case in his or her office and may choose not to send it to a judge of adolescents where the victim has been compensated and in cases where there is no threat to society.

In the Philippines, there are various programmes in place which provide for diversion of children in conflict with the law such as the *Barangay* Court (village court system), police, prosecutors and lastly, the courts. Decision makers are guided by the juvenile law. Diversion is allowed in minor cases where the possible penalty for the offence is less than six years. Some other factors include such things as the nature and consequence of the offence and circumstances of the child. The disposition must be made with consideration for the best interests of the child.

Current laws in Zimbabwe do not specifically provide for diversion of juvenile offenders. However, there is provision for prosecutors to decline prosecution in trivial cases using the *de minimis non curat lex* principle (the law does not concern itself with trivialities). The problems or challenges with this system are that it has no provision for the juvenile offender to take responsibility for what he or she has done; thus, the offender is not sent for corrective and/or rehabilitative treatment. The diversion programme proposed by the National Committee on Community Service has provision for the victim and offender to meet under victim offender mediation (VOM) and Family Group Conferencing (FGC). This will provide a platform for the victim to be heard.

The Family Court in Japan can be seen as special model of diversion (more than 70% of all juvenile cases are dismissed without any disposition). In the Family Court procedure, victims can request the Court to hear their opinion. However, in some cases, it is difficult for the Court to fully reflect the victim's voice in its disposition.

Sri Lanka at present does not have a specific diversion programme. However, the present law enables a Juvenile Court judge to proceed with protective measures and diversion in cases of a minor nature. Even though a juvenile offender is brought before a court, a formal hearing does not take place because magistrates are empowered and it is within their jurisdiction to act in appropriate cases resulting in diversion.

III. RECOMMENDATIONS FOR IMPROVING AND STRENGTHENING JUVENILE JUSTICE SYSTEMS

With regard to the topics, the participants agreed that the following recommendations could be necessary for improving and strengthening juvenile justice systems:

1. A special court system competent to deal with juvenile offenders is necessary. The Family Court in Japan, and also the model of the Criminal Child Court in South Africa as proposed in the Child Justice Bill, or the model of the *Barangay* Court in the Philippines are considered good models;
2. The formulation of (or improvement an existing) fundamental framework on arrest, detention, prosecution and trial, applicable to juvenile offenders and based on United Nations standards, norms and guidelines, must be taken into account;
3. Judges must have proper information in the form of comprehensive reports to enable them to make appropriate decisions;
4. Probation officers, as specialists of human sciences such as psychology, sociology and education, should be involved in the process of decision-making. Their reports and recommendations should have significant bearing on the final dispositions of cases;
5. The involvement of volunteer probation officers, volunteer social workers, etc. as community support resources in dealing with juvenile offenders should be encouraged;
6. The competent authorities, in their determination, should, as a rule, give priority to the juvenile offender rather than the offence;
7. Restorative justice, where the victim meets the juvenile offender to understand why the latter committed the offence and for possible compensation to be agreed upon, should be encouraged;
8. Many participants emphasized the importance of recording, properly and methodically, statistics on juvenile offenders.

GROUP 2

EFFECTIVE INSTITUTIONAL TREATMENT OF JUVENILE OFFENDERS FOR THEIR SUCCESSFUL REINTEGRATION INTO SOCIETY

Chairperson	Mr. Shu-kan Kenny Cheung	(Hong Kong)
Co-Chairperson	Ms. Ayumi Ishikawa	(Japan)
Rapporteur	Mr. Karma Sonam	(Bhutan)
Co-Rapporteurs	Mr. Herath T. N. Upuldeniya	(Sri Lanka)
Members	Mr. Masaru Kiuchi	(Japan)
	Mr. Min Than Kyaw	(Myanmar)
	Mr. Hee-Ho Park	(Korea)
	Mr. Kenji Nagaike	(Japan)
Visiting Experts	Judge Stephen O'Driscoll	(New Zealand)
	Dr. Robert Hoge	(Canada)
Advisers	Prof. Tetsuya Sugano	(UNAFEI)
	Prof. Koji Yamada	(UNAFEI)
	Prof. Shintaro Naito	(UNAFEI)

I. INTRODUCTION

Group 2 agreed to base its discussions on the following agenda.

1. The current situation and problems of organizations treating juveniles.
2. Measures of assessing the individual characteristics of juveniles.
3. Development of effective treatment programmes in accordance with the results of the risk and needs assessment:
 - (i) Characteristics and circumstances of each juvenile to be considered for developing a treatment programme;
 - (ii) Utilizing the risk, need and responsivity principles of case classification to design treatment programmes, with provision however, that such programmes are subject to professional override;
 - (iii) Type of resources for treatment.
4. Development of an effective treatment programme considering victims and/or restitution of the harm caused to victims.
5. Continuous collaboration and maintaining links with community-based treatment services and/or related organizations for the effective treatment of juveniles and their rehabilitation (through-care):
 - (i) Participation of private companies, NGOs, social workers, volunteers, government organizations;
 - (ii) Need for a monitoring system;
 - (iii) Residential programmes and halfway houses.
6. Aftercare systems which help maintain the effect of correctional treatment and which reduce the risk of reoffending and enhance the juvenile's ability to reintegrate into the community:
 - (i) Supervision by a government authority (probation officer, welfare officer or prison/correctional officer);
 - (ii) Involving community resources (volunteer probation officers, volunteer welfare officers, NGOs);
 - (iii) Need for experienced and professional staff;
 - (iv) Pre-release arrangements;
 - (v) Close contact or communication with family members before and after discharge.

II. SUMMARY OF DISCUSSION

A. Current Situation and Problems of Organizations Treating Juveniles

Most of the participants agreed that specialization of services is necessary. Staff assigned to different tasks should take responsibility for specified duties e.g. security, discipline, education, welfare. There may be some conflicts because of varying areas of responsibility. Most participants agreed that work assignment

deviations are necessary, and at the same time, smooth inter-sectional communication and co-operation should be practiced to solve the difficulties we face in each field. Participants from Sri Lanka, Hong Kong, Korea, and Bhutan mentioned that they had introduced the separated section system to give special attention in training, counselling and education on one side, and security on the other. Mr. Nagaike stated that Japan had introduced a whole unit concept for effective management. In that system, all staff are required to be familiar with all programmes, including security matters, as well as educational or psychological treatments.

Regarding the negative effects of keeping juveniles in custody, group members indicated that there is a high possibility of stigmatization. Most of the participants agreed that TV or radio publicity is important to redress the negative image of inmates. We also need to announce that the acceptance of inmates is indispensable not only for the rehabilitation and reintegration of juveniles, but also for building a supporting and caring social atmosphere.

All the participants agreed that overcrowding in juvenile training centres has a negative effect on rehabilitation programmes in relation to health, hygiene, and discipline. Overcrowding can cause terrible conflicts among inmates, and because of this problem, institutions cannot implement programmes smoothly and thereby fail to meet UN standards. Ms. Ishikawa said that in Japan, for example, in order to cope with overcrowding issues, the parole system is a good solution to reduce the population of an institution. Mr. Upuldeniya, participant of Sri Lanka, noted that the parole system alone might not be an effective way to reduce the numbers of offenders. In Sri Lanka, the parole system does not function well enough to succeed in alleviating overcrowding conditions.

Regarding family support systems and parenting assistance systems, most of the group members agreed that these helping schemes for parents and guardians are very important for the stabilization of juvenile behaviour and emotions. Most societies face the problems of broken and dysfunctional families which aggravate juveniles' misbehaviour. It is very difficult to prevent re-offending when juveniles have serious family problems. In this regard, all the participants agreed that parental meetings and education conducted in probation offices or correctional institutions under the instruction of staff members are good solutions.

Group members indicated that introducing volunteer family activities or youth supporting activities is very useful. It would provide access for juveniles to healthy social activities. Mr. Park, the Korean participant, explained the video meeting system which allows juveniles accommodated in institutions and parents in the community to remain in contact, providing an opportunity to maintain and improve their relationships.

In addition, the group discussed the fact that the correctional systems of most of the represented countries are suffering from a lack of sufficient human and financial resources. Shortage of staff may cause deterioration in the quality of treatment programmes, inadequate service implementation, and unsustainable activities. Most members experienced difficulties in upgrading their agencies' equipment and facilities because of a lack of financial input.

B. Measures of Assessing Individual Characteristics of Juveniles

All agreed that probation officers, psychologists, and social workers should participate in the assessment of individual characteristics. The important factors for assessment and classification have been meta-analyses or other statistical research, and the group members shared information on these factors from the articles of Dr. Hoge and Dr. Bonta. The Corrections Bureau of Japan has just begun the improvement of its risk and need assessment tools based upon these meta-analytic studies:

- (i) Prior or current offences/disposition
- (ii) Family circumstances/parenting
- (iii) Education/employment
- (iv) Peer relations
- (v) Substance abuse
- (vi) Leisure/recreation activities
- (vii) Personality/behaviour patterns
- (viii) Attitudes/values/cognitions
- (ix) Health condition.

The Korean and Japanese members explained that they have developed standardized personality inventories and attitude tests. Mr. Cheung said that in Hong Kong, intake assessment for offenders is conducted after their admission into correctional institutions for the purpose of deciding placement and rehabilitative programme planning.

Judge O'Driscoll stated that the criminal history of juveniles could be analysed to learn more about crime commission patterns and the development of reoffending behaviour. All participants agreed that home visits or parents' interviews are indispensable in order to get accurate information on the juvenile's criminal history, general life history, family background, and living environment.

Mr. Upuldeniya said that in Sri Lanka, risk assessment is conducted for the purpose of separating low-risk inmates from high-risk inmates. He mentioned that categorizing offenders according to levels of drug abuse and the tendency to commit criminal or delinquent acts is important for effective programme management. Assessment of criminal history and types of offence are important elements not only for sentence adjudications or placement of offenders, but also for individual programme planning.

All the participants agreed on the importance of staff education in the assessment and identification of juvenile characteristics and their risk/need levels. Well trained and experienced staff should be assigned to assess juveniles. Regarding monitoring and evaluation of risk assessment, the group member from Sri Lanka explained that social workers and probation officers have to submit reports on released offenders every six months. The superintendents of institutions have to examine these reports coming from different sections. All the participants agreed that sharing information among different organizations is very important for exchanging views on the results of risk assessments and also for double-checking evaluations.

Most group members agreed that professional workers from different parties should exchange opinions on the identification of juveniles' characteristics. In institutions, close and careful behavioural observation of juveniles in group settings is very effective in identifying natural and innate personalities and behaviour patterns.

C. Development of Effective Treatment Programmes in Accordance with Risk and Needs Assessment

All participants agreed that the factors mentioned in the previous section and some additional need (dynamic) factors should be taken into consideration for the design of treatment programmes.

Factors to be considered are:

- (i) Criminal history
- (ii) Education/employment
- (iii) Financial circumstances
- (iv) Family/parents' marital situation (attitude of parents)
- (v) Accommodation
- (vi) Leisure/recreation
- (vii) Gang/triad society background/social relationships
- (viii) Alcohol/drug/gambling problems
- (ix) Physical/emotional/psychological condition
- (x) Attitude/orientation
- (xi) Health condition.

Dr. Hoge explained the concept of assessments based on the risk/need/responsivity principle, and also emphasized the importance of professional override in individual cases. Participants shared information on effective treatment from the reference material and concluded that it is necessary to construct theoretical frameworks such as:

- (i) Insight oriented therapies
- (ii) Humanistic therapies
- (iii) Behavioural treatment - behavioural modification
- (iv) Cognitive behavioural strategies
- (v) Family and parenting intervention
- (vi) Medical and drug treatments.

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Mr. Cheung pointed out that in Hong Kong some social skills and prevention of antisocial behaviour training are provided by officers of the Rehabilitation Unit (RU), and sexual offender and drug relapse prevention programmes are conducted by psychologists. The participants from Hong Kong and Sri Lanka said that special programmes for drug addicts are held in separate drug rehabilitation institutions. Drug addicted inmates receive not only relapse prevention programmes or cognitive behavioural treatments, but also vocational training, family group counselling, and post-release follow-up supervision to achieve stable social reintegration.

All participants agreed that special treatment should be provided for offenders with mental or emotional disabilities. Also, they all agreed to the need to establish separate independent juvenile training schools, juvenile prisons, and juvenile classification centres for better management of treatment programmes.

Mr. Upuldeniya said that in Sri Lanka mirror room therapy is used for offenders to express their views and to tell life stories. It is the basic requirement of drug addiction treatment centres in Sri Lanka that all staff be selected from among those who do not smoke or drink alcoholic beverages. He also said that Sri Lankan correctional institutions conduct meditation programmes, vocational training programmes, and counselling programmes in juvenile treatment institutions.

Mr. Cheung pointed out that in Hong Kong there are two training centres for different age groups. One is for juveniles under the age of 17 and the other is for young adults under the age of 21. They are separated for efficient management and rehabilitative purposes.

Ms. Ishikawa stated that in Japan probationers with a drugs history are required to undergo a medical follow-up examination. Voluntary urinalysis was adopted to motivate probationers to keep away from drugs and prevent relapses.

Professor Sugano raised the issue of effectiveness. He mentioned that from the statistical study, programmes which focus on self-esteem alone have been evaluated as ineffective in reducing rates of re-offending. Ms. Ishikawa said that from her experience, dealing with the self-esteem of juveniles is very effective. Mr. Kiuchi agreed with Ms. Ishikawa, and said that among Japanese juveniles, most suffer from a lack of self-esteem which contributes to their troubled behaviour. Professor Sugano agreed that most staff working in the treatment of juveniles believe that a lack of self-esteem is related to juvenile delinquency; however, he mentioned that when we focus on the most effective way to reduce troubled behaviour, we need to precisely measure the results of teaching methods. To narrow down the targeted goals, the training schemes are important for developing effective treatment methods.

All members agreed that the following training programmes are good for juveniles:

- (i) Changing antisocial attitudes and feelings
- (ii) Reducing antisocial peer association
- (iii) Promoting family affection and communication
- (iv) Improving parenting skill and supervision
- (v) Increasing self control, self management, problem-solving skills
- (vi) Reducing drug dependencies
- (vii) Sex offender treatment.

Most of the group members also agreed that the following types of resources for treatment should be considered:

- (i) Human resources: experts, staff and training resources
- (ii) Social resources: community support, private companies, volunteers
- (iii) Hardware and equipment, computerization
- (iv) Assessment tools (standardized formats).

All participants agreed that anger management programmes, social skills training programmes, relapse prevention programmes, and family education programmes are important. In addition, publicity through projects such as TV programmes is important for promoting smooth reintegration into society and avoiding stigmatization.

D. Development of Effective Treatment Programmes which Consider Victims and/or Restitution

At the beginning of the discussion of this issue, all group members agreed that this topic is difficult to practice in institutional settings. Most members agreed that programmes concerning the damage caused to victims should cover the following:

- Preparation programmes for the direct participation of victims
- Videos
- Family group conferencing with victims
- Letters to victims
- Training programmes.

Mr. Kiuchi from Japan introduced the practices implemented in Japanese juvenile training schools. He mentioned that the victims and victims' family members are regularly invited to give speeches to the inmates of juvenile training schools. He added information concerning institution-based treatment programmes, e.g. training for inmates to learn how to write apology letters to the victims before real mediation. All agreed that direct mediation should occur only after proper guidance to help inmates deepen their feelings of remorse toward victims.

All participants agreed that family group conferences might be a good way for inmates to think more about the feelings of and damage caused to the victims, and also the consequences of their crimes.

Mr. Upuldeniya from Sri Lanka said that video programmes for all offences other than sexual offences would be conducted as training programmes to enhance awareness of the victim's loss, damages caused and a sense of remorse.

E. Continuous Collaboration and Maintaining Links With Community-Based Treatment Services or Related Organizations (Through-Care)

All participants agreed that participation of private companies, NGOs, volunteers and related government organizations could provide more resources and assistance for the rehabilitation of young offenders.

Mr. Cheung reiterated that in Hong Kong, NGOs and private companies are actively involved in rehabilitation services. Publicity campaigns encourage employers to employ discharged inmates. Volunteers are invited to provide support and assistance for released offenders. Ms. Ishikawa from Japan stated that the protection of confidential information should be considered at the time of community involvement or employment referrals. Mr. Upuldeniya said that in Sri Lanka the welfare association in each prison, including government officers and welfare officers, is directly involved in post-release treatment. The participants from Korea and Myanmar stated that volunteers and religious groups are actively involved in the rehabilitation services in their countries. Mr. Upuldeniya said that in Sri Lanka the Discharged Prisoners Co-operative Association provides jobs to discharged juveniles. Activities include carpentry and masonry training and employment. The association has also undertaken some government construction projects.

All participants agreed that a monitoring system for the performance and functions of the volunteers and NGOs is important to maintain the quality of their services. The privacy of inmates must also be considered and monitored. Besides, all agreed that accommodation assistance or halfway house services are essential for some juveniles. Moreover, NGOs could provide assistance in the arrangement of accommodation before discharge and close contact between welfare or parole officers and the NGO could be maintained.

F. Aftercare Systems which Help Maintain the Effect of Correctional Treatment

The group members spent more time on this topic as all agreed that aftercare supervision is significant in monitoring the progress of discharged juveniles and in providing assistance.

Mr. Nagaike said that in Japan aftercare supervision is provided by probation officers or parole officers. He mentioned that the most essential matter is how to create a law-abiding spirit within probationers. Group members agreed that probation officers need to develop programmes to enhance the spontaneous will to respect the rules and regulations of society. Mr. Upuldeniya said that in Sri Lanka aftercare supervision is provided by prison welfare officers, probation officers or parole officers.

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Mr. Cheung stated that in Hong Kong, aftercare supervision is provided by the officers from the Rehabilitation Unit, and they closely supervise and counsel supervisees and their family members and also maintain contact with employers (if applicable). Besides, they have the involvement of some community resources and NGOs to provide needed services to young offenders, e.g. halfway houses, recreational activities and employment guidance.

All participants agreed that trained and professional staff are essential for providing aftercare services and that motivation of juveniles, strict regulations, monitoring and effective counselling are also important for supervision. Ms. Ishikawa reiterated that linkage between institutions and community-based treatment should be established to enhance the effectiveness of parole and probation supervision. All participants agreed that pre-release programmes for young offenders and future discharge plans play an important role in social reintegration. Mr. Kiuchi said that in Japan more practical and updated training in institutions should be provided for meeting social change.

All participants agreed that the co-operation and active participation of parents are important for the rehabilitation of juveniles. Mr. Cheung stated that in Hong Kong regular family group and individual counselling services are provided for family members before discharge. He added that a multi-modality approach is used and also that different types of programmes are conducted by related parties to enhance the effectiveness of the supervision.

Prof. Sugano shared some relevant information on the idea of Multisystemic Family Therapy, which was developed in the USA and Canada. This therapy involves intensive observation sessions in a domestic family setting by professional volunteers. The observations last for two to three weeks and are used to identify persons who have a significant role in the juvenile's life and who can become a positive resource for the juvenile.

All participants agreed that supervision should be conducted by a government authority (probation officers, parole officers, welfare officers or prison aftercare officers), and that volunteers should play an assisting role.

Mr. Cheung stated that Hong Kong adopted the outreach approach whereby a supervising officer conducts surprise home and workplace visits to supervise the released offender closely and effectively. The participants from Japan, Myanmar and Sri Lanka said that in their countries probationers or parolees are interviewed in the probation office by appointment. Family visits are conducted if necessary. Mr. Sonam said that in Bhutan police and regional community leaders provide some assistance for discharged juveniles.

All participants agreed that there were some challenges and difficulties regarding aftercare supervision, such as handling of VPOs and some uncontrollable factors arising from bad peer group influence, finding employment, lack of family support and drug addiction.

III. CONCLUSIONS AND RECOMMENDATIONS

All participants agreed on the following conclusions and recommendations:

1. To obtain more genuine and accurate information, the different aspects and characteristics of juveniles should be taken into consideration when conducting risk/needs assessment;
2. Treatment programmes should be updated regularly by inviting the opinion of experts and related parties. Consideration should also be given to the ideas of participating staff and juveniles. Introduction of new programmes should be implemented in a step-by-step manner and the scale of reform should depend on available resources;
3. Objective and scientific measurements should be used for assessing the effectiveness of treatment programmes, such as the rate of recidivism and change of behaviour. Accurate and updated research and statistics should be rigorously maintained;
4. Restorative justice mediation programmes provide good opportunities for the juvenile to think more about the feeling of his or her victim and the consequences of crime. Juveniles should be guided and trained before attending victim mediation programmes;
5. Before discharging juveniles, greater pre-release training and preparation should be provided. For

this purpose, parole board officers or probation officers should be involved in the treatment of the juvenile during his or her stay in an institution. The through-care concept could be applied;

6. Stable employment is indispensable for the juvenile to lead a law-abiding life. Therefore, we need to seek more co-operation and assistance, from private companies as well as the community, through publicity campaigns;
7. Effective systems to monitor volunteers and NGOs are necessary;
8. In order for the juvenile to maintain his or her motivation to rehabilitate after release, it is necessary to provide some innovative and creative programmes;
9. Family plays an important part in the rehabilitation process; greater effort should be made to encourage the juvenile to build up trusting relationships with his or her family members. This should begin upon the juvenile's admission to an institution. The juvenile should also be encouraged to maintain close contact with his or her family during the parole or supervision period;
10. Aftercare supervision with control and care elements significantly influences a juvenile's re-integration. For this purpose, juveniles' needs should be assessed before release;
11. Training and education for staff on the rationale and mission of rehabilitation of juveniles should be strengthened. Some cultural change and motivational programmes could be good ways to enhance team spirit and levels of co-operation amongst staff members.

GROUP 3

EFFECTIVE MEASURES IN THE COMMUNITY-BASED TREATMENT OF JUVENILE OFFENDERS AND ENHANCEMENT OF THE JUVENILE'S ABILITY TO REINTEGRATE INTO SOCIETY

Chairperson	Ms. Loupua Kuli	(Tonga)
Co-Chairperson	Mr. Braam Paul Korff	(South Africa)
Rapporteur	Mr. Henry Asaah Ngu Ndama	(Cameroon)
Co-Rapporteurs	Ms. Iacy Monteiro Braga Caracelli	(Brazil)
	Ms. Suwa Imai	(Japan)
Members	Mr. Abdelkhoder Mahdi Al-Taher	(Iraq)
	Mr. Cesar Alexis Luiz Rodriguez	(Honduras)
	Mr. Satoshi Imamura	(Japan)
Visiting Experts	Dr. Ann Skelton	(South Africa)
	Dr. Robert Hoge	(Canada)
Advisers	Prof. Tae Sugiyama	(UNAFEI)
	Prof. Haruhiko Higuchi	(UNAFEI)
	Prof. Ryuji Tatsuya	(UNAFEI)

I. INTRODUCTION

Group 3 elected by consensus Ms Loupua Kuli as its chairperson, Mr. Braam Paul Korff as its co-chairperson, Mr. Henry Asaah Ngu Ndama as its rapporteur, and Ms. Suwa Imai and Ms. Iacy Monteiro Braga Caracelli as its co-rapporteurs. The group, which was assigned to discuss “Effective Measures in the Community-Based Treatment of Juvenile Offenders and Enhancement of the Juvenile’s Ability to Reintegrate into Society”, agreed to conduct its discussion according to the following agenda:

- 1) The current situation and problems faced by organizations that treat juveniles.
- 2) Measures of assessing the individual characteristics, degree of risk and individual needs of juveniles and classification accordingly.
- 3) Development of an effective programme in accordance with risk and needs assessment.
- 4) Development of an effective treatment programme considering victims and/or restitution of the harm caused to victims.
- 5) Continuous collaboration and maintaining links with institutional treatment services and/or related organizations for the effective treatment of juveniles and their rehabilitation (through-care).
- 6) The creation of an aftercare system which helps maintain the effect of correctional treatment, reduces the risk of reoffending and enhances the juvenile’s ability to reintegrate into the community.

II. THE CURRENT SITUATION AND PROBLEMS FACED BY ORGANIZATIONS THAT TREAT JUVENILES

The group first reviewed the current situation and problems faced by organizations treating juveniles in participants’ countries. The participant from Honduras, Mr. Rodriguez, said that in his country juvenile gang activity is a problem, as is their stigmatization by society. He added that some Christian groups and NGOs support juveniles but there are only eight such groups and they work with few juveniles. Also, one of these NGOs has conflict with the police making it difficult to have complete trust in NGOs because of the difficulty in reaching an agreement. He concluded that cultural and educational change, plus a sense of value, is needed. Reacting to this, the visiting expert from South Africa, Dr. Skelton, said some NGOs have an adversarial position to the government while others do not and actually assist the government in providing services. She said all these roles were important but the government will find it easier to make agreements with the second group of NGOs.

Ms. Caracelli, from Brazil, said that in her country, institutions are overcrowded and the aftercare system is not good, leading to a high rate of recidivism. Dr. Skelton responded that community-based treatment is less costly than institutional treatment and it is therefore easier to convince the government to establish and utilize such treatment.

Mr. Al-Taher said that in his country there is the problem of war orphans and civil organizations which do not do their work properly. These orphans are at great risk of turning to juvenile crime because they have no one to take care of them. The present government is making efforts to take care of juvenile offenders and rehabilitate them.

The participant from South Africa, Mr. Korff, said that in his country police officers are not well trained to deal with juvenile offenders. He also raised the problem of prison overcrowding and the need for more facilities in urban areas for juveniles. Reacting to this statement, Dr. Skelton noted that there is at present a good relationship between NGOs and the government for community-based treatment in South Africa. The only problem, she said, is that accessibility varies greatly between rural and urban areas. She emphasized that NGO activities should be financed by the government since they provide public services. She finally revealed that South Africa is preparing a detailed standard for restorative justice and NGO activities.

The participant from Cameroon said that in his country there is too much emphasis on institutional treatment and there are no policy guidelines or rules for community-based treatment. Probation officers have no legal power to conduct aftercare programmes and they work on a voluntary basis for a few community-based programmes, which are in turn initiated by NGOs and religious organizations.

The participant from Tonga, Ms. Kuli, said her country relied mainly on community-based treatment with good support from seven NGOs. According to her the only problem is accessibility since all NGOs are located on the mainland. The participant from Iraq also raised the issue of reliance on religion. To this Ms. Kuli said home training is more important than religion. The participant from Cameroon added that, religion being a sensitive issue, separation of religion from politics (secularism) is important.

Ms. Imai said about 80% of juvenile offenders' cases are dismissed after Family Court probation officers' investigations (which function as protective measures) so diversion is accomplished and Family Court probation officers, professional probation officers and volunteer probation officers are all well trained. She added that the future need is additional professional assistance for probation officers because cases have become, with regard to juveniles and victims, increasingly difficult to handle.

Mr. Imamura said that there has been a recent discussion of the increasing level of family problems and school problems which have necessitated the revision of the educational system, including the amendment of the Fundamental Law of Education. According to him, the problem lies with probation officers. Also, inquiry by Family Court probation officers is not fully utilized in aftercare and training also requires improvement.

The group afterwards discussed the countermeasures taken by governments to solve the problems raised above. Ms. Caracelli said in her country, age and type of offence are being considered but correction measures are not enough to take care of juvenile offenders and the educational level of offenders is very low.

Mr. Rodriguez said that his government has not established any concrete correction measures. Treatment measures are not adapted to the needs of offenders and personnel in juvenile centres lack training.

Mr. Al-Taher mentioned that young people constitute 60% of the population of Middle Eastern countries. Education, religion, tribe and rehabilitation are therefore important in the treatment of juveniles. He said there are childhood, employment, education and rehabilitation problems.

Mr. Ndama said that in his country a family code has been elaborated and will be sent to Parliament, and a Department of Child Protection has been created in the Ministry of Social Affairs to help pre-delinquent and street children and child protection has become an important aspect of the National Human Rights Commission's job. All of these he said will give probation officers a wider sphere of influence in the treatment of juveniles.

Ms. Kuli said that in her country, there are rehabilitation programmes such as training seminars and workshops, an alcohol and drugs treatment programme and unofficial practice of restorative justice at the *fono*, which is a village meeting where nobles and elders of the village gather to solve community problems.

The participant from South Africa said that in his country, there is need for improvement or creation of more facilities for the custody of juveniles, especially in urban areas, and lectures by the Department of Education to increase children's level of education. There are two One-Stop Child Justice Centres and nineteen other facilities for juveniles. Donors finance learning programmes for the police on domestic violence and child protection and people from the community provide police services on a voluntary basis.

Dr. Skelton said that training on diversion has been provided by the government for judges and prosecutors. The number of people in custody has been decreasing through inter-sectoral collaboration and legal representation. The problem of the budget required for enforcement has been solved by donors convincing the government to continue funding NGO activities and assistant probation officers earn a relatively low salary. Mr. Imamura said the Japanese government is reviewing the professional probation officers' training system and is working on increasing their numbers and criteria of employment. There is also the development of expert, clear, unified and specified services to be provided to clients.

Prof. Sugiyama added that in Japan professional probation officers have three years' training, consisting of lectures and on the job training, and another one month's training after ten years of service to become senior probation officers. Training is also provided six times a year for volunteer probation officers on matters such as the treatment of offenders and juveniles who have difficult problems. She also mentioned that social requests for effective community-based treatment are increasing.

The participant from Brazil said volunteers for several projects, such as the Midnight Programme, come from the Public Safety Secretariat, the police and the community.

III. MEASURES OF ASSESSING INDIVIDUAL CHARACTERISTICS, RISK AND NEEDS, AND CLASSIFICATION ACCORDINGLY

Under this topic the group permitted each participant to mention what elements are assessed in his or her country, the methods of assessment, and how this assessment is used.

Mr. Korff said age, type of offence, family background and personal history constitute elements of assessment in his country. To this, Dr. Skelton said emphasis should be placed on the juvenile's abilities and interests. Professor Sugiyama added that considering the juvenile's abilities and interests is very important for reintegration. Ms. Caracelli, from Brazil, said that in her country the type of offence and age are the primary factors for consideration. The mental and physical development of the juvenile and his or her family situation are also taken into account. For the participant from Honduras, family background is a very important factor. The participant from Cameroon said assessment by probation officers is based on the traditional elements of age, type of offence, criminal history etc. The medical approach is used in age determination and type of offence is important in determining diversion.

Ms. Kuli said that in Tonga there are two kinds of assessments; one for pretrial diversion programmes and the other for court. Six elements are used: family background, health status, criminal history, social circumstances, educational status and economic status. Marks are allocated as follows; 0-9 is low risk; 10-17 is moderate risk; 18-25 is high risk. Drug abuse is a subtitle under the social circumstance category.

The participant from Iraq said the political situation is an important element in assessment in his country. Mr. Imamura said the social and economic situation should be also considered.

Concerning methods of assessment, the participant from South Africa said that in his country the assessment is conducted via interviews with the juvenile. The interviewers are probation officers, schoolteachers and parents. This is the same for Brazil.

In the case of Iraq, interview is carried out after identifying the juvenile suspect. The Honduras participant said police officers in his country carry out such investigations. In Cameroon and Tonga assessment is carried out through interviewing of juvenile offenders, family members, teachers, friends, church leaders, employers or any person who can provide useful information.

In Japan, as revealed by Mr. Imamura, interviews and questionnaires are used. Professor Sugiyama added that psychological tests are used by the juvenile classification home officer. To this, Professor Higuchi said psychological tests are not always effective because they do not guarantee that juveniles will speak the truth; therefore, professional judgment is very important. Still on assessment methods, the visiting expert from Canada, Dr. Hoge, said assessments should be standardized, the people who administer them should be well trained, and assessment of juveniles should be different from that of adults. He gave the example of the Case Management Index method which gathers and mixes information. In addition there should always be room for professional judgments and flexibility, and he emphasized that school officers should be taught basic risk/needs assessments because there is a danger that they may overestimate risk, especially risk of violence.

On the use of assessment, the participant from South Africa said the scoring sheets are used to determine level of delinquency, peer influence and other characteristics. In Cameroon probation officers have discretion to decide on the use of assessment results. This decision influences future determinations on diversion and premature release. In the case of Tonga, assessment results are used to evaluate the juvenile's characteristics and from this make an individualized treatment plan. They also enlighten on the composition of the panel members who will attend the juvenile hearing, the appropriate disposition and the elaboration of an appropriate rehabilitation programme. In Japan assessment results are used to determine the appropriate disposition and elaboration of treatment programmes.

IV. DEVELOPMENT OF AN EFFECTIVE TREATMENT PROGRAMME IN ACCORDANCE WITH RISK AND NEEDS ASSESSMENT

Under this topic the participants discussed the characteristics and circumstances of each juvenile which ought to be considered in order to develop a treatment programme, the kind of treatment programmes that could be introduced, and the kinds of resources that could be used.

Concerning the characteristics of the juvenile, the participant from Honduras said the juvenile's abilities and interests should be a primary factor for consideration, to which all participants agreed. Mr. Ndama added that in complement to the juvenile's skill and ability, community opinion should be considered since the community's acceptance of the juvenile favours his or her reintegration. Therefore, in determining risk there is a need to strike a balance between juvenile risk and social risk.

In Japan, as expressed by Mr. Imamura, evaluation of a juvenile's characteristics are based on the following classification elements: drug dependency, relationship with gangs, sex offences, psychological disorders (including mental disability), unemployment, level of education, school violence, and domestic violence. Professor Sugiyama mentioned that emotional maturity was also an important characteristic to assess.

Ms. Kuli explained that in addition to needs, skills, and the disposition of the community, the juvenile's health, physical condition and possible changes in his or her circumstances if he or she moves from one community to another, should be considered. All participants concurred.

Regarding treatment programmes to be introduced, participants agreed that they should be individualized as much as possible. This is the case in Japan where there are different treatment programmes according to different behavioural patterns and characteristics, such as sex offender treatment programmes, drug treatment programmes, vocational training, etc.

In addition, many participants admitted the insufficiency or poor enforcement of treatment programmes in their countries. In the case of Honduras there are 12 programmes for at-risk juveniles and a passive minors' programme. These programmes face problems such as lack of finances and inadequately trained personnel. They therefore need to be improved. In Cameroon, there is a need for a treatment programme for girls and drug offenders as the numbers of such offenders are increasing.

Finally, participants agreed that in addition to taking into account juveniles' abilities and interests, such as sports or music, treatment programmes should incorporate, as much as possible, elements of juveniles' former environments. For example, for juveniles who have links with gangs, the rites and role types that

feature in gang life can be used in the elaboration of a treatment programme for them.

Referring to possible resources the group unanimously agreed that institutional and community resources are necessary. In Japan, this involves professional probation officers and VPOs; in South Africa, it means assistant probation officers and probation officers; and in other countries it refers to probation officers.

Mr. Imamura asked what material is to be used by these officials and proposed the establishment of unified manuals to provide the same quality of treatment across all institutions. Mr. Ndama thought such a manual could minimize differences in knowledge and experience of probation workers, while Professor Higuchi thought that since crimes are varied, an excessively detailed manual would discourage independent thinking and initiative, thereby promoting incompetence. Professor Sugiyama expressed the view that a guideline rather than a manual was necessary and this should be associated with experience and discussion between professionals. This was agreed upon by participants.

The use of community resources was considered very important in community-based treatment, for example, in Iraq community treatment involves religious and tribal leaders with strong influence in the community. This may require political and financial aid. The *fono* in Tonga, where nobles and elders in the village meet to solve the juvenile's problems, is a further example.

It was noted that in many countries NGOs and religious organizations are the major providers of community-based assistance to juveniles. Workers in these bodies usually assist offenders on a voluntary basis and the organizations themselves usually face financial problems and lack of access to information. Given the above situation group members were unanimous on the fact that it's important for governments to provide necessary information and financial aid to these bodies. The role of the government in providing incentives to companies who employ juveniles and that of the mass media in sensitization of communities on the need, importance and advantage of community-based treatment as against prejudice and rejection of juveniles was highlighted. To this end, the Japanese example regarding incentives for employers was considered an example to emulate.

In relation to this topic certain difficulties were raised. Dr. Hoge mentioned that although community opinion is important, it is difficult to consider it in a large community where there are few or no relationships between community members.

Another problem raised by Professor Sugiyama was sectionalism, which makes it difficult for PPOs, VPOs and police to co-operate with schools. Nonetheless, she said this is changing due to co-operation from the community. In reaction to these difficulties presented, the group unanimously agreed that the use of opinion leaders within the community is crucial, coupled with media sensitization of the community. Nevertheless, the difficulty of how to sensitize the media to advance this aim remains.

V. DEVELOPMENT OF AN EFFECTIVE TREATMENT PROGRAMME CONSIDERING VICTIMS AND/OR RESTITUTION OF HARM CAUSED TO VICTIMS

Under this topic, the group discussed the victim's feelings, expectations and needs; how, where and when offenders and victims should relate; and the third parties that should be involved in victim-offender contact.

On the aspect of victim's feelings, Dr. Hoge said anger and sorrow were common emotions experienced by victims. Also, victims may blame themselves, lose interest in their lives and isolate themselves from society, as mentioned by the participant from South Africa. Other concerns are cases where victims don't want to talk at all, even after a minor offence. This has happened in many cases in Brazil. With the victims having these feelings it is important to know what they want. The participant from Cameroon in relation to this said some victims may want justice to be done while others may not bother much about the offence. Still on this, Professor Higuchi said victims want severe punishment and they expect the government to provide such punishment. In order to take the victim's interest into consideration, compensation is important. Dr. Hoge said this could be monetary compensation or community work. Also, Mr. Ndama mentioned that victims may require only symbolic compensation, such as an apology. Professor Sugiyama added that victims want some information about the offender, the circumstances and facts constituting the offence. It is

noteworthy, as Ms. Imai mentioned, that in cases where the victim is seriously injured as a result of the offence and needs continuous medical assistance, or is permanently handicapped, the issue of receiving compensation becomes very serious.

Referring to how offenders and victims should relate, Dr. Hoge said that face-to-face meeting is the most useful but it is very difficult and needs to be applied carefully. In some cases, victims do not want to see the offender. Ms. Caracelli said that in Brazil, communities are shown a video on how juveniles are serving the community through voluntary work. Some victims feel more satisfied and less afraid after watching the video. Dr. Hoge added that although compensation is very important, restorative justice has to continue after restitution because there are needs of juveniles which need to be addressed.

The discussion that followed was on the matter of where victims and offenders should meet. Mr. Al-Taher said that in his country, they meet in a tribe guesthouse, a countryside place called the "Senate", or tribe police affairs where meetings are organized in conformity with the desires of the victim. Other participants proposed that the meetings should be held at the victim's house and or an administrator's office. Participants finally agreed on Ms. Kuli's proposal that a neutral place where both parties could relax, chosen through consensus and accepted by them both, was preferable.

Ms. Kuli also asked whether offenders could write letters to victims. Participants agreed that this was possible where victims were ready to read the letters. Participants discussed the inability of many offenders to write comprehensive letters due to their low level of education. It was unanimously agreed that face-to-face meeting between victims and offenders in a convenient place accepted by both parties is most desirable. Speaking on when victims and offenders should meet, Mr. Imamura said that victims' feelings usually show the following progression: firstly confusion; secondly anger and revenge when he or she finds out the facts constituting the offence; and thirdly wanting to act to achieve solutions. As such, the best time for the meeting between the victim and the offender is after the second stage. This opinion was unanimously accepted by all group members. Talking about third parties who should be included in victim-offender meetings, Mr. Rodriguez said the victim should be accompanied by a friend or somebody he or she trusts. The participant from Cameroon continued that in cases of sexual offence victims are often in a very sensitive situation and in the case of murder the bereaved family's feelings are very severe and this should be considered when deciding on the presence of third parties. Dr. Hoge highlighted the fact that the healing of the victim is a process and should be considered as such. Ms. Kuli was of the opinion that the victim's and offender's choices should be considered when deciding on the presence of third parties.

The group finally agreed that third parties were necessary for the successful conduct of victim-offender meetings but stipulated that they needed to be chosen carefully, taking into account the desires of both victims and offenders.

VI. CONTINUOUS COLLABORATION AND MAINTAINING LINKS WITH INSTITUTIONAL TREATMENT SERVICES (THROUGH-CARE)

Under this topic the group discussed three issues: how to strengthen the relationship between related treatment agencies to create an integrated system; the efforts communities can make before they receive the juvenile, and the institutional change that can be introduced to enhance inter-agency co-operation.

Relating to the first issue, participants agreed that communication and exchange of information between treatment agencies and the community was crucial in increasing collaboration and co-operation between them. This nonetheless requires due regard for the juvenile's right to privacy and should be done in the juvenile's best interests. In this regard, information should not be given to just anybody and should be given for a good reason. Ideally information will be provided only to persons or bodies who have a positive stake in the juvenile's rehabilitation. In the case of Japan, there is a juvenile support team in which VPOs, police officers, child welfare centre officers and school teachers discuss juvenile aftercare treatment.

In Honduras, officials and bodies involved in treatment have access to only part of the information on the case of the juvenile; full access is the exclusive preserve of the judge. Ms. Kuli proposed in this regard that the probation officer should be responsible for information on the juvenile.

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Mr. Korff said depending on the country situation, the courts of the Social Welfare Department could be in charge of information on the juvenile. No matter what the facts of the case, it is desirable and in the best interests of the juvenile that the probation office has a perfect mastery of this information. Professor Sugiyama, from her Kenyan experience, posited a situation in which different agencies may use differently formatted documents, thereby creating misunderstanding. In this case the challenge of ensuring the use of identically formatted documents by all agencies is very important, because this enhances co-operation and collaboration. The participant from Honduras said this situation exists in his country, where NGOs use differently formatted documents, but agencies exchange information with them and everything works well. Exchange of personnel between agencies as a means of enhancing collaboration was also mentioned by Professor Sugiyama.

Concerning the efforts communities should undertake before they receive the juvenile, participants focused on community sensitization in order to ensure preparedness. The participant from South Africa said that in his country there is a "police forum" involving police officers, community members and invited experts, where juvenile offenders' issues are discussed and common solutions are sought. This makes the community more prepared to receive and accept the juvenile, and prevents stigmatization. Social events are also organized in the community for sensitization.

The participant from Brazil revealed that the above-mentioned approach is also used in her country and this raises community awareness of and co-operation with the reintegration of juveniles. To this, the participant from Tonga said that police officers and probation workers have connections with people who are influential in the community, to whom they can turn for help in sensitizing the community. She also underscored the important role of the mass media in community sensitization. Enhancing community preparedness also requires that the community has some information about the juvenile that they will receive. In this connection, Professor Sugiyama said the community needs to know what the juvenile wants to do after release, and it needs to understand what training the juvenile has received by visiting the institution or exchanging letters with staff.

Mr. Ndama proposed that the community be involved in activities of vocational training and living guidance within the institution. This will ready the community to receive and accept the juvenile because it can already identify with the juvenile when he or she is released.

With reference to what institutional change should be introduced to enhance inter-agency co-operation, the group had a heated discussion.

Mr. Ndama highlighted the fact that the link between the institution and the community is difficult to establish, but it is nonetheless desirable to continue treatment after the juvenile's release. It is therefore necessary to establish a formal public institution for aftercare. He continued that in Japan there is a formal link between institutional treatment and community-based treatment, but this is not the case in many other countries, like his, where commissions have been proposed in each province to act as a link between the institution and the community. Professor Sugiyama said in that in Japan, the parole board decides whether or not the juvenile will be paroled. Also, in some systems, such as that of Hong Kong, correctional institutions have a section in charge of aftercare activities such as job searching. Ms. Kuli said that in Tonga, the probation office is the link between institutional treatment and community-based treatment. Mr. Imamura mentioned the fact that establishing a good system of information was most important given that providing information to the community is more necessary than setting up a new government institution. Regarding the juvenile's right to privacy, he said information can be provided on an anonymous basis, on request. For example, when a company requests information for recruitment, the juvenile's name is not disclosed.

Mr. Ndama next proposed the establishment of a government agency which co-ordinates several community resources regarding the juvenile because he believes that an overly complicated system would be unclear and vague. He also said that the Japanese system is too dependent on volunteers. The participant from South Africa said to change institutions you must have good benchmarks and communication between agencies and everyone has to assume responsibility. In relation to the proposal to establish another institution which is mainly in charge of aftercare, the participant from Cameroon said it was an excellent idea, but mentioned one difficulty. According to him, most of the time corrections tend to be regarded as a consuming department and to convince the government to provide a budget for institutional change, it is

important to use cost-benefit analysis. This opinion was also shared by Mr. Imamura. To this, the participant from South Africa said that before carrying out institutional change it is necessary to carry out an impact study to show how corrections can decrease recidivism and save money.

VII. AN AFTERCARE SYSTEM WHICH HELPS MAINTAIN THE EFFECT OF CORRECTIONAL TREATMENT AND PROMOTES REINTEGRATION

Under this topic, the group dwelt firstly on how aftercare should maintain the effect of correctional treatment; secondly on how it reduces the risk of reoffending; and finally how it enhances the juvenile's ability to reintegrate into the community.

Relating to the first subtopic, Ms. Caracelli said that in her country finding a job for juveniles is very difficult, and there is no aftercare treatment. She continued that there is an agricultural training school but it is not for juveniles. This school, she said, may be useful for juveniles and does not require a large government budget.

Ms. Kuli said continuous communication with the juvenile's family, school authorities and community is necessary. To this end, in her country, probation officers continue to keep in touch with family members and school members for at least six months. Ms. Caracelli mentioned that it is possible to work on continuous aftercare where the community can collaborate with the police and schools to help juveniles.

Mr. Korff said an impact study is very important to see whether the treatment was effective and if juveniles have re-offended. The participant from Cameroon was of the opinion that there is a big gap between community-based treatment and institutional treatment, and it is necessary to make efforts to reduce this gap since treatment has to be a continuous process.

Ms. Caracelli next highlighted the fact that it is important for juveniles to attend community-based activities, while for Tonga's participant it is also important to solve family problems before release and it is desirable for juveniles to attend counselling once or twice a week.

Professor Sugiyama said that in Japan it is necessary to provide many medical follow-up programmes such as hospital or clinic visits to treat the juvenile's mental disorder or psychological problem. Additionally, there is need for professional support to supervise the juveniles after release because supervising them is difficult for their family members. According to Professor Sugiyama, family support is very necessary and VPOs work in liaison with families, medical doctors, counsellors and other experts. The problem here is that very few of these professionals provide these services and the insufficiency of medical follow-up programmes makes it difficult to release the juvenile. Some people are thus of the opinion that a juvenile should remain in the institution for a longer period so as to get full treatment before he or she is released.

To this the participant from Cameroon said that a longer stay in the institution defeats the very purpose of juvenile justice which demands that juveniles be in institutions for the shortest possible time. This, according to him, is a controversial issue and should be a matter of public policy.

For the participant from Iraq, whether or not the juvenile has the support of family members after his or her release is very important. If he or she has no family member there is a need to provide a particular programme. This in his opinion is because when the juvenile is released, he or she may be taken care of by the probation officer for a few months but if there is no family member to take over he or she will go back to the streets and resume a criminal or delinquent lifestyle. The government therefore has to take care of such juvenile offenders and oversee their rehabilitation. He added that in his country the government provides counselling to increase the self-esteem of juveniles and the community has to accept him or her. Also, the government provides money to juveniles without jobs to get married and to start a small business.

Professor Sugiyama was of the opinion that establishing facilities requires a large budget. She said that in Japan the government gives compensation or financial aid to companies which employ juveniles. This was proposed as a good approach by the participant from Tonga.

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The participant from South Africa revealed that his government gives subsidies to certain organizations which provide free accommodation and food to released juveniles and the juveniles in turn do community work. Also, most churches carry out weekend activities where social workers and other professionals provide counselling, communication and social skills to juveniles.

The participant from Cameroon said that public opinion is sometimes very critical of government provision of facilities for offenders which are much better than those available to the law-abiding community. It is therefore necessary according to him to provide minimum service; this is the responsibility of the government because over-reliance on volunteer systems does not set a solid basis for aftercare.

He added that private individuals or companies can provide aftercare services and manage them under the supervision of the government, like the privatization system underway in Hong Kong and Japan. To this, Professor Sugiyama said halfway houses in Japan were established by private persons, but now the government provides about 70% to 80% of their budgets. She added that Japan is now planning to establish national halfway houses for offenders who are difficult to deal with and this may be useful to other countries.

For Mr. Imamura, the important thing is improving the juvenile's ability or awareness rather than giving any particular kind of aid. Also, Ms. Kuli said a post-release legal system is needed because most aftercare activities are carried out through personal or group initiatives.

On how aftercare can reduce the risk of reoffending the participant from South Africa asserted that the probation officer's role is very important. He continued that his country has a programme for adult and juvenile sex offenders called "Say Stop". This is an NGO programme, which aims at preventing offenders from committing further sex offences. He also emphasized the importance of stopping juveniles from engaging in relationships with peers, especially adults, who influence them negatively. The above-mentioned programme provides advice and counselling to them in this regard.

Mr. Rodriguez said that in Honduras there is no aftercare system. Co-ordination between NGOs and the government is therefore necessary. In his opinion, police officers could call such meetings. Ms. Imai said it is also important for NGOs to receive budgets from the government. This is because without such budgets, it is difficult for the government to supervise NGOs and they can't work effectively.

According to Ms. Kuli, an aftercare system has to accommodate the problems of the juvenile. This needs continuous assessment after release and the information has to be shared with family members. She added that aftercare has to continue until the juvenile is completely corrected or becomes an adult.

To this Mr. Korff reaffirmed the importance of continuous assessment to see if the juvenile is progressing and the crucial role of the probation officer.

Mr. Imamura said when we assess the risk and needs of the juvenile both before and after release, not only family problems but relationships with supportive persons are important. In addition, whether or not the juvenile has a job is important, not only because of money but also because it is important for him or her to contribute to society.

Mr. Al-Taher agreed with Mr. Imamura's opinion and added that the juvenile should also feel forgiven and not have a sense of guilt anymore in order to consider himself or herself accepted and admitted into the community.

Mr. Ndama was of the opinion that bad peer influence and recidivism can be reduced by changing the way the juvenile uses his or her free time. In this connection, treatment programmes should involve juveniles using their free time for healthy distractions and hobbies, such as the Midnight Programmes in Brazil. In this regard it is important to take the juvenile's interest into consideration and not impose on him or her activities which will not work.

Professor Higuchi said that in his experience, the juvenile is relatively psychologically, mentally and even physically weak. This makes him or her want to belong to a group and he or she tends to return to detrimental peer groups after release. It is therefore necessary to provide the juvenile with another group,

such as legal motorcycle riders or an agricultural activities group, which is involved in constructive activities.

Following this the participant from Brazil said that in her country, juveniles always talk about groups and they say the group is waiting for them. She agrees therefore, that it is very important to provide them with another group.

On aftercare enhancing the juvenile's ability to reintegrate into the community, Professor Sugiyama said the juvenile's parents always need continuous support because they tend to conceal the juvenile's case from their wider social circle. They are also afraid to ask for help because they are always criticized by other community members. She mentioned that in the case of Japan each prefectural police office has a support centre which the juvenile's parents can consult at no cost. Ms. Caracelli also added that the juvenile's family needs support in looking for a job and counselling by probation officers is very important for them. For Ms. Kuli, to make aftercare treatment effective, connecting with family and community members is very important and there is need for a legal system of aftercare treatment.

The participant from South Africa said that in his country, there is a "Skill Development Programme" which provides juveniles with skills so that they can find employment.

Referring to the family, the participant from Cameroon said it is one of the most important elements in ensuring that the juvenile is reintegrated into the community. According to him, counselling parents increases their ability to help the juveniles after release, making it a vital element of aftercare treatment. He went ahead to underscore the role of the victim in aftercare treatment. He said when the victim and offender are in the same community, the victim will be an important element in facilitating the juvenile's reintegration in cases where he or she has forgiven the juvenile. The victim can convince the community members to accept the juvenile as he or she has done.

Mr. Al-Taher said the volunteer system is very important because it has a direct influence on the community. He added that Iraq has a child adoption system which works very well.

VIII. RECOMMENDATIONS

1. Community-based treatment measures must be in line with the needs of offenders. A board or governmental institution may screen these programmes before allowing implementation by NGOs and other community organizations. By doing this, the government may also need to set guidelines or regulations;
2. A treatment programme for the type of risk and need assessment should be developed by specialists and role players in co-operation with the police and departments of justice, social welfare, correctional services and prisons;
3. Considering the protection of the human rights of juveniles, governments must prioritize financial support of treatment programmes and concerned organizations;
4. Aftercare agencies should co-operate and collaborate with all institutional organizations. Communication and exchange of information and community resources between treatment agencies and the community is crucial in increasing collaboration and co-operation between them. This should take into consideration the juvenile's right to privacy, and should be in the juvenile's best interests. Identically formatted documents should be used by all agencies to enhance co-operation and collaboration among stakeholders;
5. The use of community resources such as religious groups, community leaders and police community forums should be highly considered for community-based treatment;
6. Third parties are necessary for successful victim-offender meetings but they need to be chosen carefully, taking into account the desires and situations of both victims and offenders;
7. Aftercare residences (halfway houses, etc.) should be established or increased to continue effective treatment of the juvenile within the community;
8. Continuous supervision, assessment and treatment of juveniles, and supports to their parents and families, should be maintained;
9. Treatment programmes should provide juveniles with healthy distractions and hobbies in which they have interest so as to reduce negative peer influence and recidivism.

APPENDIX

COMMEMORATIVE PHOTOGRAPH

- *136th International Training Course*
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UNAFEI

The 136th International Training Course



Left to Right:

Above:

Dr. Hoge, (Canada), Prof. Noguchi, Prof. Higuchi, Prof. Naito, Mr. Park (Korea)

4th Row:

Ms. Shibuki (Staff), Ms. Uenishi (Staff), Mr. Ohashi (Staff), Mr. Matsumoto (Chef), Mr. Iwakami (Staff), Mr. Takagi (Staff), Mr. Kitada (Staff), Mr. Nakayasu (Staff), Mr. Kosaka (Staff), Mr. Yamagami (Staff), Ms. Obayashi (JICA), Mr. Shirakawa (Staff)

3rd Row:

Ms. Ota (Staff), Ms. Tomita (Staff), Ms. Tsuruoka (Staff), Mr. Nagaike (Japan), Ms. Ishikawa (Japan), Ms. Kuli (Tonga), Mr. Kapila (Sri Lanka), Mr. Upuldeniya (Sri Lanka), Mr. Parodi Pugliese (Panama), Ms. Caracelli (Brazil), Ms. Imai (Japan), Mr. Ndama (Cameroon)

2nd Row:

Mr. Al-Taher (Iraq), Mr. Senot (Philippines), Mr. Sonam (Bhutan), Mr. Kyaw (Myanmar), Mr. Rodriguez (Honduras), Mr. Korff (South Africa), Mr. Cheung (Hong Kong), Mr. Chu (Vietnam), Mr. Kiuchi (Japan), Mr. Imamura (Japan), Mr. Nakazawa (Japan), Mr. Katsuda (Japan), Mr. Makwakwa (Zimbabwe)

1st Row:

Mr. Kawabe (Staff), Prof. Ishihara, Prof. Yamada, Prof. Sugiyama, Deputy Director Seto, Judge O'Driscoll (New Zealand), Director Aizawa, Dr. Skelton (South Africa), Prof. Oshino, Prof. Tatsuya, Prof. Sugano, Mr. Fujii (Staff), Mr. Cornell (LA)