

CHAPTER FOUR

AN EXPLORATION OF PROJECTS USING RESTORATIVE JUSTICE

INTRODUCTION

Chapter Four presents a brief report on each project included in the study, presented provincially. A summary of the status of restorative justice practice in the province appears at the end of each province's reports.

EASTERN CAPE

THE DEPARTMENT OF SOCIAL DEVELOPMENT: TSOMO

Two social workers operate in the local region of the Eastern Cape comprising the area of Tsomo and Cofimvaba. The social worker interviewed began incorporating restorative justice elements into her work in October 2004, after completing training in VOC and FGC through the RJC. She currently identifies suitable cases for VOCs and FGCs during her work with the court. Since the completion of her training in October 2004, she has facilitated eight conferences, all of which were successful.

All funding for the probation officers of this region is provided by the Department of Social Development (DSD). Although resources for carrying out the work are scarce, no local fundraising is conducted.

After assessing each case appearing in the local court, the social worker makes recommendations to the magistrates and prosecutors as to which cases would be suitable for diversion programmes. If the court approves the recommendation, she commences with the appropriate conferencing procedure. Although she finds that the courts are open to the concepts of restorative justice, it generally seems that the courts are more inclined to refer children rather than adults for diversion programmes.

The conferences conducted follow the standard VOC/FGC procedure as described in Chapter Two. The social worker facilitates the meetings, making the necessary referrals when the occasion arises. For example, should drug rehabilitation or further counselling be necessary, she makes referrals to external organisations.

The most serious problem hindering work has been the lack of knowledge

on the part of local magistrates and prosecutors about restorative justice programmes. While the latter have been open to suggestions, the work in restorative justice would have been easier if they had also been trained in its procedures. As it is, referrals have been fewer than she would have liked. On the other hand, the local communities have been very open to restorative justice options.

THE DEPARTMENT OF SOCIAL DEVELOPMENT: ZWELITSHA

The social worker interviewed is the only one serving the local region of the Eastern Cape near Zwelitsha. He began incorporating restorative justice elements into his work in 1997, after completing training in VOC and FGC at Stepping Stones. Since his training, he has facilitated one FGC, which took place in February 2005. Having identified this particular case as suitable for conferencing, he recommended to the court that it be diverted to him personally for conferencing.

All funding for the probation officers in this region is provided by the DSD. No funding is provided specifically for restorative justice projects.

By assessing each of the cases appearing in the local court, the social worker makes recommendations to the magistrates and prosecutors as to which cases would be suitable for diversion programmes. If the court approves the recommendation, he typically makes referrals to NICRO for the appropriate programme. He facilitated the FGC case in February 2005, personally because he felt that the dispute was not sufficiently serious to warrant a more substantial diversion programme. This conference followed the standard FGC procedure as described in Chapter Two. While the case was successful, it necessitated time and use of personal resources, making it difficult to carry out this sort of work often.¹ The most serious problem encountered by this social worker is the severe shortage of resources for conducting his own conferencing programmes. Further, he experiences difficulty in obtaining community support for diversion programmes because some members think they are a 'soft solution' to crime. Compounding these difficulties, he finds that the magistrates and prosecutors in Zwelitsha are not particularly well educated in diversion or restorative justice programmes, and thus do not make many referrals for these options.

NICRO : PORT ELIZABETH

The National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) is a non-profit organisation dedicated to development and crime prevention in South Africa. NICRO was founded in September 1910 as

the South African Prisoners' Aid Association, serving prisoners and their families. After much growth within the organisation, as well as the development and modification of services, it was renamed NICRO in 1970. In the late 1980s NICRO began serving victims of crime, focusing specifically on abused women. The introduction of the Diversion and Youth Development Programme in 1992 was followed closely in 1993 by the Economic Opportunities Project as well as the Youth Empowerment Scheme (YES). 1996 saw the introduction of the Journey Programme, a component of NICRO's Diversion Programme, based on the Rite of Passage theory and wilderness therapy. This programme is also suitable for high risk and repeat offenders. The FGC was initiated in the same year. The organisation broadened its scope to include services to other victims of crime in 1997, which marked the launch of the Community Victim Support Programme. In that year, the word 'rehabilitation' was replaced by 'reintegration' to give a more accurate reflection of NICRO's work with offenders.

NICRO is the largest and most organised civil society organisation practising restorative justice nationally, with established offices in all nine provinces. As outlined in Chapter Three, NICRO was the first organisation to introduce restorative justice to South Africa. Restorative justice in all its aspects is now integral to all NICRO's programmes.

In line with its focus on children, NICRO has concentrated on FGCs rather than VOCs, although it appears that staff members do not all use the term in the same way. FGCs are utilised as a decision-making forum that promotes a restorative justice principle of rebuilding disrupted relationships, where the focus is on putting things right and not punishment. Through FGCs, families are put in charge of decision making and reclaiming responsibility for various aspects of community and family life.

The Journey Programme is an intensive experiential intervention programme aimed at high-risk children, while the pre-trial community service allows children who have offended to do volunteer work at community service centres or at other public institutions. The organisation has forged a good relationship with the government by identifying the needs of children at risk and in conflict with the law and designing relevant programmes. Their reliability in service delivery has also impressed donors. NICRO is funded by both government and private donors.

The offender reintegration programme, the Tough Enough Programme, or TEP, is a voluntary programme for prisoners who are within one year of their release date. It is a six-phase programme aimed at helping the prisoner make the transition from incarceration to release. It involves individual assessments of a prisoner's concerns and needs, group education on topics like drugs and

HIV/AIDS, community networking and support and conducting a job search. It also assists released prisoners who wish to continue their education.

These programmes do not really differ from province to province, as the core programme remains the same. However, programmes are implemented according to clients' needs, which means that, in essence, some content may differ but processes are consistent.

NICRO Eastern Cape's diversion programme is concerned with children in trouble with the law, but the children have to take responsibility for their actions before they can be included in the programme. Children deemed possibly suitable for diversion are referred by the court, and take part in programmes like confidence-building workshops, drug education, diversity training and community service projects, amongst others. NICRO Eastern Cape completed 1,593 diversion cases for children during the 2004-2005 financial year. They conducted 69 FGCs and 17 VOMs.

NKOSI THANDATHU JUSTICE MABANDLA: HOUSE OF TRADITIONAL LEADERS: ALICE

Nkosi Mabandla is a leader of a Xhosa tribe in the Eastern Cape. He was installed in 1958, at which time he was certified to try certain cases. Currently, there is no legislation to guide the tribal authorities, and they have received no referrals from the formal justice system. Historically, the tribal authorities had a list of the cases they could or could not try, but those guidelines are no longer followed. Nkosi Mabandla says it is consequently unclear which cases may now be tried by traditional authorities.

He emphasised that disputes are solved by the people. The leader does not pass judgment or make decisions himself; but acts merely as the mouthpiece for the community. The cases Nkosi Mabandla oversees are usually solved by peacemaking rather than punishment. He explained the traditional court process, using the example of the pregnancy of an unwed girl. The complainant, typically the girl's parent² or guardian, brings the case before the traditional leaders' court. Following this, the leader advises the respondent and sets a date for the hearing. The leader, the prosecutor, the family and community members are all involved, and have the right to hear and question the parties concerned. Nkosi is not aware of any cases heard by the tribal authority referred from the judicial system.

Once the court is in session, the girl makes her statement before everyone present. The respondent confirms that he has heard her statement and then gives his response. If he admits to the accusation, he has to set the situation right by giving her parents or guardian five head of cattle or the monetary equivalent. If, on the other hand, he denies the accusation, he must provide

proof to exonerate himself from the charge. For example, if the respondent admits that he and the girl did have a relationship, but that she had a subsequent relationship with another man, mere suspicion is not enough to excuse the respondent. Both parties have the right to carry out cross questioning. Once the statements and questions have been completed, the two parties leave and the council renders a decision. If there is any disagreement over the fatherhood, the court will wait for the birth, after which the older women examine the baby's features to determine the father.

Nkosi Mabandla also described an example of stock theft. If a boy steals and eats a sheep, an investigation ensues. If the offender is found guilty he is not sent to prison but, instead, he or his parent or guardian is asked to give the victim a sheep in return, to make the victim whole again. So while there is no formal punishment, there is restitution. In certain cases, the offender might be required to provide a second sheep to be slaughtered for those who attended the hearing.

Anyone has the right to appeal to the formal justice system if they are dissatisfied with the results of the hearing by the tribal authority.³

Magistrates now find difficulty in coping, because such offences, previously handled by the tribal authorities, are now their responsibility. To alleviate this problem, there should be a closer working relationship between the Department of Justice and the traditional leaders.

PHAPHAMANI RAPE CRISIS CENTRE: UITENHAGE

The Uitenhage Phaphamani Rape Crisis Counselling Centre (the 'Centre') is a small, non-profit organisation which began implementing restorative justice practices in 2002 and received training from the RJI in 2003. The Centre's two employees learned of restorative justice during a workshop and became interested in the practice because they felt that offenders and victims could benefit from the additional support provided by the restorative justice process. The formal court process does not allow for this.

The Centre works on both criminal and civil cases. Some are very difficult, particularly the domestic violence cases. The programme has developed through the provision of legal assistance, community education, counselling and moral support. It focuses on adult victims and does not charge fees. Clients include survivors and their families, who are referred to the Centre by the SAPS, the courts, lawyers, social workers or hospitals. Sometimes offenders or victims themselves initiate the process and request participation in the programme. In this case, the Centre channels the client through the programme in the same way they would a referral.

The Centre's two staff members are assisted by 20 trained volunteers, who do not receive remuneration. Usually, the Centre receives five referrals a day, far more than can be managed. If the volunteers are diligent, ten cases can be completed in a month.

Volkswagen South Africa (Pty) Ltd (VW) has, since 1998, consistently provided the entire funding for the Centre. When the Centre wishes to introduce a programme, such as one on restorative justice, a business plan is prepared and presented to VW. In the contract, VW agrees to act as partner, not donor, with the Centre. VW requires a quarterly report from Centre, which also has partnerships with the DSD, the DCS, the SAPS and the local municipality. In addition, a magistrate and a few attorneys have received training in restorative justice. Despite this, the Centre still finds the need for more comprehensive training within the government and the formal justice system.

The Centre holds VOCs involving a number of role players. The standard process, as described in Chapter Two, is followed.⁴ While the process often causes the victims' pain to resurface, they are usually satisfied in the end. Nevertheless, because most of the cases involve domestic violence, the Centre notes that it needs more training to know how to ensure the security of the victim. Between 1 April 2004 and 31 March 2005 the Centre carried out 63 FGCs and 72 VOCs.

Like other NGOs, the Centre faces numerous problems. Although its funding from VW is steady, it is sufficient only for operating the programme. More funding is required to compensate the volunteers if the Centre is to reduce their high turnover. The Centre encounters a further problem when the offender wants to go through the process but someone in his or her family does not want to support the offender's participation. But the most serious problem of all arises when the role players in the formal justice system do not understand the restorative justice process and consequently do not use it.

DEPARTMENT OF SOCIAL DEVELOPMENT, STEPPING STONES ONE STOP YOUTH JUSTICE CENTRE: BLOEMENDAL

Stepping Stones is a one-stop youth justice centre in Bloemendal, Port Elizabeth. This project was established in 1996 as a pilot project of the Inter-Ministerial Committee for Young People at Risk. This was done with the assistance of private donor funding and was the first of its kind in South Africa. Stepping Stones is now managed by the DSD, which employs the staff and finances the programme. Stepping Stones works in close co-operation with NGOs, schools, places of safety and secure care facilities, as well as with the prison where certain children are held.⁵

Stepping Stones brings together the services for children in trouble with the law under one umbrella.⁶ Services are rendered by the DSD, the SAPS, NICRO, and the Department of Justice and Legal Aid, all of whom contribute to the success of Stepping Stones. When a child is arrested, he is detained at the Stepping Stones Centre, whereupon he is assessed by a probation officer before appearing in court. This assessment typically takes between 45 minutes and an hour, depending on the child's cooperation.

The assessment examines the child's suitability for various options, such as diversion, the Y.E.S. Programme, a pre-trial community service order or an FGC, if an identifiable victim exists. If the child appears to be a suitable candidate for a diversion option, the probation officer notifies the NICRO social worker, who is stationed full-time at the Stepping Stones office, to assess him. The court then makes the final decision as to whether the child's case can be diverted. Children placed in diversion programmes are then monitored by their respective probation officers. FGCs are sometimes conducted by Stepping Stones staff, although they are not part of court-ordered diversion. During the period 1 April 2004 – 31 March 2005, Stepping Stones carried out 28 FGCs.

As part of the pre-sentence investigation, Stepping Stones must contact and interview the victims, if possible. During the interview with the victim, Stepping Stones personnel explain the potential sentence and ask for the victim's opinion on this. Should the need exist, Stepping Stones will follow a child up, even if a criminal case is withdrawn. Should a child continue to experience problems, Stepping Stones tries to place him/her in a follow-up programme. They also refer the child to relevant external resources. If a children's court inquiry has been opened or if it seems appropriate, reference can be made to social workers in the DSD. About 20% of the children who go through Stepping Stones re-offend.

Yet another problem arises when children try to re-enrol at school, because schools are sometimes hesitant about or resistant to playing a role in the re-integration of child offenders into their community.

Funding is provided by the DSD. Stepping Stones is currently experiencing certain challenges regarding management arrangements and funding flow. There is also a shortage of probation staff. Previously, community volunteers were paid a stipend to assist with the case load, but there is no further funding for this.

PROVINCIAL REPORT: EASTERN CAPE

The survey of restorative justice programmes and practices in the Eastern Cape revealed a variety of programme designs, implementation, setting and size, even within the sectors. While funding poses an obstacle for virtually every programme, there are promising innovations and potential sources for expansion. Six programmes and practices were surveyed in the three sectors of traditional authorities, civil society and government. The DCS was not surveyed in the Eastern Cape but is included in this provincial analysis.

The organisations surveyed in the civil society sector of the Eastern Cape varied widely in their practices. However, a lack of sufficient and consistent funding is a unifying concern. Long-term funding provides civil society organisations with stability, which enables them to expand and develop restorative justice programmes. For example, one organisation surveyed is entirely funded by a private business dedicated to strengthening the community, while another relies on cooperation between various private donors and government agencies. The second organisation thus spends more of its available resources on securing its future operations rather than on developing its programmes.

Similarly, the NICRO Eastern Cape office appeared far less cohesive in its operation than other NICRO offices; even definitions of its own restorative justice programmes varied from staff member to staff member. This organisation's mediators seem to operate independently of one another, possibly losing out on the benefits of teamwork.

Dedication to restorative justice work on the part of probation officers in the Eastern Cape struck the researchers positively. All three interviewees indicated that they lacked resources. None of them was receiving specific assistance or funding for restorative justice programmes and several were practising restorative justice at their personal expense. But the difficulty of running a restorative justice programme with limited time, money and staff has resulted in inspiring innovations that should enable the expansion of restorative justice within the DSD.

The traditional leader with whom the researchers met in the Eastern Cape confirmed an understanding of how restorative justice philosophies are, and have been, integral to the traditional justice system. Though the actual phrase 'restorative justice' is not used, the traditional process of conflict resolution centres on rebuilding community ties between the victim, offender and community which is a central theme of mainstream restorative justice programmes. However, these traditional courts are limited in their authority. Cooperation between traditional courts and local police or magistrates is unidirectional. A traditional authority will, and in some cases must, refer certain cases to the

formal justice system. On the other hand, if a community member chooses to report a crime to the police before bringing it before the traditional leader, the case will fall under the jurisdiction of the criminal court, which is highly unlikely to refer a case to the traditional authorities. This was a common frustration expressed by several of the leaders surveyed. Most wished for greater cooperation between the traditional justice system and the formal justice system, particularly as far as less serious offences are concerned.

Generally, restorative justice work is operational in the Eastern Cape on a rather limited scale, and virtually all restorative justice practices suffer from a severe lack of resources. There are several promising programmes, but not much cooperation among the available resources. The Eastern Cape showed the potential for expansion, particularly in cooperation with large private and international donors. It also showed the importance of innovative measures for programmes with limited resources.

FREE STATE

DEPARTMENT OF SOCIAL SERVICES: FICKSBURG

The DSS provides probation services in five areas, namely Ficksburg, Fordesburg, Clocolan, Rosendal and Makgwate. Probation services are conducted by two staff members, who are the chief probation officer, and the assistant probation officer.

In 2004, the probation staff were trained in conducting FGCs and VOCs by the Restorative Justice Centre. Since then, one VOC and eight FGCs have been facilitated, with positive outcomes. Other programmes offered are the Youth Empowerment Scheme (YES), community service and home-based supervision. The target group is children under 18 years of age in trouble with the law, who have been referred by the formal justice system at the diversion and pre-sentencing stages. All the referrals are for criminal offences like house-breaking, shoplifting and theft, as well as common and GBH assault. According to the statistics, the staff deals with a minimum of 35 clients annually. There are 15 programmes annually, each with an average duration of three weeks.

The programmes are funded by the DSD, and there are no other fund-raising projects. The clients, children in conflict with the law, come mainly from the black and coloured communities of poor socio-economic status. The languages commonly used are Sotho, Afrikaans and English. Offenders who are not willing to participate in the programmes are referred back to the prosecutor. No fees are charged for these services.

The standard procedure for FGCs and VOCs as described in Chapter Two is followed.

DEPARTMENT OF SOCIAL SERVICES: THABO MOFUTSANYANA

The probation officers in this department were trained to conduct VOC and FGC by the Restorative Justice Centre in February, 2004. These services are provided by officers based in Ficksburg, Vrede, Bethlehem and Qwa Qwa. The surrounding villages and towns are included. There are two chief probation officers, one probation officer and two assistant probation officers. There are no volunteers.

The DSS funds programmes as a component of its annual budget, but there are no fund-raising projects. There are, however, various partnerships with community members, such as NGOs like the OVV, NICRO and the Thusanang Advice Centre, as well as with churches and other government departments.

Participation in programmes is free. The main target group is children under 18 who are in conflict with the law, and their families. The clients, consisting of victims, offenders and their families, are referred by the Justice Department, the SAPS and the community at the diversion and post-sentencing stages. They come mainly from African communities belonging to the Zulu or Sotho culture and are of poor socio-economic status. Services are provided regardless of race, language or culture. Offences include assault, both common and GBH, housebreaking, theft, fraud and rape. The annual number of cases depends on the number of clients referred.

Preparation for cases, the time required for this and the programme design depend on the nature of the client. As yet, there have been no re-offences.

Problems in programme development pertain to difficulties in training all the stakeholders, but this could be solved by training others. However, as there is a general lack of interest, it is likely that the programme could benefit from the use of billboards, pamphlets, relevant articles and video programmes.

Other programmes offered are life skills, the Youth Empowerment Scheme (YES) home-based supervision and community pre-trial supervision. Although the officers are doing their best to render the programmes efficiently and effectively, this is not always easy, because most of them received no programme training after being appointed. Since the training, 20 VOCs and 40 FGCs have been facilitated with positive results. Participation in these programmes is voluntary.

DEPARTMENT OF SOCIAL SERVICES: WITSIESHOEK

The Probation Services of this Department were trained to conduct VOC and FGC by the Restorative Justice Centre in February 2004. The service is provided in four areas, namely Qwa Qwa, Harrismith, Witsieshoek and Kestelle. There are no volunteers.

The DSS funds programmes as a component of its annual budget, but there are no other fund-raising projects. However, there are various partnerships with members of the community, NGOs, churches and other government departments. No fees are charged for participation in the programmes. The target group consists mainly of children under the age of 18 and adults above 18 who are in conflict with the law, and their families. The clients, that is, victims, offenders and their families are referred by the Justice Department, the SAPS and the community at the stages of diversion and post-sentencing. They come mainly from African communities, which are Sotho or Zulu in culture. Services are provided regardless of race, language and culture. The communities are of poor socio-economic status. Offences include assault, both common and GBH, housebreaking, theft, fraud and rape. The number of cases per year depends on the number of clients referred.

The standard procedure for FGCs as described in Chapter Two is followed. Preparation for cases, the time required and the design of the programme depend on the nature of the client. As yet, there have been no re-offenders.

There have been certain problems in programme development, in that it has been difficult to train all the stakeholders like court personnel and the community, but this could be solved by training others. It seems that the programme could benefit from the use of billboards, pamphlets, relevant articles and video programmes.

Other programmes offered are life skills, the youth empowerment scheme (YES), home-based supervision, and community pre-trial supervision.

NICRO: FREE STATE PROVINCE

The National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) is a non-profit organisation dedicated to development and crime prevention in South Africa. NICRO was founded in September 1910 as the South African Prisoners' Aid Association, serving prisoners and their families. After much growth within the organisation, as well as the development and modification of services, it was renamed NICRO in 1970. In the late 1980s NICRO began serving victims of crime, focusing specifically on abused women. The introduction of the Diversion and Youth Development Programme in 1992 was followed closely in 1993 by the Economic Opportunities Project as well as the Youth Empowerment Scheme (YES). 1996 saw the introduction of the Journey Programme, a component of NICRO's Diversion Programme, based on the Rite of Passage theory and wilderness therapy. This programme is also suitable for high risk and repeat offenders. The FGC was

initiated in the same year. The organisation broadened its scope to include services to other victims of crime in 1997, which marked the launch of the Community Victim Support Programme. In that year, the word 'rehabilitation' was replaced by 'reintegration' to give a more accurate reflection of NICRO's work with offenders.

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These programmes do not really differ from province to province, as the core programme remains the same. However, programmes are implemented according to clients' needs, which means that, in essence, some content may differ but processes are consistent.

NICRO Free State has a project manager and four social workers, assisted by volunteers, who are not remunerated.

The Diversion Programme, developed by means of research, pilot studies

and evaluation, was introduced into the Free State Province in 1994 in response to the need for involvement with children at risk or in conflict with the law. NICRO's target group is children of 15-21 years of age, from different racial and cultural backgrounds and from all socio-economic groups. Language is according to client preference and the staff members are well able to deal with any cultural or linguistic barriers. Clients found guilty of petty criminal offences are referred by the Justice Department to participate in a diversion programme. The service is free of charge. Between April 2004 and March 2005, there was a total of 1,283 diversions, 96 FGCs and 22 VOMs.

The standard procedure for FGCs, described in Chapter Two, is followed. In most cases, the victims leave feeling that they have gained something from the process. As far as offenders are concerned, the programme helps them to better understand their own behaviour, to take responsibility for their actions and their impact on others, and to repair the damages, if possible. Should a client refuse to participate in a programme, the victim's rights will be protected and the case referred back to the court.

ORANJE VROUE VEREENIGING: HARRISMITH

The OVV introduced diversion programmes in 2002. Their target group is youth in conflict with the law who have been referred to diversion programmes by the prosecutors and the DSD. The two social workers employed by the organisation make assessments and conduct the programmes.

There is an annual intake of approximately 50 - 70 clients, all charged with criminal justice offences like shoplifting, housebreaking and theft, assault, vandalism and traffic offences, mostly driving without a licence. Clients are from the black, white and Indian communities across the entire socio-economic spectrum. The languages most commonly used are Zulu, Sotho, English and Afrikaans. Language barriers are overcome by the use of interpreters. The annual number of cases ranges from two to eight, and the duration of each programme is six weeks, with a one-hour weekly session. A variety of life-skills education programmes suiting the needs of any specific group is offered. The services are free of charge.

The organisation is subsidised by the DSS following the submission of a proposal and a service plan. The main objective of the organisation is to divert children from the criminal justice system by offering alternative solutions and programmes that are designed also to prevent re-offending.

PROVINCIAL REPORT: FREE STATE PROVINCE

Restorative justice practice in this province is promising, with the DSS and NICRO as the main service providers. However, given the size of the province, the number of the organisations and districts surveyed does not give a true reflection of restorative justice practices in the area. Other urban centres like Bloemfontein, Kroonstad and Welkom were not part of the survey. Only Ficksburg, Witsieshoek and Harrismith responded to the questionnaire and telephonic interviews.

NICRO has established itself with the Government through a good working relationship with the DSD, the Department of Justice and the DCS. Some of NICRO's social workers are based permanently at the courts to make assessments and write intermediary reports. Other NGOs operating in the province are the Thusanang Advice Centre, which provides a crime prevention programme, and the Oranje Vroue Vereeniging (OVV), which offers diversion programmes.

The DSS also presents assessment and intermediary reports in court, and refers clients to the abovementioned NGOs for specific programmes. Clients in need of secure care are referred to the Tshireletsong Centre in Bloemfontein and the Matetematches Security Centre in Kroonstad.

FGCs with children appear to have become more established than VOCs with adults.

GAUTENG

ALEXANDRA COMMUNITY LAW CLINIC: GAUTENG

The Alexandra Community Law Clinic (ACLC) was founded in 1995 as a legal advice organisation serving the Alexandra Township and surrounding areas. The ACLC was part of the RJI VOC pilot project that started in 1999 (see report on RJI). Currently, the ACLC has two mediators working regularly, both of whom were trained in restorative justice practices by the RJI. There are more than twenty trained mediators available to the ACLC for conferencing if necessary.

During the pilot study period (until 2004), the Open Society Foundation funded the ACLC's restorative justice programmes through the RJI. The ACLC conferenced 163 cases during this period, involving charges of varying degrees of severity.⁷ The majority of these cases were referred from the court, and the VOCs were conducted in the standard manner.

Currently, the ACLC receives no funding for restorative justice projects, nor are efforts being made to secure funding. Owing to this lack of funding,

the ACLC is not formally conducting any VOCs. It does, however, facilitate conferencing on a very limited scale. In January and February of 2005, ACLC completed conferencing in three criminal cases.

The ACLC does not receive cases from magistrates or prosecutors. Rather, it handles walk-in cases from the local community. Where the ACLC identifies a suitable case for conferencing which can be facilitated with relative ease, it makes the effort to aid the parties. Because it is a walk-in clinic, these are mostly minor civil cases. Its procedure follows the typical VOC programme as described in Chapter Two. The ACLC does not follow up the involved parties and has no authority to enforce any agreement reached.

As expected, the ACLC identifies lack of funding as its most serious hindrance to operating more extensive restorative justice programmes. In addition they often receive complaints from the formal justice system that the ACLC is taking work away from the courts. Such complaints centre on concerns that offenders should be punished by the courts rather than being treated 'leniently' through programmes like conferencing. The ACLC does find, however, that the community is open to restorative justice ideas.

CONQUEST FOR LIFE : WESTBURY

CFL was founded in 1995 by its current director, Glen Steyn. Through focusing on children and youth, CFL works to impact the community as a whole by helping to strengthen family and community ties. CFL currently operates four branches in Gauteng (Westbury, Ennerdale, Soweto and Schmidtsdrift). A fifth branch is scheduled to open soon. CFL also does some work with the San people in the Northern Cape Province. They employ seven mediators, all of whom have been trained in restorative justice programmes by the RJI or the RJC.

CFL's funding comes primarily from donations by local businesses. A variable amount comes from proposal and grant writing, but this is nominal. There is no government funding of CFL.

In 1999, CFL joined the RJI VOC pilot project. During the pilot study period (until 2004), the Open Society Foundation funded CFL's restorative justice programmes. CFL conferenced 159 cases during this period, involving charges of varying degrees of severity. The majority of these cases were referred from the court, and the VOCs were conducted in the standard manner.

Currently, CFL runs a number of programmes:

- After Care (for children, it includes tutoring, after-school activities, parent-teacher conferences, life-skills programmes, and camping trips);
- Diversion (for children in trouble with the law);

- Just For Kids (working on conflict resolution through play), prison work (teaching life skills and socialisation workshops), parenting classes;
- VOC.

CFL's VOC programme is the only one of their programmes that directly incorporates restorative justice elements. CFL works directly with the courts for its VOC programme. A mediator is stationed at the magistrates' court each day to receive cases referred for conferencing. The case is then assigned to a mediator, and from then it follows the standard VOC procedure as outlined in Chapter Two. Since January, 2005, CFL has completed nine VOCs, most of which have been domestic violence cases.

The most substantial problem identified by CFL is the difficulty of locating victims involved in the referred cases. This consumes a significant amount of the mediators' time and resources. Another issue is the high turnover of magistrates and prosecutors, which leads to problems in consistency of referrals. When a new magistrate or prosecutor arrives, it often becomes necessary to educate him or her in restorative justice practices, which creates this inconsistency.

CENTRE FOR THE STUDY OF VIOLENCE AND RECONCILIATION

The Centre for the Study of Violence and Reconciliation (CSVR) was initially launched in January 1989 as the project for the Study of Violence. It has since expanded to become multi-disciplinary, engaging the combined services of sociologists, psychologists, criminologists, social workers, lawyers, educationists and historians. There is currently a staff of 40 full-time employees (26 of these are women), as well as a number of additional contract workers, interns and volunteers.

The CSVR is concerned with policy formation, implementation, service delivery, education and training, as well as providing consultancy services. The Centre also operates its own trauma clinic, providing counselling services for both victims and perpetrators of violence.

Although the CSVR has not, to date, provided a VOC service, it has been involved in related matters. These include housing the RJI, a consortium of NGOs who ran conferencing for adults as a pilot.⁸ In addition to this project, the CSVR has more recently been involved with a number of other partners in running the Integrated Youth Offender Programme piloted in the Boksburg Juvenile Correctional Centre. This programme is a pre-release reintegration programme that has sought to include some elements of restorative justice.

During the time of the Truth and Reconciliation Commission's hearings, the CSVR initiated a research project on South Africa's TRC in order to inves-

tigate survivors' and amnesty applicants' reactions to any shortcomings, failures or issues that the participants felt the TRC had ignored.⁹ The research revealed that one of the TRC's most substantial failures was that various parties wished they had been able to meet with one another to discuss their conflicts. Also, counselling was requested by several TRC participants, because none had been provided. In response to the research, the CSVR project evolved to address those needs. The project employs four mediators, all of whom have been trained in restorative justice practices.

International governments have provided funding for the project. For example, the Irish Development Cooperation funded the research and the pilot phase of intervention in 2004. The German government and Atlantic Philanthropies provided funding for further interventions in 2005. The South African government has not provided any funding for the mediations.

On the basis of the research, the CSVR identified cases that appear suitable for conferencing. As a pilot study, ten cases were identified for mediation, which were completed during the Centre's first year. They continue to identify cases from their TRC research for participation in the mediation programme, but have recently begun answering requests from anyone seeking help. Occasionally, requests are received from prisoners for counselling and mediation assistance. All the conflicts involved in CSVR cases pertain to apartheid-related violence. The cases chosen concern situations in which either the perpetrator or the victim has a pressing desire to meet with the other to discuss the conflict, but was not given the opportunity of doing so during the TRC proceedings. The CSVR mediators take great care to prepare the participants individually, and to ensure that the information revealed during the group meeting is used only for healing, not for revenge. Seeing that these cases are often political/ violent, confidentiality is essential.

The most serious problem identified by the CSVR is unwillingness to participate on the part of those who fear that their past crimes will be uncovered. This applies also to those who did not request amnesty during the TRC proceedings, and who are afraid that participation in CSVR mediation will result in prosecution. It can also be difficult to identify perpetrators or victims associated with a particular CSVR case.

THE DEPARTMENT OF CORRECTIONAL SERVICES: LEEUWKOP

During the autumn of 2003, Jeromy Mostert, the counselling psychologist at Leeuwpkop Prison, established a restorative justice programme as part of his work with the DCS. He uses his resources as a counsellor to implement and run the restorative justice programme.

This programme is designed for violent offenders. Preparation is conducted in group format, and Mostert finds that a maximum of ten prisoners per group facilitates full participation. Individual preparation may also occur if there are only a few participants or if an individual requires special attention. Mostert sees the offenders once a week during the two-hourly session. If there is a significant contribution and enough interest on the part of the group, he will go beyond the two hours. Each programme requires eight to ten weeks. During the preparation stage, Mostert explains restorative justice and what the offender can and cannot expect from the process. Often, victimisation of the offender is the focus as well as the impact of incarceration on the offender's own life, as well as the lives of his family members, the community and the victim. The ultimate goal of this restorative justice programme is to help the offender towards repentance and ultimate forgiveness. Mostert also hopes to help programme participants towards empathy for their victims.

Mostert also meets with the victims of the prisoners' crimes, and tries to see them every second weekend during the course. VOCs are conducted where appropriate, which Mostert himself facilitates, whenever possible. If his caseload is too high, he refers cases to an independent mediator.¹⁰ The standard procedure as described in Chapter Two is followed. Ideally, Mostert would like to run from two eight to ten-week sessions per prison annually, because 20 offenders is the most he can handle effectively on his own. Also, he finds this work emotionally draining, so is attempting to involve local civil society organisations to expand his resources.

He identified a number of challenges in his work. He struggles to reconcile restorative justice with the formal justice system. He does not advocate the mitigation or remission of any sentence based on the completion of his programme, because he finds that this possibility affects the offender's motive for doing the course. Although 80% of offenders complete the programme, commitment is problematic, especially among sex offenders. In addition, the nature of Mostert's work is largely focused on offenders. While it is certainly rehabilitative in character, more victim involvement would increase its restorative focus. In fact, the DCS is hoping that it can be arranged for the victim to have a say at parole-board hearings. The main problems concern logistical issues like communicating with the guards to bring the offenders to the weekly meetings. Mostert lacks resources to document his programme.

DEPARTMENT OF SOCIAL SERVICES: PROBATION SERVICES

The Department of Social Development in Gauteng province employs about 51 probation officers, with duties ranging through screening and assessing people in conflict with the law, compiling pre-sentence and pre-trial reports and undertaking the supervision of sentenced offenders. Currently, the officials are doing mandatory assessment of children in district courts and at the courts where they are available on a permanent basis. With the implementation of the Child Justice Bill, it will be crucial for the probation officers to be stationed in each of the 43 magisterial districts served across the province.

It is expected that the probation officers will be rendering a number of services, such as prevention, early intervention, statutory services and continuity of care. However, owing to the challenges of limited capacity, they are unable to render all these services at the moment, and statutory services remain the first priority.

While the focus is on the usual probation practice, including assessment of children and compiling pre-trial and pre-sentence reports, the probation officers are now expected to compile victim-impact reports.

Facilitating diversion programmes is also one of their key activities, which is currently not receiving attention, as not all the offices or regions are rendering diversion programmes. Only three offices currently render diversion programmes, that is, life-skills programmes ranging from youth programmes through drug programmes and youth offender school/information classes. Owing to limited capacity, most of the diversion programmes are rendered by NGOs, such as NICRO, the Teddy-Bear Clinic, Conquest for Life and others.

Most of the staff members have been trained in restorative justice and conferencing by the RJC, and a few have since started conducting family group conferences and victim-offender conferences. At this stage the numbers of FGC and VOC are minimal as they are conducted on an *ad hoc* basis. Some of the probation officers who have implemented the FGCs and VOCs maintain that organising the conferences is very time-consuming, and, with their limited capacity and high caseloads, it is difficult to implement the conferences regularly. This is in addition to an average of 8,882 assessments of children in trouble with the law, 5,143 pre-trial and pre-sentence reports, victim-impact reports and children dealt with in life-skills programmes run by probation officers.

The services rendered by the probation officers are complemented by the home-based supervision run by the assistant probation officers. A total number of 12 APO posts have been contracted for a year to pilot the programme. Recently, an additional 43 permanent posts were established and the APOs will resume duties at the beginning of 2006 in all regions.

FAMILY LIFE CENTRE (FAMSA): JOHANNESBURG

The Divorce Mediation Department at the Family Life Centre has been operational since 1988, and every year sees an increase in the number of couples using this service.

Model of mediation

FAMSA uses a co-mediation model. For every couple divorcing or separating, there are two mediators – a legal mediator and a social worker/counsellor mediator. These two mediators work as a team throughout the mediation process. In this way, the parties receive information not only on their legal rights and obligations, but also on how their decisions may impact on themselves and their children. The social worker/counsellor mediator may also be required to provide information on how the parties should tell the children about the divorce or separation, and how it is likely to affect them. Information on counselling options is available to all concerned, namely divorce support groups, single parent groups, divorce counselling, individual counselling, play therapy and counselling for children.

The role of the mediator is to facilitate negotiation and discussion between the parties and to generate creative suggestions on resolving difficult issues. The mediators do not make the decisions for the parties because it is the latter who will be affected by the outcomes of the mediation.

Mediation is by no means therapeutic, but is a goal-directed, quasi-legal process. The parties set an agenda in their first session, which is not necessarily restricted to legal aspects, that is, custody, access, maintenance and division of assets. Parties are encouraged to raise all the issues causing conflict between them, or those that might do so, such as the role of the grandparents, what school the children are going to attend, and what would happen should the custodian move from Johannesburg with the children. If any of the issues raised would be best handled in a counselling session, the parties are encouraged to attend such a session to resolve that issue.

Most couples need an average of three to four mediation sessions of 90 minutes each. The duration depends on the parties' ability to negotiate and the complexity of the legal issues.

Each session is minuted to provide a running record of discussion in mediation. At the end of the process, the mediators draft a Memorandum of Understanding, which incorporates all the points of agreement reached during mediation. If there is to be a divorce, the parties use the Memorandum as the basis for their Settlement Agreement. This legal document is then made

an order of court. If the parties have never married, they are encouraged to take the Memorandum to an attorney and have it made an order of court through an application.

Parenting plan

In 2003, FAMSA introduced a parenting plan for divorcing and separating couples, *Children are for Keeps*, to ensure that they consider all aspects of their children's lives. This augurs well for better co-parenting and less conflict. The parenting plan includes, but is not limited to:

- moving home
- relationships with extended family members
- introduction of new partners
- religious education the children will receive
- which expense each parent will cover
- mode of access to the children for each parent
- where the children will live.

Situations appropriate for mediation

- divorce
- temporary separation (no decision to divorce has been made)
- separating couples who have never been married
- family members who are disputing over, for example, an inheritance, property, or university costs.

In fact, any situation in which parties can negotiate the resolution of an issue may be appropriate for mediation.

Mediation may not be appropriate in certain circumstances, for example, when:

- emotions are too high, and there is too much anger or sadness which prevents people's ability to negotiate reasonably
- there is domestic violence
- one party does not want to negotiate or disclose relevant financial information.

Mediators will not continue to mediate if no progress is being made or if continuation of the mediation process will seriously prejudice one party.

Statistics for the period 1 April 2004 – 31 March 2005

During this period, FAMSA conducted 73 mediations, with a completion rate of 65%, that is, a Memorandum of Understanding was drafted.

Information on the parties

Contact person	Pre/Post Divorce	Duration of marriage	Minor children	Living arrangements
Mrs 61%	Pre 66%	Less than 5yrs 30%	None 5%	Separate 76%
Mr 36%	Post 15%	5-10yrs 34%	One 35%	Together 24%
Both 3%	Never married 11%	Over 10yrs 36%	Two 47%	
			Three 11%	
			Four 2%	

The largest group (64%) submitting to mediation have been married for under 10 years. This is a disturbing statistic considering that most of these couples have small children and, generally speaking, are in financial difficulty. A parenting plan is therefore essential, as parents of young children have many years ahead of them, during which time they will have to communicate with each other and make decisions in their children's best interests.

Marital regimes

In Community of Property	34%
ANC (before Nov 1984)	8%
ANC including Accrual	46%
ANC excluding Accrual	6%
Customary	4%
Foreign	2%

Members of the general population who would consider mediation as an alternative to litigation or the use of attorneys constitute a small sector of the divorcing population so these statistics should not be generalised to the divorcing population as a whole.

Divorce court

Two members of the mediation department work at the Divorce Court (15 Market St, JHB) three days a week. The presiding officers refer contested matters to them for mediation. Owing to the circumstances of the parties

involved, and the fact that the presiding officer wants them to resolve outstanding issues, there is a high success rate for this service. The Divorce Court has come to rely very heavily on these two mediators, although funding for their positions at the Court comes from FAMSA.

Videos

FAMSA has produced two videos, “Divorce Mediation” and “How to Get a Divorce”, with funding by Lotto. These videos are used by all our community offices, as well as by ministers, lawyers, social workers and psychologists to educate the public on mediation and how they would be able to carry out their own divorce through the Divorce Court. These videos are available from the FAMSA offices.

KHULISA: JOHANNESBURG

Khulisa, founded in 1997, is a nationwide non-profit organisation working to reduce crime in South Africa by means of programmes directed at youth at risk, prisoner reintegration and rehabilitation, as well as youth diversion programmes. Restorative justice elements were incorporated in 2003, when formal mediations began. In Gauteng, Khulisa provides the following main programmes:

- Make It Better (MIB)
- New Directions
- Discovery and
- Destinations.

Nationally, Khulisa receives the bulk of its funding from the DSD, matching funding from the Royal Danish Embassy, the Finnish Embassy and the USA. A small amount of funding is received from other international private donors. Overall, very little is received from private South African sources.

Khulisa’s MIB programme trains groups of young adults (aged 18-30) to implement local community development initiatives. Nationally, more than 360 young people have been trained as MIB leaders since 2000, and those leaders have the capacity to reach more than 20,000 learners per year. This programme includes life-skills training, drugs, HIV/AIDS, community service, mentoring support, recreation, parenting support and workshops, visits to rehabilitation centres and prisons, and a fellowship network.

Khulisa’s New Directions programme involves youth referred by the courts for diversion programmes. New Directions looks to the source of the criminal behaviour, provides its participants with personal development and edu-

cates them on appropriate and socially acceptable behaviour.

The Discovery programme (or My Path) is for currently incarcerated offenders who wish to take steps toward a life free from crime. The programme is completely voluntary, and takes place at correctional facilities that collaborate with the local Khulisa office. The programme is divided into three stages, each of which is dedicated to a different element of preparation for the prisoner's release. Discovery begins with an individual psychological evaluation: who the prisoner is, his personal history, the crime for which he was imprisoned, and so on. Phase Two addresses the offender's specific needs. Expectations and goals are discussed, and a plan is constructed to meet individual needs. Community involvement, counselling, and career and life services training are all offered. Phase Three is mostly constructive and works on establishing such things as a personal and professional support network and *curriculum vitae* writing. A prisoner's personal concerns are addressed to make the post-release transition as smooth as possible.

Run in conjunction with Discovery is Destinations, a programme for post-release offenders. Destinations links released offenders to job training and employment opportunities through local businesses and donors. Mentoring and community support are also involved.

Another of Khulisa's projects is to increase the capacity in South Africa's diversion programmes in preparation for the CJB's becoming law. Currently, there are diversion places for approximately 20,000 children nationwide. Once the CJB becomes law, an estimated 60,000-70,000 children will be diverted. The current capacity of diversion programmes could not cope with that increase. Increasing this capacity ahead of the law's enactment has involved significant work within the CJS to promote acceptance of restorative justice and other diversions as viable alternative sentencing procedures. During the period 1 April 2004 – 31 March 2005, Khulisa carried out 75 FGCs and 65 VOCs.

NATIONAL YOUTH DEVELOPMENT ORGANISATION: EERSTERUS

There are eight mentors and four family support workers in the organisation, trained by the NACCW to conduct life-skills programmes.

Their clients are children under 18 years of age who are in conflict with the law, and their families. They are poor, mostly coloured and black, and from different cultural and socio-economic backgrounds. Referrals come at the diversion stage from the formal justice system, the SAPS, schools and the community, while their offences vary from substance abuse to domestic violence.

Offenders' parents are also involved in programmes that teach them parenting skills and dispute resolution. The use of all official languages is emphasised, but the most commonly used are English, Afrikaans, Tswana, Zulu and Northern Sotho. Interpreters are involved if necessary. NYDO programmes do not involve victims unless the victim is a family member. Consequently, family group conferencing is the preferred method of conflict resolution.

The NYDO is subsidised by the DSD, and the funds are used to sustain programmes and for staff development. There are about 500 clients annually, and each programme runs for approximately three months. On completion of a programme, the children have to attend a music therapy programme once a week for a period of six months. After-care supervision is carried out by mentors to monitor the children's progress and to reduce the chance of re-offending, which is currently about 9%.

NICRO : JOHANNESBURG

The National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) is a non-profit organisation dedicated to development and crime prevention in South Africa. NICRO was founded in September 1910 as the South African Prisoners' Aid Association, serving prisoners and their families. After much growth within the organisation, as well as the development and modification of services, it was renamed NICRO in 1970. In the late 1980s NICRO began serving victims of crime, focusing specifically on abused women. The introduction of the Diversion and Youth Development Programme in 1992 was followed closely in 1993 by the Economic Opportunities Project as well as the Youth Empowerment Scheme (YES). 1996 saw the introduction of the Journey Programme, a component of NICRO's Diversion Programme, based on the Rite of Passage theory and wilderness therapy. This programme is also suitable for high risk and repeat offenders. The FGC was initiated in the same year. The organisation broadened its scope to include services to other victims of crime in 1997, which marked the launch of the Community Victim Support Programme. In that year, the word 'rehabilitation' was replaced by 'reintegration' to give a more accurate reflection of NICRO's work with offenders.

NICRO is the largest and most organised civil society organisation practising restorative justice nationally, with established offices in all nine provinces. As outlined in Chapter Three, NICRO was the first organisation to introduce restorative justice to SA. Restorative justice in all its aspects is now integral to all NICRO's programmes.

In line with its focus on children, NICRO has concentrated on FGCs rather than VOCs, although it appears that staff members do not all use the term in

the same way. FGCs are utilised as a decision-making forum that promotes a restorative justice principle of rebuilding disrupted relationships, where the focus is on putting things right and not punishment. Through FGCs, families are put in charge of decision making and reclaiming responsibility for various aspects of community and family life.

The Journey Programme is an intensive experiential intervention programme aimed at high-risk children, while the pre-trial community service allows children who have offended to do volunteer work at community service centres or at other public institutions. The organisation has forged a good relationship with the government by identifying the needs of children at risk and in conflict with the law and designing relevant programmes. Their reliability in service delivery has also impressed donors. NICRO is funded by both government and private donors.

The offender reintegration programme, the Tough Enough Programme, or TEP, is a voluntary programme for prisoners who are within one year of their release date. It is a six-phase programme aimed at helping the prisoner make the transition from incarceration to release. It involves individual assessments of a prisoner's concerns and needs, group education on topics like drugs and HIV/AIDS, community networking and support and conducting a job search. It also assists released prisoners who wish to continue their education.

These programmes do not really differ from province to province, as the core programme remains the same. However, programmes are implemented according to clients' needs, which means that, in essence, some content may differ but processes are consistent.

There are 52 employees in NICRO Gauteng, 16 of whom work in Diversion. They receive case referrals from the court, prosecutors, and probation officers, 95% of which are criminal cases. Civil cases are mostly school or community referrals. Staff members assess each child to ascertain their needs, and to determine which of the programmes would address those needs. For example, FGCs are not suitable if the victim could be re-traumatised. In these cases, it is possible to hold an FGC without the victim but with the victim's family present instead. Between April 2004 and March 2005, NICRO Gauteng conducted 141 FGCs and 519 FGCs.

NICRO uses experienced RJC-trained facilitators for these programmes and supplements their training. Once the facilitator is satisfied that the participants have been adequately prepared, they conduct the conference. If an agreement cannot be reached, NICRO will organise a second conference. Once an agreement has been reached, NICRO writes a report to the court detailing the offender's progress during intervention as well as making recommenda-

tions to the referral agency. Follow-up by volunteers for all child offenders is scheduled for three months, six months, and one year after the conference.¹¹ These follow-ups are done telephonically or in person and are documented. Follow-up also includes pairing the client with a support person from the community, who contacts NICRO if the child requires attention.

Challenges include the difficulty of raising funds for programme development, because the DSD does not fund programme design and implementation. Another complication is that the parties within the formal justice system have little or no understanding of restorative justice and some regard it a 'soft solution'. Communities also need more information about restorative justice.

Most individuals want to see justice done, but in many cases the crime has hurt them so severely that it is difficult for them to see past this. Follow-up is also difficult, but this is not a major obstacle for the organisation. Yet another obstacle to NICRO's expansion of restorative justice practices is that they do not have sufficient funding to work with schools. Currently, NICRO visits schools and explains the available services. However, NICRO is not funded by the Department of Education and cannot use DSD money for any of its school programmes or outreach.

NIGEL JUSTICE CENTRE

The centre was established in 1993 during the period of unrest and political tensions, when people had no faith in the system and took the law into their own hands. The NJC focuses mainly on historically disadvantaged communities and farm workers in the Gauteng area.

The estimated annual number of 800 clients is referred by the magistrates' court, the SAPS and various welfare organisations. They are from different racial and cultural backgrounds, and mostly of very low socio-economic status. The languages commonly used are Sotho, Zulu, English and Afrikaans. Programmes offered are:

- Alternative Dispute Resolution
- Conflict Management and
- the Victim Empowerment Programme.

The appointment fee of R50-00 is paid only by those who can afford it. Restorative justice procedures have been conducted at the Boksburg Correctional Services from October 2005, focusing only on juvenile cases.

The Nigel Justice Centre is subsidised by the DSD on a quarterly basis. Funds are raised by submitting proposals and service plans, and are used for remuneration, rent and administrative purposes. The staff is comprised of

social workers and trained mediators. Programmes run for 20 hours a week, with two sessions daily. Should a client refuse to participate, their case is referred back. Domestic violence is one of the most common offences.

RESTORATIVE JUSTICE CENTRE: PRETORIA

The RJC was established in 1998, basing its approach on a pilot programme of the Inter-Ministerial Committee on Young People at Risk that explored the New Zealand model of FGC. The RJC currently runs the following services:

- probation and intermediary services
- victim support
- assessment of children in conflict with the law at three courts
- a diversion programme and
- VOC.

The RJC is also actively involved in instructing and training groups in the theory and skills of restorative justice, as well as advocating for the use of restorative justice. The Centre currently employs 24 staff members – six probation officers, five intermediaries, one coordinator for victim support, four VOC facilitators, one trainer, three diversion workers, a programme manager, an office manager, a receptionist and the director. They currently make limited use of volunteers. The Gauteng Department of Social Development and the National Lottery provide the RJC with most of its annual funding.

Although the RJC's initial programmes were VOC and Diversion, since branching out into the other services listed above, it has sought to use the framework of restorative justice as a way of thinking. While VOC demonstrates the application of restorative justice well, the RJC holds that it is not the only way in which the concept can be applied. Staff members are thus actively encouraged to integrate restorative justice into all of the above programmes.

The bulk of the RJC's caseload consists of criminal cases referred by the courts. VOC is conducted at both the pre-trial and pre-sentence levels. A few cases are dealt with at the post-sentence level in cooperation with prison staff or volunteers. The RJC has tried to place emphasis on the willingness of parties to participate, rather than on the nature of the offence as the criterion for selecting VOCs. Because of this approach, they have been able to deal with some serious cases like murder and rape. VOC facilitators are not bound to a single approach when dealing with cases, but draw on a number of models as they find them appropriate.

The RJC estimates that 90% of the victims are willing to meet with the

offenders, but is careful to explain that the victim does not waive his or her right to seek redress in the formal justice system. Both the victim and the offender are entitled to the participation of their own support and the RJC also prepares these participants. Confidentiality is emphasised and then the conference is held. After an agreement has been reached, the RJC provides the court with a final report.

Domestic violence is a particularly sensitive issue to handle, and the procedure reflects this challenge. A family meeting with some of the participants may be held before the conference as part of the preparation process. Every effort is made to address the issues underlying a conflict situation. In any of the cases, should the participants require further counselling, the RJC will refer them to therapy. In certain cases, the RJC uses a surrogate offender or victim if the person actually involved does not wish to participate directly in the conference. In this situation, the victim or offender who chooses to participate indirectly will write down his or her needs so that they can be considered in the process.

One problem for the RJC is that offenders are indirectly coerced by the court to participate in the programme. However, the RJC gives the offenders the option of participating and explains that they cannot expect an obstacle-free process. The RJC finds that its programmes are less successful when the client abuses substances. Further problems for the Centre are the stress created by the lack of stable funding and the difficulty of tracking victims and/or offenders who relocate frequently.

Case notes and files are kept for all cases dealt with. The RJC has not managed to research or document trends in its caseload. During the period 1 April 2004 – 31 March 2005, the RJC dealt with 85 VOCs involving 410 people.

RESTORATIVE JUSTICE INITIATIVE SOUTHERN AFRICA¹²

Restorative Justice Initiative Southern Africa, developed out of a VOC project initiated by a consortium of NGOs in 1999.¹³ It operated as a pilot project for one year, after which it was extended for two subsequent years.¹⁴ It was funded during this period by the Open Society Foundation.

The VOC project sought to build on the growing restorative justice movement that was taking hold in Canada, the United States and New Zealand. It was conceived as a community-based restorative justice approach for dealing with crime by means of a face-to-face mediated interaction between offenders, victims, and their families or members of other support networks. It aimed to formulate a restorative model more closely aligned to African customary values, and at the same time empower people to work in partnership with the

formal criminal justice system.

Although the VOC project was conceived as a community-based initiative, it was also intended as a diversionary process to relieve the workload of the justice system. It therefore sought to work in close cooperation with the police and justice sectors – primarily those officials based at the magistrates' courts.

Outline of the project

The project was established in three Gauteng areas: Dobsonville, Westbury and Alexandra. It was extended to include Odi in the second year. In each of the areas, the project partnered with community-based organisations experienced in dealing with the criminal justice system, and with some experience in community-based mediation or conflict resolution. These organisations, which became known as the implementing 'sites', were:

- Conquest for Life in Westbury;
- the West Rand Justice Centre, with offices in Roodepoort, and outreach programmes in various areas, including Dobsonville in the West Rand;
- the Alexandra Community Law Clinic; and
- Odi Community Law Centre.

The VOC project was conceptualised by a steering committee responsible also for its implementation. In the second and third years, it was run under the auspices of the Restorative Justice Initiative, a consortium of organisations involved in the project. Each implementing site had one member on the steering committee and each site recruited approximately ten mediators from their communities, who received training in mediation skills and restorative justice. One mediator was appointed, and was paid a nominal fee to coordinate mediations.¹⁵ A project manager was appointed to oversee the management of the entire project. Cases were referred to the VOC project by the courts, police and community-based organisations. Most cases were referred by prosecutors. In such cases, the criminal prosecution would be suspended until the VOC process had been completed or the case was resolved.

Rather than targeting young offenders exclusively, the VOC project was open to all age groups and types of offenders. The project aimed at allowing victims to express their needs and feelings, and also to create an environment for the offender to begin to understand the consequences of his or her actions. This approach allows for the facts and emotions of the dispute or offence to be dealt with in a safe environment. It aims also to encourage the parties to

move towards reconciliation, redress and restitution, through both parties reaching an agreement. Based on restorative justice, the principles that underpinned the VOC were:

- acknowledging the injustice: The offender needs to acknowledge responsibility for the offence. The offender has to confront the consequences of his or her action, and see the victim as a person with real feelings and needs. Without this there can be little progress in resolving or reconciling the hurt and damage that has occurred.
- restoring the inequity: This involves a delicate process of levelling the power imbalances that exist between the offender and victim as a result of the offence or the nature of the relationship between the parties. It provides a forum where victims and their families are given time to speak and be heard by the offender. They are given the opportunity to express their needs and concerns.
- addressing the future: This is the process of developing an appropriate and concrete plan of action accepted by all parties involved. The plan should address symbolic as well as material needs of the victims and must sufficiently spell out the future intentions of the offending parties in order to ensure that there is no revenge or retaliation.¹⁶

Cases referred to the VOC project

A total of 660 cases were recorded as mediated by the sites over the three year period. Of these, 134 were mediated at Odi, 159 in Westbury, 163 in Alexandra, and 204 in West Rand. Additional cases that were not captured in the research process were referred to the sites by the courts, police and community-based organisations over the three year period. The outcomes of this work were written up by Amanda Dissel of the CSVr in a number of papers available on:

<http://www.csvr.org.za/papers/papvoc1.htm> (Restoring the Harmony: A Report on a Victim Offender Conferencing Pilot Project)

<http://www.csvr.org.za/papers/papdis11.htm> (Giving a Face to Crime: Report on the Second Phase of the Restorative Justice Initiative Victim Offender Conference Project)

<http://www.csvr.org.za/papers/papvoc2.htm> (Restorative Justice Initiative Research Report on the Victim Offender Conferencing Project: November 2002 to October 2003)

<http://www.csvr.org.za/papers/papadk3.htm> (Giving Women their Voice: Domestic Violence and Restorative Justice in South Africa)

During 2002 and 2003 it became clear that the project had progressed from the stage of a pilot project. However, ongoing funding for the service at all the sites was not forthcoming. The consortium began to define itself more in terms of a network of service providers. At a conference, “Restorative Justice: from theory to implementation”, held under the auspices of the government Justice, Crime and Security cluster from 18-20 November 2003, RJI (Gauteng) was mandated to facilitate the establishment of a network, as well as a set of principles for restorative justice practice. In November 2004, RJI (Gauteng) amended its constitution in line with this mandate and changed its name to RJI Southern Africa. Unfortunately, the funding that RJISA hoped would be available for 2004 did not materialise, seriously delaying progress on this vision. As from January 2006, the Royal Danish Embassy has agreed to fund:

- basic infrastructure for the network
- the development of a funding strategy for organisations rendering services in this field
- a consultative process to establish practice standards
- training and capacity building of partners and potential partners.

TOGETHERNESS ACTION GROUP

The Togetherness Action Group (TAG) was founded in 2001 in an area well-known for gang-related crime. The founders were former members of rival gangs, who sought to break the cycle of violence and gangster activity in the area and address issues of poverty. As its mission statement declares, the TAG attempts “to create a safe haven for communities by instilling moral regeneration with the purpose of curbing crime and poverty through educative programmes that bring about a return to a better quality of life”. Restorative justice work began in 2003 when the TAG was introduced to and trained in restorative justice practices by the RJI.

All the TAG’s funding is provided by private local businesses. There is no government funding.

The TAG operates a wide variety of programmes aimed at both children and adults. It runs:

- a soup kitchen ministry
- after-school care
- crime rehabilitation
- prison intervention

- community vegetable gardens and
- sports programmes.

It also publishes a local newspaper and does restorative justice work through its mediation and conferencing work. Recently, the TAG submitted a proposal to the Johannesburg Prison to conduct official VOC sessions and training programmes in peer mediation. This programme has been approved and will be conducted in the prison for current prisoners who contact the TAG for assistance with conflict resolution. After the prisoner has made contact, the TAG will assess the suitability of the case for peer mediation or VOC, and, if appropriate, the conferencing will proceed in the standard fashion as described in Chapter Two. The group has one facilitator who will be running the prison programme.

The most difficult problem has been obtaining approval from the prison for conferencing work. Generally, the TAG finds that prisons are unfamiliar with restorative justice programmes and that there are very few facilities and resources available. It is hoped, however, that approval of the project will significantly facilitate future work.

WEST RAND JUSTICE CENTRE : GAUTENG

The West Rand Justice Centre (WRJC) opened its doors in 1989, primarily performing mediation. In 1999, the WRJC was approached by the RJI to be part of a pilot project promoting VOCs. This pilot study sought to alleviate the burden on the formal justice system while establishing a community-based approach to dealing with crime.

During the pilot study period (until 2004), the Open Society Foundation funded WRJC's restorative justice programme. The WRJC conferenced 204 cases during this period, involving charges of varying degrees of severity.¹⁷ The majority of these cases were referred by the court, and the VOCs were conducted in the standard manner as described in Chapter Two. The WRJC currently has one restorative justice mediator, who was trained in restorative justice practice by the Restorative Justice Centre.

There is no funding for restorative justice programmes, and the WRJC facilitator works solely on walk-in cases from the local community. The procedure for the VOCs and FGCs is standard, although no follow up is conducted. The walk-in cases concern both civil and criminal matters and are all minor disputes.

The most serious problem for the WRJC is lack of dependable funding, which prevents restorative justice programmes from running effectively and reliably in the long term.

PROVINCIAL REPORT: GAUTENG

Restorative justice work in Gauteng can best be described as uneven. In the civil society sector, some strong organisations are rendering ongoing services, while several smaller organisations started services that they have been unable to maintain owing to lack of funding. As far as the DCS is concerned, restorative justice appears to be developing in a structured way at only one prison. Based on the level of implementation of conferencing compared with other provinces, it appears that real implementation of restorative justice practice in probation services is not currently receiving active attention.

Within the civil sector, the RJC, NICRO and Khulisa appear to be the major restorative justice practitioners rendering direct services. Despite their very different histories, these organisations have firmly established themselves with the government and community as effective and reliable practitioners, integrating restorative justice into a range of services. They document their cases and evaluate and track their results as far as possible. This allows for reference to their practices and successes when recruiting new clients, employees, and, perhaps most importantly, donors. Under the auspices of the RJI (a network of organisations that set up VOCs with adults in the Alexandra Law Clinic, the West Rand Justice Centre, Conquest for Life and, later, the Odi Law Clinic, with funding from the Open Society Foundation over a four-year period, more than 40 community members were trained in conferencing. This expertise has, for the most part, been lost, because it has not been possible to continue the programmes.

When funding was available, the restorative justice programmes were largely successful. However, once funding ceased, all four of the above-mentioned organisations were unable to operate restorative justice programmes on any sizable scale. Recruitment for new donors is also difficult, because many of these organisations lack the personnel or the documentation to do this. It is not the lack of dedication to restorative justice practices within the civil society sector that limits restorative justice practice, but the lack of resources.

The CSVr collated data from these projects, and has published four reports demonstrating the impact of these services in a way that would not have been possible for those organisations on their own. While the CSVr itself does not render any specific restorative justice programme, it is currently involved in a pre-release programme for juveniles at the Boksburg Juveniles' Correctional Facility. In cooperation with other organisations, the Centre is looking for ways of including a VOC component. The RJC, the CSVr, NICRO and Khulisa illustrate the importance of dedicated and vocal leadership in guiding the programmes and raising funds successfully.

Direct restorative justice practice in the DCS exists only in the Leeuwkop prison. Of his own accord, the counselling psychologist introduced the restorative justice programmes into the prison, and currently runs them in conjunction with a volunteer restorative justice practitioner. The programmes are conducted within the prison, and general DCS funding is used for counselling and rehabilitation work. No specific funding and time are provided for restorative justice work, and it is only because of the counselling psychologist's and volunteer's dedication that these programmes are operational. The researchers are unaware of any other Correctional Services officers working with restorative justice programmes in the prison context.

Generally, despite difficulties, restorative justice work in the Gauteng province is promising. The fact that the province is small and urbanisation high is probably advantageous, particularly as far as networking is concerned. Struggling organisations should use this to their advantage when trying to re-establish working restorative justice programmes and should develop cooperative partnerships with other organisations and the government.

KWAZULU-NATAL

DEMOCRACY DEVELOPMENT PROGRAMME: DURBAN

The Democracy Development Programme (DDP), a non-profit organisation, started in 1993, just prior to South Africa's first democratic elections. The project evolved out of the First Initiative for a New South Africa, in which the DDP's role was to inform people about the elections and educate the voters. The organisation's main goal is to increase awareness that there is work beyond the liberation movement. There are five areas of focus in the achievement of this goal:

- local and provincial government – issues of the decentralisation of power
- civic and voter education concerning elections (pre- and post- monitoring, setting up fair elections)
- a reconciliation and diversity programme
- civil society board (which creates forums and spaces for civil society to engage with itself and other stakeholders, and gathers community responses to those forums) and
- political parties (people from all parties gather together over three to four days to develop a sense of community and find a common goal among parties).

There are 12 employees at the KwaZulu-Natal office and two in the Western Cape office. The seminar staff are trained facilitators. Additionally, the DDP is assisted by about 16 unpaid volunteers. The organisation does not receive funding from the government, but is mainly funded by the Konrad Adenauer Foundation.

Choosing Our Future, the DDP's programme integrating restorative elements, is ongoing in two KwaZulu-Natal schools. Based on a Swedish model, and focusing on cultural and racial differences in the school environment, this programme began five years ago. The DDP brings Grade 10 learners (14-15 year-olds) together and facilitates discussion on cultural and racial differences and stereotypes. Each programme has no more than 30 participants and the gender and racial composition of each group is balanced. The teachers are always present at the workshops, but they do not participate. However, they attend a separate workshop during which they do participate. The DDP relies on teachers to act as mentors, and the organisation also tries to involve parents, especially through the parent governing body. This age group was selected because they still have three years at the school after completing the programme, during which time they can positively affect their school environment. The DDP empowers the students to start democracy projects in which they conduct community work. They keep careful documentation as well as reflecting on the programme and its impact.

The organisation works with communities and municipalities that approach them and are most in need. If they decide to work with a community, this is on the understanding that their staff members do not function as expert consultants but that all the necessary expertise exists in the community. The DDP does not run restorative justice programmes *per se*, but, should clients raise the issue, they are referred to an organisation specialising in restorative justice. Recognising its own limitations, as well as the value of using available resources to benefit communities and individuals, the organisation refers widely to a variety of other organisations.

DEPARTMENT OF SOCIAL WELFARE AND POPULATION DEVELOPMENT: KWAZULU-NATAL

The Department of Social Welfare and Population Development employs approximately 105 probation officers across the province. Some were trained in restorative justice and conferencing by the Restorative Justice Centre during 2004-2005. The province itself has made steady progress in implementing restorative justice and conferencing. The process followed is the typical one

taught by the RJC, and is implemented at the pre-trial and pre-sentence levels. It has been used in a range of offences, including some relatively serious cases, such as assault GBH, rape, house-breaking and theft. During the period 1 April 2004 to 31 March 2005, approximately 20 VOCs and FGCs were facilitated by probation officers.

Probation officers have integrated restorative justice into their general practice by reflecting the perspectives of victims more specifically and clearly in pre-sentence reports. However, the difference between a pre-sentence report and a report on a VOC did not always seem to be fully understood.

Some of the difficulties listed by probation officers in trying to implement VOCs and FGCs were:

- Not all probation officers have received the training, so there was a call for more training in this respect;
- Other staff members from the criminal justice system also need to understand restorative justice and VOC better. This would enable more cases and appropriate ones to be referred;
- Victims are initially unwilling to meet with offenders. There is also the consideration of the time required to explain the process and the potential benefits it would have for them. In some places, assistant probation officers are being used to assist in making logistical arrangements (from the information received it seemed clear that probation officers understood the importance of voluntary participation);
- Transport is needed if victims are to attend a VOC.

THE DIAKONIA COUNCIL OF CHURCHES: DURBAN

Reconciliation Project

The idea of a reconciliation project was encouraged by the World Conference on Racism and Xenophobia held in Durban in 2000, and at the KwaZulu-Natal Church Leaders' Group Consultation on Racism a year later. The project adopted the methodology of the Institute for Healing of Memories (IHOM), based on the past and present effect of the apartheid legacy on South Africans. The emphasis is on dealing with these issues at the emotional, psychological and spiritual levels.

The Council of Churches organised a successful three-day workshop to launch the project. People attending the workshop engaged in the process of story-telling, which provided a unique opportunity to examine, through sharing, their own journeys and experience other participants' individual journeys. The process included the use of art, drama and creative exercises carried out in small groups. The workshop raised awareness about a number of issues

and most churches revisited their constitutions and principles. Today most predominantly white churches in the area recognise the role of different race groups in their congregations.

The use of video cassettes featuring motivational speakers like Nyameka Goniwe is effective. Joint projects on reconciliation have been identified by the participating churches. Special events within parishes across racial and cultural backgrounds are taking place, with a group of facilitators well equipped to drive the process.

GREYTOWN MAGISTRATES' COURT

There has been interest in victim-offender mediation in this area of KZN since the mid-1990s. The project was started some time before the SA Law Commission's paper was published, which gave further impetus to the process of victim-offender mediation. Some of the arising issues have also been expressed in two articles.¹⁸

The focus at the Greytown Magistrates' Court is specifically on applying victim offender mediation at the pre-trial stage. The project has the support of both the magistrate and the prosecutor. The members of staff involved list the advantages of out-of-court settlements as the following:

- Most importantly, they will contribute to saving the court's time and costs, since the case can be finalised without going to court, and without the time-consuming task of settling factual disputes;
- The time saved means that more cases can be dealt with more rapidly, should improve people's perception of the justice system;
- The accused would gain certainty as to the outcome of the case, provided the conditions of the agreement are complied with;
- The accused will not have a record of previous convictions, a factor which often prompts people to dispute a criminal charge;
- If all parties involved approach the matter with open minds there are ample opportunities for restorative justice as one of the outcomes of an out-of-court settlement.
- Victims can be protected from publicity and from being subjected to cross-examination, and still benefit from compensation or restitution by the accused.¹⁹

The process followed since the introduction of the project in 1995 is:

- (a) At the outset of a charge of assault or malicious injury to property, the

matter is postponed and the investigating officer is requested by the public prosecutor to warn the complainant to appear on the remand date;

- (b) If the complainant comes to court, the prosecutor proceeds to interview the complainant in order to establish whether s/he is prepared to have the matter resolved and what they would require;
- (c) If the complainant indicates that s/he is prepared to have the matter resolved, the accused is then interviewed and the complainant's proposals are stated;
- (d) If the accused indicates that s/he is prepared to have the matter resolved by means of compensation payment to the complainant, arrangements are then made as to how and when the compensation will be paid. At this stage, once this basic agreement has been reached, the matter is again postponed in court to the date on which the accused will be able to pay the agreed compensation;
- (e) On the agreed date the accused pays the compensation to the complainant. At this stage the victim and offender will also be assisted in making peace, after which the matter is withdrawn from court;
- (f) In matters where persons from the same family or where persons living together as husband and wife are involved, the victim must apply for a protection order, which must be granted before the matter can be withdrawn from court.

In the event of either party not being prepared to have their case resolved in the above manner, the matter will proceed to trial in the normal way. Since the inception of this process at the Greytown Magistrates' Court, very few of the less serious offences have proceeded to trial, since the majority of such cases are resolved in the manner described above. Currently, about 15–20 cases per month are resolved in this manner. Specific statistics have been kept since May 2005, as follows:

May 2005 -16

June - 5

July -5

August -9

September -19

October -22

November -17

December -10

The above system has resulted in continued peace between victims and offenders, as none of the disputes resolved came back to court at a later stage.

The local prosecutor keeps a register for alternative dispute resolution/mediation in which particulars of the accused and the charge must be recorded, as well as the reason for the withdrawal of the matter. In this way, a record can be kept of perpetrators whose matters have been settled. Repeat offenders can be identified and prosecuted if necessary. It is also important to note that out-of-court settlements are entered into only if the prosecutor has sufficient evidence to warrant prosecution of the accused.

INKOSI SIPHEWE SYDNEY KUNENE

TRADITIONAL LEADERS SOCIAL WELFARE COMMITTEE TRADITIONS, CULTURE AND CUSTOMS COMMITTEE

KWAZULU-NATAL

Inkosi Kunene is one of about 300 Inkosi in the Zulu kingdom in the KwaZulu-Natal province. An Inkosi is third in the Zulu ruling hierarchy, under the King and the Prime Minister. He governs an area comprised of four wards, assisted by Induna and counsellors.²⁰ Although an Inkosi inherits his position, he can be removed and replaced by either the community or the South African government. The replacement or substitute is typically a family member – the use of non-family members is rare and occurs only in extreme cases.

The Department of Provincial and Local Government provides Inkosi Kunene's salary. Induna and counsellors do not receive compensation for their services, but legislation provides that ward residents pay an annual tribal levy of R20, which pays for the services of a secretary, a cleaner and a night watchman. Court fines also provide funding, but many people are too poor to pay theirs.

The authority of Inkosi Kunene and his traditional court is limited by the South African legal framework. Most often, legal cases include compensation for the destruction of crops by livestock, pregnancy outside marriage, money owed, domestic disputes, and child support.²¹ The tribal authority refers the more serious cases of robbery, burglary, theft, assault, murder, and rape to the police and the formal justice system.

A dispute is first brought to a counsellor, who discusses it with the parties involved and attempts to restore peace. If the counsellor cannot resolve the matter, the case is taken to the Induna. If he fails to resolve the matter, the case is taken to Inkosi. At each level, the community is involved. Local men and women, especially older men, act as part of the council. Women may also participate; females have long been part of this region's tribal authorities but

this differs from region to region. Inkosi emphasised that community leaders never try a case alone; the community must always take part. Community members participate in the process, help pass judgment, and recommend sentences or fines. The tribal authority acts as both mediator and arbitrator.

However, if the case is successfully resolved at an earlier stage, Inkosi receives a report. The tribal authority keeps a register of the cases and provides the local magistrate with a report on cases heard and their results. If a party is not satisfied with the outcome, they can take it to the formal justice system within 30 days. On very rare occasions, the formal system has referred cases to the traditional authority. Inkosi himself has never received a referral from the formal justice system. He did, however, provide an example of one formal justice system referral of which he was aware. The case involved an out-of-wedlock pregnancy case in which the girl's father took the boy's father's cattle by force. The presiding magistrate referred the case to the traditional authority because he recognised it as a traditional matter requiring a traditional solution.

JUSTICE AND WOMEN (JAW)

A brief history of JAW

JAW was formed in 1998 as a result of an "Open day" held at the Pietermaritzburg Magistrates' Court, where women identified the need for court-based service that would assist them in accessing Maintenance and Domestic Violence protection orders and would monitor the court's implementation of the Maintenance and Domestic Violence Acts.

JAW operated initially as a project jointly managed by FAMSA (PMB) and the Black Sash, Midlands. In May 2005, JAW was registered as a Charitable Trust and now functions as an autonomous NGO. JAW employs six staff members, all of whom work on a part-time basis.

The context

In 2004, the Department of Justice and Constitutional Development processed 350,000 maintenance orders through 750 courts in the country. The majority of these applications are made by women, a large percentage of whom are unemployed, so maintenance is the major source of financial support for their children. Maintenance application is problematic in two respects:

- **Court services**

The courts are understaffed and under-resourced, with the result that most women's experience of applying for maintenance is characterised

by repeated remands in court dates and delays of up to one year before an order is finalised. Women receive no financial support for their children during this period.

- **Men's resistance to financially supporting their children**
Having secured an order does not ensure payment of that order and there is a high rate of men's non-compliance with maintenance court orders. Consequently, women are forced to return to court to secure arrears payments, where they again face repeated remands of court dates, and continued lack of financial support for their children.

Department of Justice and Constitutional Development (DoJ)

The DoJ acknowledges that its maintenance system is in crisis and has tried to address the situation through the promulgation of Maintenance Act number 98 of 1999. This Act sought to improve the effectiveness and efficiency of the system through

- provisions such as the attachment of emolument orders where maintenance can be deducted directly from someone's salary when s/he defaults on payment;
- appointment of maintenance investigators to trace maintenance defaulters.

Whilst these measures are welcomed, the Department of Justice and Constitutional Development's tardiness in implementing, in particular, the appointment of maintenance investigators and maintenance prosecutors has meant that many of the Act's intentions have been undermined by the reality of women's experiences at courts.

JAW maintenance programme

JAW has developed a model of practice which seeks to improve women's access to maintenance at the Pietermaritzburg Magistrates' Court. The model comprises the following services;

- *Maintenance Information Desk:* JAW has set up a maintenance information desk which acts as the entry point into the maintenance system and refers people to the relevant section of the maintenance court.
- *Maintenance legal literacy programme:* JAW has developed three programmes covering different aspects of the maintenance legal process, which are run on a groupwork basis with women at court. Women are referred to the programmes by staff at the Maintenance Information desk. Each programme has a workbook with information on the issues covered which women are able to take at the end of the session. The legal literacy pro-

gramme aims to give women sufficient knowledge of the legal process and of their rights, so that they can act as their “own best advocates” in their maintenance cases.

- *Monitoring the court:* JAW refers women’s complaints about service delivery to the Court and monitors the response to the issues raised. JAW has developed a forum, the Family Court Indaba, which seeks, by means of networking with the various stakeholders like the Court, the SAPS, the Sheriff’s office and Non-Governmental Organisations, to improve women’s access to services.
- *Maintenance mediation service:* JAW offers couples who have not formally entered the legal process the opportunity of resolving their dispute by means of mediation. This service seeks essentially to improve the level of compliance with maintenance orders.

Specific focus: JAW maintenance mediation service

As far as maintenance matters are concerned, JAW has applied a model used by the Family Life Centre, Johannesburg in mediating divorces. The JAW maintenance mediation model comprises 3 distinct stages:

1. The invitation to mediate a maintenance matter: Women are informed about mediation in the legal literacy programme and are asked to consider this option as one way of resolving their dispute. Should the applicant wish to pursue mediation, JAW offers to contact the respondent and to advise him of the option. JAW then contacts the respondent and explains what is involved in mediation. Should the respondent agree to mediation an appointment is made for both to meet with a JAW staff member at court. Both the applicant and the respondent are advised to bring proof of income to the mediation session, and both are advised to come prepared with information on their monthly expenditure.

2. Mediation: A JAW staff member who was not involved in the initial contact then mediates the matter. Throughout the mediation, the focus is placed on the child’s needs and interests and both parties are helped to identify how much they earn and how much they can afford to contribute to the child’s needs and expenses. The mediator attempts to strengthen issues of common concern relating to the child.

3. Court order by consent: If settlement is reached on an amount to be paid, JAW refers the couple to the Court, where the settlement is converted into an order by consent on the same day.

Comments on the Jaw mediation model

To date, JAW has mediated 70 maintenance cases and has achieved settlement in 80% of cases. Mediation has proved to be a powerful tool in helping women access maintenance more quickly, but this is not its only value. In 2005, JAW contacted a sample of 20 couples to gain their views on the service:

- All couples reported that the maintenance based on agreements continued to be regularly paid. There was 100% compliance on orders made.
- Some men reported that, through mediation, they had been able to renegotiate regular contact with their children.
- Some men reported that they felt less guilty about their children and welcomed the opportunity that mediation gave for them to be more informed about their children's lives and needs.
- Zulu-speaking men reported that mediation felt culturally more appropriate and respectful.
- Women valued the fact that potential conflict had been contained and some said that it had been their first real opportunity of communicating their own and their children's needs to the respondent.

Further evaluation revealed that part of the success of the service could be attributed to the following factors:

- Women felt more ready to consider mediation after they had participated in the legal literacy programme. Being better informed, women felt less anxious about the maintenance legal process and were more able to make choices about the type of action to take.
- Prior to mediation, communication between the parties had broken down completely and women needed a neutral party to broker the option of mediation with the respondent. They consequently welcomed JAW's offer to speak to or approach the respondent on the option of mediation.
- The offer to mediate a maintenance matter is made *prior to* the maintenance application being lodged at court. The legal process has not yet been implemented. JAW found that men did not want to receive a *subpoena* from court and that they were motivated to consider the option of mediation as a way of avoiding a *subpoena*. Men were also aware that it would take time to resolve the maintenance dispute through court and that this would lead to difficulties with their employers. These two factors acted as powerful inducements for men to consider mediation.

The value of the JAW maintenance mediation service to the DoJ

JAW feels that the mediation service could be of benefit to the Department of Justice and Constitutional Development, as it could

- ease the pressure placed on court staff by reducing the number of maintenance applications that have to be processed at court
- cut back on costs to court of issuing *subpoenas* and other documents
- reduce the time taken for matters to be heard at court through reducing the numbers of cases on the court roll.

JAW plans to expand this service over the next year and to train community volunteers to deliver the service. JAW would then be in a better position to evaluate the impact of the service on the court and to motivate the DoJ to consider funding such a service at maintenance courts. JAW is currently seeking funding to implement this project.

KHULISA: NEWCASTLE

Khulisa, founded in 1997, is a nationwide non-profit organisation working to reduce crime in South Africa. It does this by means of programmes directed at prisoner reintegration and rehabilitation, and child diversion programmes. Restorative justice elements were incorporated in 2003, when formal mediation programmes began. The Newcastle office in KwaZulu-Natal was founded to expand the national organisation, and its operations are largely identical to those of the national office. In KwaZulu-Natal, Khulisa runs the following programmes: Diversion (for child offenders), MIB, Discovery and Destinations, as well as HIV/AIDS and Peer Drug education.

All the funding for this regional office is provided by the parent office in Gauteng. There is some small and sporadic funding by a variety of private donors, but this comprises a very minimal percentage of the office's overall budget.

The diversion programme is for first-time child offenders, its main goal being to facilitate behaviour change and reintegrate the children into their communities without the burden of a criminal record. The programmes are run in conjunction with the relevant governmental department and are based on court referrals. Adopting a child-specific approach, the programme consists of a variety of activities that cater for individual needs. All the children are encouraged to meet with their victims or, alternatively, to write them letters. Since many are charged with shoplifting, this is typically something as simple as meeting with the shopkeeper to admit the crime and apologise or writing the apology if the victim is unavailable.

Khulisa Newcastle's MIB programme trains groups of young adults (aged 18-30) to implement local community development initiatives. Nationally, more than 310 young people have been trained as MIB leaders since 2000, and those leaders reach more than 20,000 learners annually. The programme includes life-skills training, community service, mentoring support, recreation, parenting support and workshops, visits to rehabilitation centres and prisons, and a fellowship network. These form part of the Diversion and Reintegration programmes as opposed to the MIB programme. MIB members are also trained as mentors to the young divertees.

The Discovery programme (also called My Path) is for currently incarcerated offenders who wish to take steps towards a life free from crime. The programme takes place at the local Ekuseni Prison, and attendance is voluntary. Each programme is divided into three stages, while each stage is dedicated to an element of preparing for the prisoner's release. Discovery begins with an individual psychological evaluation: who the prisoner is, his personal history and the crime committed. The first phase focuses on self-development and awareness, the goal being behavioural change. Phase 2 is the consolidation phase of life skills taught in Phase 1, and challenges the inmate to restore relationships and become constructively involved in their communities after release. Expectations and goals are discussed, as well as a plan for the participants to implement these goals. Community involvement, counselling, and career and life services training form part of the programme. Phase 3 is mainly constructive, and works on things like establishing a personal and professional support network, writing a CV, and basic entrepreneurial skills. This phase prepares the participant for reintegration into his/her community.

In conjunction with Discovery is Destinations, a programme that includes both a pre- and post-release component. The pre-release programme equips the offender with practical skills necessary to their pending release where the prisoner's personal concerns are addressed in order to make the post-release transition as smooth as possible. The post-release component links released offenders to job training and employment opportunities through local businesses and donors, as well as providing a monthly support function for a period of eight months after release. Mentoring and community support are also available through the Fellowship network. Family and community conferencing, as well as victim-offender mediations, are facilitated at this time if the offender wishes to initiate the process.

Khulisa identifies its greatest problem as the retention rate of prisoners in the in-prison programme. Drop-out means wasted resources and a negative effect on other prisoners who might be interested in participating.

LAKEHAVEN CHILDREN'S HOME: INANDA

Lakehaven, initially an all-Indian children's home, was established in 1957. In 1989, the staff started integrating children and staff from other race groups. It caters for boys and girls from eight to 18 years of age who are physically, emotionally and sexually abused. There is also a project for children from the street, which is separate from Lakehaven, but on the same premises. This was established in 1993. The children are dealt with by social workers who assess them and write reports before referring them to children's homes. They live in cottages and are divided into age groups.

Twenty-six people are employed, and six community volunteers assist the child-care workers. Child and Youth Care Workers are trained by the National Association for Child Care Workers. While the volunteers do not earn salaries, they are reimbursed for expenses incurred in the course of their duties. In 2002, some staff members were trained in facilitating restorative justice practices to assist them in dealing with disputes in the children's home. Six restorative justice cases have been mediated since 2003. Each case takes at least two weeks, including preparation.

Parents are encouraged to participate in resolving children's disputes through FGCs or VOMs. Child-care workers represent children whose families cannot be traced. The most common offences in the home are physical assault, theft of other children's property, sexual abuse and stigmatisation. Restorative justice methods are also used to help children with behavioural problems or those who have been abused by their parents. During the period 1 April 2004 – 31 March 2005, Lakehaven carried out five FGCs.

Lakehaven is funded by the DSW. The children are from all race and cultural groups, and are of varying socio-economic status.

NATIONAL PROSECUTING AUTHORITY, RAY SANSOM, REGIONAL CHIEF PROSECUTOR : SOUTHERN KWAZULU-NATAL

Prosecutors of the KwaZulu-Natal National Prosecuting Authority (NPA) are experimenting with diversion and alternative sentencing. Diversion for young offenders has met with the greatest success. The prosecutors researched VOC and, concluding that NICRO offers the best possibilities, now use that organisation's services for mediating cases. Weekly rounds by a NICRO social worker to conduct diversion were organised. Recognising the importance of focusing on young offenders and removing them from the formal justice system, Sansom would extend this programme if more resources were available.²² The NPA does not have formal practice, guidelines or training in re-

storative justice.

The challenges Sansom identified include those arising from the fact that the formal justice system has to rely extensively on a diversity of partners, including NGOs. Determining the appropriateness of restorative justice in certain cases is also a challenge.²³ Further, pressure arises within the NPA because a prosecutor's success is equated with his or her prosecution count. Obviously, quantitative evaluation means that prosecutors will be unwilling to refer cases to diversion and VOC. There is also judicial pressure, because some magistrates are doubtful about the use of diversion or VOC.

Sansom also identified the need for more logistical support in terms of both staff and resources. However, he is convinced that a small, contained management structure, and a well thought out, open-ended plan of action will facilitate the implementation and establishment of a structured restorative justice programme. It is possible that the majority of the KwaZulu-Natal chief prosecutors will accept this on account of the recent NPA policy of supporting community-based efforts at peace building.

NICRO: DURBAN

The National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) is a non-profit organisation dedicated to development and crime prevention in South Africa. NICRO was founded in September 1910 as the South African Prisoners' Aid Association, serving prisoners and their families. After much growth within the organisation, as well as the development and modification of services, it was renamed NICRO in 1970. In the late 1980s NICRO began serving victims of crime, focusing specifically on abused women. The introduction of the Diversion and Youth Development Programme in 1992 was followed closely in 1993 by the Economic Opportunities Project as well as the Youth Empowerment Scheme (YES). 1996 saw the introduction of the Journey Programme, a component of NICRO's Diversion Programme, based on the Rite of Passage theory and wilderness therapy. This programme is also suitable for high risk and repeat offenders. The FGC was initiated in the same year. The organisation broadened its scope to include services to other victims of crime in 1997, which marked the launch of the Community Victim Support Programme. In that year, the word 'rehabilitation' was replaced by 'reintegration' to give a more accurate reflection of NICRO's work with offenders.

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restorative justice to SA. Restorative justice in all its aspects is now integral to all NICRO's programmes.

In line with its focus on children, NICRO has concentrated on FGCs rather than VOCs, although it appears that staff members do not all use the term in the same way. FGCs are utilised as a decision-making forum that promotes a restorative justice principle of rebuilding disrupted relationships, where the focus is on putting things right and not punishment. Through FGCs, families are put in charge of decision making and reclaiming responsibility for various aspects of community and family life.

The Journey Programme is an intensive experiential intervention programme aimed at high-risk children, while the pre-trial community service allows children who have offended to do volunteer work at community service centres or at other public institutions. The organisation has forged a good relationship with the government by identifying the needs of children at risk and in conflict with the law and designing relevant programmes. Their reliability in service delivery has also impressed donors. NICRO is funded by both government and private donors.

The offender reintegration programme, the Tough Enough Programme, or TEP, is a voluntary programme for prisoners who are within one year of their release date. It is a six-phase programme aimed at helping the prisoner make the transition from incarceration to release. It involves individual assessments of a prisoner's concerns and needs, group education on topics like drugs and HIV/AIDS, community networking and support and conducting a job search. It also assists released prisoners who wish to continue their education.

These programmes do not really differ from province to province, as the core programme remains the same. However, programmes are implemented according to clients' needs, which means that, in essence, some content may differ but processes are consistent.

NICRO KwaZulu-Natal receives virtually all its funding from the national office. Very small amounts of money are donated on an *ad hoc* basis, but such donations comprise only a minimal percentage of the office's overall budget.

The diversion programme is primarily for children in trouble with the law, although there is some work with adult offenders. Children judged suitable for diversion are referred by the court, and take part in programmes like confidence-building workshops, drug education, diversity training and community service projects, amongst others. One component of this programme is the VOC. Sessions are handled by NICRO mediators, and provide offenders with the opportunity to rebuild ties within their community. Between 1 April 2004 and 31 March 2005 2,744 children were diverted, and 16 FGCs and 633 VOMs were conducted.

The most serious problem facing NICRO in KwaZulu-Natal is staff turnover. This creates instability in the clients' lives and cases, as well as a concomitant lack of trust on the part of the court system. Mistakes are common among new staff, and the quality of work suffers. Consequently, the courts are less willing to refer people to NICRO for restorative justice services. Other problems include lack of funding to pay the staff competitive salaries and to provide resources for helping staff members operate more efficiently. Many employees are lost to government work on account of the higher salaries paid in that sector. NICRO is also concerned about the safety of its staff members when carrying out home visits.

NKOSI BHENGU : UMKOLOSİ VILLAGE

Nkosi Bhengu is the chief of Umkolosi Village, situated south west of Durban, on the banks of the Inanda dam. The chief is assisted in performing his duties by the Indunas (Headmen) and councillors appointed by himself or by the community. Complaints and disputes are first reported to the councillors, who attempt to resolve the matter. Failing this, the matter is referred to the Induna. If the Induna finds the case difficult, he refers it to the Nkosi.

Complaints and disputes are dealt with in a traditional way, which involves the community in decision making. According to Nkosi Bhengu, there is a good relationship between his traditional authority council and the formal justice system. There are apparently referrals from the courts and the SAPS concerning disputed lobola, domestic problems, stock-theft, common assaults and theft. If these matters are not solved, they are referred back to the courts. The traditional authority also refers serious cases like murder, rape and robbery to the SAPS and the courts. As far as the number of monthly cases is concerned, Nkosi Bhengu has not tried a single case since the eruption of violence in KZN, which has lasted for more than ten years. However, the traditional authority does play a significant role in combating rural crime.

The Inkosi's salary is provided by local government department, while Indunas and councillors live on the Khonza, a fee of R20 charged for lodging a complaint or allocating a residential site in rural areas. The Traditional Court raises funds through Court fines and Tribal Levies, which are R20 annually.

PHOENIX : ZULULAND, KWAZULU-NATAL

Phoenix was established in September 2003, and focuses mainly on the rehabilitation needs of offenders and their re-integration into society on completion of their prison sentences. The organisation conducts rehabilitation programmes in three major prisons in the province: Eshowe, Mthunzini and

Qalakabusha (Empangeni) prisons.

Ex-offenders, parolees and inmates awaiting release or parole as peer tutors are included in the programmes. Community and Church members were recruited for restorative justice training, conducted in May 2005.

As a new organisation, Phoenix has yet to develop a pattern for funding. They are currently funded by South African corporates, foreign funding trusts and the Zululand Chamber of Business Foundation. Funds are used to sustain programmes such as:

- the Alternative to Violence Project (AVP)
- Violence in the Shadow of a Recent War (for ex-combatants in prison)
- Restoration through Creativity and Achievement
- Radio Drama (in collaboration with Icora FM)
- Professional Development (study with accredited institutions to improve prisoners' lives).

Phoenix Zululand's clients and target groups are male, female and child offenders at the post-sentence stage. The major challenge facing the organisation is overcrowding in prisons, seeing that all prisons in Zululand are above the national average for overcrowding. Clients represent different racial, cultural and socio-economic groups.

TRADITIONAL HEALERS' ASSOCIATION: DURBAN

The Traditional Healers' Association in Durban, with branches in other provinces, works in collaboration with the Department of Health and Social Development, which provided their training in primary health care. They are also trained to recognise symptoms of TB and HIV/AIDS. They are aware of the necessity for using both traditional and modern medicines as well as the need to refer certain cases to the nearest health centres.

Unless the client is unable to pay, there is a consultation fee. There are fundraising projects, but fees are used to purchase medicine for other clients. These clients are mainly black adults with illnesses and domestic problems, referred by word of mouth. Consultations are according to the traditional procedures.

Conflict resolution is an important task for traditional healers. Most African communities still consult with them for various reasons, including counselling. Because of their role in their society, members of the organisation need training and information on restorative justice practice. Only the Gauteng branch has undergone this training, so this has been requested for all the branches countrywide.

WYLIE HOUSE CHILDREN'S HOME: DURBAN

Wylie House is one of the oldest children's homes in Durban, having been established more than 60 years ago as a whites-only institution. It is a girls-only home which started admitting all racial and cultural groups after 1994. The clients are girls aged two to 18 who have been physically, sexually and emotionally abused, have serious behavioural problems or are terminally ill.

Of 15 employees, seven are child-care workers residing permanently in the centre and one is a resident social worker. The staff was trained in 2002 to conduct FGCs and VOMs in order to resolve domestic conflicts. The most common disputes involve physical abuse, racial tensions and theft, as well as one serious incident of GBH assault (involving a stabbing).

The home is funded by the Department of Welfare and Social Development to the monthly amount of R1,200 per child. This is used for teaching the children life and development skills, as well as providing for their education, medical costs and daily requirements. Children represent all racial and cultural groups around Durban, mainly black, white and Indian. They are of differing socio-economic status. The children are referred by social workers, who are responsible for assessments and reports. The resident social worker does the same.

FGCs are used in dispute resolution and the reconciliation of children with their parents. Preparation for a conference or mediation may take some time, depending on the availability of stakeholders. VOMs also depend on the availability of parents because of the children's ages. Children whose parents cannot be traced are represented by child workers. On average, five cases per year are conducted. There is a good working relationship with six other children's homes around Durban as well as with NGOs like NICRO and NACCW.

PROVINCIAL REPORT: KWAZULU-NATAL

This province reflects a particularly rich and diverse tapestry of activity across various sectors. Within the formal criminal justice system, probation services are clearly committed to integrating restorative justice and conferencing into their work. This appears to be the only province in which both the National Prosecution Authority and the magistracy have taken initiatives of their own. These are documented in the reports from the chief prosecutor in Southern KwaZulu-Natal and the magistrate from Greytown.

There are some unusual features within civil society. Apart from the programmes run by NICRO and Khulisa, which are similar to those in other provinces, there are programmes run primarily at three prisons by Phoenix Zululand. The programmes of the Democracy Development Programme and

the Diakonia Council of Churches include a reconciliation and diversity programme that focuses on the damage caused by apartheid. Also within this sector are additional programmes not found in other provinces: Lakehaven Children's Home and Wylie House have integrated restorative justice into their disciplinary procedures, while Justice and Women (JAW) use mediation for dealing with maintenance issues.

The province also reflects the contribution that traditional leaders and healers can make to the field of crime and conflict resolution.

LIMPOPO PROVINCE

NICRO : POLOKWANE

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The Diversion and Youth Development Programmes, introduced nationally by NICRO in 1990, were first practised in Polokwane in 1999. The programmes are free of charge and include the Youth Empowerment Scheme (YES), the pre-trial community service, the Journey and FGC. Only one diversion worker is permanently employed. Volunteers are used and reimbursed according to their number of working days. Between 1 April 2004 and 31 March 2005, NICRO Limpopo diverted 526 children and conducted 59 FGCs and 116 VOMs.

Clients come mainly from dysfunctional and single-parent families in both the black and white communities, and from differing socio-economic backgrounds. Languages used are Pedi, Tsonga, Venda, Afrikaans and English. NICRO makes its own assessment of clients before referring them to the relevant programmes. Documentation is in the form of a report.

PROBATION SERVICES: LIMPOPO

Over the past year, the Department of Health and Welfare in Limpopo Province has employed a number of new probation officers. There are now 29 probation officers serving the various magistrates' courts across the province.

The focus is on the usual probation practice, including:

- assessment of children
- compiling pre-trial reports
- compiling pre-sentence reports
- compiling victim impact reports
- facilitating diversion programmes, including
 - family group conferences
 - victim-offender conferences
 - pre-trial community service
 - home-based supervision
 - the Journey
 - conducting crime prevention awareness raising campaigns.

Most of the staff members were trained in restorative justice and conferencing by the RJC during December 2004, and have since started conducting family group conferences and victim-offender conferences.

TLANGELANI COMMUNITY DEVELOPMENT AGENCY

The Agency focuses on crime prevention and early intervention through establishing community projects involving children and their families. Service is provided in seven villages, Siyandhane, Giyani, Shitau, Nwamatatani, Ribungwana, Mabodlongwa and Nwaxinyanam. The Agency employs four permanent staff members and 68 volunteers, some of whom receive reimbursement of R350 or R1,500 monthly.

The target group is children in the 5-18 age group who are referred by the social workers and the community. The children are assessed before being placed in programmes or referred to other organisations, depending on their needs. The following projects, which differ from those offered by other organisations, are offered:

- after-school sports activities, and drama
- a trauma-support programme that identifies traumatised and abused children
- family preservation, similar to FGC.

Clients are children, young people and families referred by social workers and the CPU. They come from the Shangaan and Venda communities, the main language being Tsonga.

The Agency is funded by the Nelson Mandela Children's Fund, Care South Africa, Themba Le Sizwe and the DSD. Funds are raised by submitting annual proposals and service plans. Depending on the project, there is generally one a year, which is funded with R 100,000. Otherwise, funding proposals are written and submitted. Funds are used for running programmes and for administration purposes. It is estimated that the organisation works with 800 children annually.

The Tlangelani Community Development Agency does not do restorative justice work, but is interested in the practices and has requested that its staff be considered for training as soon as possible.

PROVINCIAL REPORT: LIMPOPO

For logistical reasons it was not possible for the research team to visit this province, but, had it been so, it is likely that some valuable data pertaining to the functioning of traditional leaders would have been obtained. Nevertheless, the survey was able to identify only three projects implementing restorative justice. These were:

- probation services, which appear to have been through a period of consolidation and are now making headway with implementing programmes;
- NICRO, with the usual services it offers, and
- Tlangelani Development Agency. This organisation is involved in social crime prevention work, but does not, at present, integrate restorative justice elements, although the staff indicated openness to doing so. They are a good example of a resource that could become part of a strategy to implement restorative justice on a wider scale, especially in rural areas.

MPUMALANGA

DEPARTMENT OF SOCIAL DEVELOPMENT: GERT SIBANDE DISTRICT

Probation Services employs seven social workers, who were trained by NICRO in 1998 to conduct diversion programmes. In 2004 they were trained in conducting FGCs and VOMs by the RJC. Volunteers, most of whom are part of the LoveLife Organisation, are used in various programmes.

Clients are mainly teenagers in the 14-17 age group, and adult offenders

who have been referred for pre-sentence reports and VOM. They are referred by the Justice Department and the SAPS at the pre-trial, pre-sentencing, reporting and diversion stages. Clients who have suspended sentences with conditions are referred at the post-sentencing stage. On average, about 40 cases a month are referred, 25% of them for domestic violence. Some victims of domestic violence who have applied for protection orders are not satisfied with referrals for mediation because they feel that their cases are very serious and warrant prosecution by the formal justice system.

Clients are mainly black (Zulu, Sotho and Swazi speaking), whites and coloureds from different socio-economic backgrounds. Interpreters are used to breach the cultural and language barriers. In the period 2004-2005, 516 cases were diverted.

The standard procedure for conducting FGCs and VOMs is described in Chapter Two. The Department cooperates with both the subsidised and unsubsidised organisations in the community, such as LoveLife, churches or clinics.

The probation officers have designed a credit points system for diversion programmes whereby a certain number of points are allocated for a particular crime. For instance, assault is allocated 650 credit points, while a written apology earns 50. A fee of R20 is charged for lodging a complaint or allocating a residential site in rural areas. Credit can be lost or gained depending on attendance and behavioural patterns. The implementation of this system gave probation staff a framework for planning diversion activities, especially in rural areas where resources are limited. Follow-up is done twice in six months before the file can be closed. Cases are documented in files, and there is a regional register.

The vastness of the district forces probation officers to attend to cases individually in different locations, instead of dealing with children in groups, which is time-consuming. Problems centre on services, and are mostly individual, such as time constraints. There could be logistical improvements, such as in transport, and resources like staff could be increased. Increasing the number of NGOs in the region would also be helpful.

A good relationship has been developed with some traditional leaders in the Albert Luthuli area. They participate when required in cases of stock theft, theft, housebreaking, assault and *crimen injuria*. These cases are referred back to the justice system for a final decision. The traditional authorities also take part in VOCs and FGCs arranged by the Department.

DEPARTMENT OF SOCIAL DEVELOPMENT: NELSPRUIT

There is one chief probation officer who is responsible for six probation officers and five assistant probation officers in Ehlanzeni, Mbombela, Thabatshewu, Nkomazi and Greater Tzaneen. The chief probation officer initiated diversion programmes in 2001.

Probation services receive case referrals from the formal justice system, the SAPS and the community. Cases are referred at the pre-trial (diversion), pre-sentencing and post-sentencing stages, and all are criminal cases. Diversion programmes include VOC, FGC, life skills and home-based supervision. The procedure for dealing with these cases is standard, as described in Chapter Two.

During the period 1 April 2004 – 31 March 2005, the DSD Nelspruit carried out 50 FGCs and 17 VOCs. The chief probation officer, following discussion with some prosecutors on diverting more cases, now expects an average of at least 10 cases a month in future. The type of cases referred include rape, which is very high in the province, with 20 cases a month, house-breaking, theft, robbery, assaults, hijacking and murder.

Clients are both children and adults from all racial and cultural groups and of differing socio-economic status. The most commonly-used restorative justice process is the FGC, in which assistant probation officers sometimes represent the victims. The offender is made to understand the impact of his actions on others and to take responsibility. Languages used are English, Afrikaans, Swazi and Shangaan, while the clients are mainly black and white, with a few Indians and coloureds. When language is a barrier, tolerance, understanding and mutual assistance are practised.

The Department also co-operates with NICRO, referring a number of cases to that organisation after the probation officer has made the assessment.

Follow-up is not possible in rural areas, owing to insufficient human resources. Assistant probation officers are over-worked and poorly paid but there is a plan to involve traditional leaders in follow-up procedures in the near future.

One problem is that secure care facilities for children awaiting trial are inadequate, while those that exist need upgrading. It is also felt that there is a lack of professionalism in conducting the programmes, which could be solved with more training from the RJC.

DEPARTMENT OF SOCIAL DEVELOPMENT: WITBANK

The office serves six districts, namely Dr Moroka, Thembisile, Sikhukhumi, Emahleng, Steve Tshwete (Middleburg) and Highlands. The chief probation

officer is responsible for twelve probation officers, all social workers, and three assistant probation officers. The staff was trained by the RJC in June 2004. There are no volunteers.

The Probation Services receive case referrals of juvenile and adult offenders from the prosecutors, the SAPS, schools and the community. Cases are referred at the pre-reporting, pre-trial (diversion), post-sentencing and diversion stages. Offences include housebreaking, theft, shoplifting, assault, fraud, rape, culpable homicide and murder. The clients represent all the cultural and racial groups in South Africa and are from different socio-economic backgrounds. The range of languages used includes Zulu, Sotho, Ndebele, English and Afrikaans. Interpreters are available in the case of language barriers.

During the period 1 April 2004 – 31 March 2005, the DSD in Witbank, carried out 73 FGCs and 42 VOMs. Probation Services were able to provide several written reports of VOCs and FGCs which demonstrate a sound understanding of restorative justice. The process followed is the standard one described in Chapter Two.

There is an excellent relationship between the probation officers and the formal justice system in Mpumalanga, in comparison with most of the other provinces. This is evident in the number and nature of cases referred for mediation. One case in particular is a case of murder involving a 15 year old teenager who stabbed his friend with a broken bottle. A VOM was conducted with the victim's parents in the presence of SAPS members, the offender's family and his teacher. The victim was a bread-winner and had children. It was agreed that the offender should support the victim's family financially for a period of two years. Because the offender was still a student, the investigating officer, Mr van der Walt, offered to employ him part-time and his family offered to supply the victim's family with vegetables from their garden every month. Both families were satisfied with the agreement.

NICRO: MPUMALANGA

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NICRO Mpumalanga deals with child and adult offenders referred by the justice system, social services, schools and families. The following programmes are provided;

- Diversion for children below 18 years of age
- offender re-integration for adults of 18 years and above
- the Economic Opportunity programme for post-release offenders.

The office staff are in consultation with the relevant stake holders to introduce alternative sentencing programmes. NICRO uses volunteers to run their Youth Empowerment Scheme (a diversion programme) and for tracking children's progress. Volunteers are not remunerated, but are reimbursed for travel expenses.

Clients are from various cultural and racial backgrounds of differing socio-economic status. The main languages used are Zulu, iSiswati, English and Afrikaans. All the cases arise from criminal matters and are referred at the pre-trial and pre-sentencing stages. Between 1 April 2004 and 31 March 2005, NICRO Mpumalanga diverted 635 children and conducted 6 FGCs and 13 VOMs. NICRO has provided training for probation and assistant probation officers employed by the Government. There is also a good working relationship with organisations and NGOs like SANCA, Lifeline and Business Against Crime, Education and the DCS.

PROVINCIAL REPORT: MPUMALANGA

The study identified two projects implementing restorative justice: Probation Services and NICRO, which renders most of its usual programmes. Probation services appear particularly well organised within their three districts, and impressed the researchers with the extent to which they are integrating and implementing restorative justice into their programmes. In particular they have made progress in drawing on other resources in rural areas, including involving traditional leaders in FGCs and VOCs.

Although attempts were made to interview some traditional leaders, none of these appointments materialised.

NORTHERN CAPE

DEPARTMENT OF SOCIAL DEVELOPMENT

The Department provides probation services in the Siyanda district, Upington and Postmasburg in the Northern Cape Province. Social Services have proved themselves effective and successful practitioners of restorative justice through their diversion programmes. The programmes are designed to change the criminal lifestyles of young offenders by engaging them in life-skills education.

The service targets children in conflict with the law through criminal offences such as shoplifting, housebreaking, assault and theft. Clients are referred by the Justice Department and assessed by the social workers (probation officers) before being placed in relevant programmes. They come from all racial and cultural groups of different socio-economics status, and mainly from poor communities in the province. Preparations for restorative justice programmes such as VOM and FGC take several hours or days, owing to the sensitive nature of the process, involving both the victim and the offender. FGCs, which are the more popular method of conflict resolution compared to VOM, take place twice or three times monthly. Other clients are referred to NGOs like NICRO, which provide the same services as the Department. The actual implementation of restorative justice started only in April 2005, after training had been conducted in the province by the Restorative Justice Centre. Since then, probation officers have conducted a total of 29 FGCs and 6 VOMs.

Other steps taken to promote restorative justice included translating a brochure into Afrikaans in the Siyanda (Upington) district, as well as arranging a two-day workshop in February 2006 for SAPS officials, NGO representatives and community representatives. The opinion was expressed that magistrates in particular need to know more about this approach.

NICRO : KIMBERLEY

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The Journey Programme is an intensive experiential intervention programme aimed at high-risk children, while the pre-trial community service allows children who have offended to do volunteer work at community service centres or at other public institutions. The organisation has forged a good relationship with the government by identifying the needs of children at risk and in conflict with the law and designing relevant programmes. Their reliability in service delivery has also impressed donors. NICRO is funded by both government and private donors.

The offender reintegration programme, the Tough Enough Programme, or TEP, is a voluntary programme for prisoners who are within one year of their release date. It is a six-phase programme aimed at helping the prisoner make the transition from incarceration to release. It involves individual assessments of a prisoner's concerns and needs, group education on topics like drugs and HIV/AIDS, community networking and support and conducting a job search. It also assists released prisoners who wish to continue their education.

These programmes do not really differ from province to province, as the core programme remains the same. However, programmes are implemented according to clients' needs, which means that, in essence, some content may differ but processes are consistent.

NICRO Northern Cape has offices in Kimberley, Okiep, De Aar, Upington and Hartswater. There are eight employees in the entire province, with two social workers and three service deliveries directly involved in restorative justice practices. Volunteers, who receive a maximum of R200 per month for travelling expenses during service delivery, are also involved.

NICRO's target groups are children in conflict with the law, adult offenders in prison, and victims of violence and crime, mostly women and children. Children are referred by the courts for diversion programmes, while adult offenders recruited by service deliverers participate in pre-release programmes. All the referrals are criminal cases. There is no fee for participation in programmes. The clients come from all racial and cultural groups of differing socio-economic status. The most commonly-used languages are Tswana, English and Afrikaans. Interpreters are available in the event of language barriers, while people with professional skills assist in overcoming other problems. NICRO also cooperates with other organisations like SANCA.

Between 1 April 2004 and 31 March 2005, NICRO Northern Cape diverted 722 children and conducted 30 FGCs and 3 VOMs. The designs and models for programmes are developed on a national basis with input from all the provinces. The duration of each programme differs accordingly. The life skills programme consists of eight sessions, while FGCs and VOMs take from 1-2 hours (excluding the one-hour preparation session). Awareness programmes last from 2-5 hours. The outcomes achieved in these programmes include, for example, a lower rate of re-offending, compensation for victims, restored relationships and personal empowerment.

The fact that programmes are not available in all regions is problematic. Solutions to this could be further funding to pay for the implementation of programmes and the acquisition of vehicles to improve accessibility.

DEPARTMENT OF SOCIAL DEVELOPMENT: UPINGTON

The Department provides probation services in the Siyanda district, Upington and Postmasburg in the Northern Cape Province. Social Services have proved themselves effective and successful practitioners of restorative justice through their Diversion Programmes. The programmes are designed to change the criminal lifestyles of young offenders by engaging them in life skills education.

The service targets juveniles in conflict with the law through criminal offences such as shoplifting, housebreaking, assault and theft. Clients are referred by the Justice Department and assessed by the social workers (probation officers) before being placed in relevant programmes. They come from all racial and cultural groups of different socio-economics status, and mainly

from poor communities in the province. Preparations for restorative justice programmes such as VOM and FGC take several hours or days, owing to the sensitive nature of the process, involving both the victim and the offender. FGCs, which are the more popular method of conflict resolution compared to VOM, take place twice or three times monthly. Other clients are referred to NGOs like NICRO, who provide the same services as the Department. The actual implementation of restorative justice started only in April 2005, after training had been conducted in the province by the Restorative Justice Centre. Since then, probation officers have conducted a total of 29 FGCs and 6 VOMs.

Other steps taken to promote restorative justice included translating a brochure into Afrikaans in the Siyanda (Uppington) district, as well as arranging a two-day workshop in February 2006 for SAPS officials, NGO representatives and community representatives. The opinion was expressed that magistrates in particular need to know more about this approach.

PROVINCIAL REPORT: NORTHERN CAPE

As with some of the other provinces, only Probation Services and NICRO were identified. NICRO renders most of its usual programmes. Although it is clearly a recent development, Probation Services appear to be engaging actively with the realities of integrating restorative justice into their functioning.

NORTHWEST PROVINCE

DEPARTMENT OF SOCIAL SERVICES: BRITS

A social worker/probation officer is stationed at the Brits Magistrates' Court, where she assesses clients' cases before they go to court and recommends diversion. She has been trained to conduct FGCs and VOMs.

The clients are children between the ages of eight and 17, from all race groups and of differing socio-economic status. They are referred by the prosecutor and the SAPS at the pre-trial and diversion stages. There are also some adult clients, although the target group is young offenders. An average of two FGCs/VOMs are conducted by the probation officer bi-monthly, depending on the nature and circumstances of the case, while some cases are referred to NICRO, who conduct these programmes on the DSD's behalf at the Social Services' office twice a week.

All referrals are for criminal offences like theft, housebreaking, assault, rape, sodomy and murder. The probation officer does not use the scripted model, even though she has been trained in it, because she finds it somewhat restrictive and formal for conducting FGCs and VOMs. There is no preparation

because of the personnel shortage and the fact that those concerned live in a widely scattered area. The conference takes the form of a discussion in the social worker's office, with the families present. The victim and offender meet only during this discussion. Many cases end with apologies and some with compensation for the victim. The participants are given a chance to talk about their feelings, and to reach a sense of closure or peace. During the period 1 April 2004 – 31 March 2005, approximately two FGCs per month were conducted. Five VOCs were also completed.

Problems include the fact that often victims do not respond, which could be solved if the probation officer instead of the police could contact the clients.

Documentation is in the form of a written report to the court.

DEPARTMENT OF SOCIAL DEVELOPMENT: KLERKSDORP

The DSD in Klerksdorp has a supervisor of probation services, one probation officer and one assistant probation officer who are responsible for four districts of Klerksdorp, Orkney, Hartebeesfontein and Stilfontein. The staff attended restorative justice training at Rustenburg in May 2004. This branch is funded by the departmental budget. There are no volunteers.

The probation service in Klerksdorp is under-staffed, with the two probation officers working in 14 courts and a population in the region of 600,000. They deal with child and adult offenders referred by the prosecutors for diversion at the pre-trial stage. All referrals relate to criminal offences like house-breaking, theft, assault, drug abuse and murder. Available programmes are youth development and life skills. These last for three sessions on the basis of one a week for three weeks. On average, there are about 20 diversion cases per month, with each probation officer writing at least 10 pre-sentence reports and doing assessments of children's cases before the court procedure.

Only two FGCs are conducted each year, and no VOMs at all. Contact between the victim and the offender takes place only if both parties are from the same family. Conferencing procedures are as described in Chapter Two. There is a diversion programme on home-based care to monitor children's progress, support them and to make sure that they attend school.

The clients are from different racial and cultural groups and are of differing socio-economic status. Contract workers are used to breach the language barriers. Victims in need of counselling are referred to the Crisis Centre. There is also a good working relationship with organisations like Child Welfare, NG Welfare, the Suid Afrikaanse Vroue Federasie and the Ondersteunings Raad.

The probation officers are of the opinion that the low number of referrals

for FGCs and VOM is on account of the justice system being poorly informed about restorative justice. Intensive training on the restorative justice process is recommended for both the prosecutors and the probation staff.

DEPARTMENT OF SOCIAL DEVELOPMENT: MMABATHO

The DSS, which works 26 wards around the Mafikeng area, started diversion programmes, including FGCs and VOCs, as part of its process in 2003. Other available programmes are life-skills education, crime prevention and home-based supervision. Funding is provided by the Department of Health and Social Development.

The probation service receives case referrals from the prosecutors, the magistrates and regional courts, schools and the SAPS at the pre-trial, pre- and post-sentencing and diversion stages. They conduct an average of three FGCs and six VOMs per month, as well as arranging counselling with psychologists if necessary. The probation officers deal mainly with criminal cases like theft, shoplifting, housebreaking, rape and murder, and also offer after-care services once a month for three months after clients have completed programmes. The programmes follow the accepted procedure described in Chapter Two.

The clients, who come from different cultural and racial backgrounds of varying socio-economic status, are young offenders, victims and their families. Adults are dealt with only at the pre-sentencing stage. Languages used are Tswana, English and Afrikaans, but interpreters are available if necessary. After the usual procedures have been followed, children living with grandparents or relatives because of misunderstandings with their biological parents are reconciled and made to sign agreement forms. School drop-outs are now being re-admitted to school. Further, it has been recommended to the Justice Department that the latter should institute some form of compensation to victims.

According to information received from clients, gangsterism is becoming a problem in many schools, where children even use gangster names like 25s, 26s and 28s. In view of the crime situation, workshops on crime prevention have been conducted for traditional leaders and their councillors. The chief probation officer feels that there is a need for the Restorative Justice Centre to educate the traditional leaders, the communities and the teachers from the Department of Education on restorative justice concepts and practice.

Two NGOs, Tshwardano and Aganang Youth Zone, have expressed an interest in working with the department. The department's other associate, the traditional councillors, are also involved in education in crime prevention at schools.

DEPARTMENT OF SOCIAL DEVELOPMENT: VRYBERG

The probation officers were trained in probation services by the Department, and in 2004 they were trained in conducting VOM and FGC by the Restorative Justice Centre.

The Social Services' target group is child offenders and their families, and adult offenders. Clients are referred by the courts, the SAPS and schools. The Department offers an assessment and referral (RAR) service. Pre-trial reports, and intermediary reports are compiled. Probation officers also testify in court and carry out daily cell visits. Cases include minor offences like shoplifting, house-breaking, theft of less than R300 and common assault. They also include major cases like murder, rape, hijacking and theft of large amounts of cash.

Other programmes offered are VOC and FGC, victim empowerment, after care, alternative placement and diversion. The Department has recently outsourced the diversion programmes to NICRO, and has a good working relationship with the LoveLife Youth Centre and Department of Arts and Culture. The probation officers' main concern is the removal of juveniles from the prison environment and placing them in child and youth care facilities and secure care. When children are referred to places of care (alternative placement), a development assessment is conducted by a team, who compile a care plan for the child. This is renewed after six months. Home-based supervision is also dealt with by the probation officers. Very few VOCs and FGCs have been conducted on account of unwillingness on the part of most victims.

The clients are predominantly Tswana-speaking Africans, and coloureds, and the main languages spoken are Tswana, Afrikaans and English. The challenge facing the probation officers is lack of feed-back from the courts, which causes a delay in processes. Sometimes they are not even informed about trial dates. Training in restorative justice practice is thus recommended for prosecutors, magistrates and the SAPS.

KGOSI TSHEPO MANKUROANE: BATLHAPING BA GA PHUDUHUTSWANA: TAUNG

Kgosi Tshepo Mankuroane is Paramount Chief of Batlhaping ba ga Phuduhutswana in Taung Village, which is made up of 63 small villages. Each of these has a Headman and one or more councillors, who serve the community and assist in resolving conflicts. The court process involves the community and family of both the complainant and the defendant.

Wednesdays have been designated as court days in all villages, while on Thursdays all Headmen congregate at the main office in Taung to give feedback and to present unsolved disputes to the Paramount Chief. Disputes are first reported to councillors, who assess them and decide whether to conduct a hearing or refer them to the Headman. In the latter instance, if the Headman fails to resolve the matter, it is then referred to the Chief. The community is always part of the process of dispute resolution, and can even recommend sentences or fines.

If the parties involved, that is, victims or offenders, are not satisfied with the outcome, they have the right to appeal in the formal court within a period of 21 days following the verdict. There is a good relationship between the Chief, the Senior Magistrate and the prosecutors. The latter make case assessments and decide which cases fall under the jurisdiction of the Traditional Authority and which should go to the formal court. For example, theft of property valued at less than R300 is dealt with by the Traditional Court. Other kinds of cases include common assault, customary marriage dispute and breach of contractual obligations.

Historically, traditional leaders served as governors of their communities, with authority over all aspects of life, from social welfare to judicial functions. Today, many traditional leaders feel that their powers have been drastically reduced. Chief Mankuroane also confirmed that, even though he has good relationship with the municipal councillors in his area, many of them still disregard or disrespect the chiefs. He feels that municipalities should consult with Chiefs concerning developments in their areas of jurisdiction.

Chief Mankuroane is Deputy Chairperson of the House of Traditional Leaders in North West Province. While the Chief and Headman are paid by the local government for their services, councillors are not remunerated. Headmen earn a stipend of R300 per month. After the completion of each case, an amount of R50 is paid by the offender as court costs, which is used for administration and the salary of the office cleaner.

The Chief expressed his interest in having traditional leaders and their staff trained in restorative justice processes, and undertook to recommend this to the House of Traditional Leaders.

KHULISA: RUSTENBURG

The Rustenburg branch of Khulisa was established in February 2004, and renders services to child offenders in Tlhabane, Mogwase and Madikwe prisons. Volunteers receive remuneration for their services. The office's main focus is on teaching offenders life skills, giving them HIV/AIDS education, reconciling them with their families and getting them re-admitted to school. Khulisa cooperates with the SAPS, the DCS, NICRO and the NPA.

Khulisa receives pre-trial case referrals of children with behavioural problems from schools, and child offenders from the justice system. Scholars go through a mini-diversion programme that teaches them self esteem, ubuntu, and how to resist peer pressure. Formal diversion is designed for children charged with criminal offences, and involves VOM and FGC. At one meeting, involving a parole murder offender, the victim's and offender's families, tribal leaders and the community, there was some reconciliation and acceptance, even though the process was emotional and difficult. As a result, the Khulisa staff, after recent training on restorative justice, realised that they needed to make adjustments in their approach, such as having separate pre-mediation meetings with participants and a more private meeting for all concerned.

On completion of formal diversion, the social worker writes progress reports to the prosecutors and, in most cases, the charges are withdrawn and the children reintegrated with their families. Young offenders on programmes (divertees) are taken on prison visits to witness how prisoners live. This is to discourage crime and help them see the programmes as a second chance.

Khulisa involves the community and the traditional leaders in community restorative programmes with the idea of encouraging and educating them on the restorative justice process.

Last year during Forgiveness Day, Khulisa organised a forgiveness workshop which involved five offenders, their families, correctional services, two mediators, six social workers and the community, at which offenders talked about their crimes.

Documentation consists of reports written after each case has been followed up.

NICRO: RUSTENBURG

The National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) is a non-profit organisation dedicated to development and crime prevention in South Africa. NICRO was founded in September 1910 as the South African Prisoners' Aid Association, serving prisoners and their families. After much growth within the organisation, as well as the development

and modification of services, it was renamed NICRO in 1970. In the late 1980s NICRO began serving victims of crime, focusing specifically on abused women. The introduction of the Diversion and Youth Development Programme in 1992 was followed closely in 1993 by the Economic Opportunities Project as well as the Youth Empowerment Scheme (YES). 1996 saw the introduction of the Journey Programme, a component of NICRO's Diversion Programme, based on the Rite of Passage theory and wilderness therapy. This programme is also suitable for high risk and repeat offenders. The FGC was initiated in the same year. The organisation broadened its scope to include services to other victims of crime in 1997, which marked the launch of the Community Victim Support Programme. In that year, the word 'rehabilitation' was replaced by 'reintegration' to give a more accurate reflection of NICRO's work with offenders.

NICRO is the largest and most organised civil society organisation practising restorative justice nationally, with established offices in all nine provinces. As outlined in Chapter Three, NICRO was the first organisation to introduce restorative justice to South Africa. Restorative justice in all its aspects is now integral to all NICRO's programmes.

In line with its focus on children, NICRO has concentrated on FGCs rather than VOCs, although it appears that staff members do not all use the term in the same way. FGCs are utilised as a decision-making forum that promotes a restorative justice principle of rebuilding disrupted relationships, where the focus is on putting things right and not punishment. Through FGCs, families are put in charge of decision making and reclaiming responsibility for various aspects of community and family life.

The Journey Programme is an intensive experiential intervention programme aimed at high-risk children, while the pre-trial community service allows children who have offended to do volunteer work at community service centres or at other public institutions. The organisation has forged a good relationship with the government by identifying the needs of children at risk and in conflict with the law and designing relevant programmes. Their reliability in service delivery has also impressed donors. NICRO is funded by both government and private donors.

The offender reintegration programme, the Tough Enough Programme, or TEP, is a voluntary programme for prisoners who are within one year of their release date. It is a six-phase programme aimed at helping the prisoner make the transition from incarceration to release. It involves individual assessments of a prisoner's concerns and needs, group education on topics like drugs and HIV/AIDS, community networking and support and conducting a job search. It also assists released prisoners who wish to continue their education.

These programmes do not really differ from province to province, as the core programme remains the same. However, programmes are implemented according to clients' needs, which means that, in essence, some content may differ but processes are consistent.

NICRO Rustenburg realised the need to address the plight of child offenders in the province and to provide life-skills education and other diversion programmes. The office was opened in 1997 and three years later, in 2000, another office was opened in Winterveld, near Pretoria.

There are seven employees in Rustenburg, five social workers and two administration workers. They have a good working relationship with the DCS, the Department of Justice, Bokamoso Children Centre (dealing mainly with school leavers/children out of school) and the DSS.

Other programmes include:

- Community Victim Support
- The Offender Reintegration Programme
- Diversion and Children Development
- The Economic Opportunity Programme to help victims start their own businesses, which has been discontinued owing to lack of funding.

NICRO has case referral from the prosecutors and from the DCS at the following stages:

- diversion for young offenders
- pre-trial for perpetrators of domestic violence and
- post-sentence for inmates.

VOM and FGC started as diversion programmes, but have been extended into other programmes like victim support and offender reintegration. In a month, the staff deal with an average of eight cases of VOM and FGC, approximately five cases of domestic violence and one or two offender reintegration cases. Most VOMs have no direct victim, because the offences are mainly those committed in businesses like supermarkets. The procedure for conferencing is the standard one described in Chapter Two.

The languages most commonly used are Tswana, Xhosa, English and Afrikaans. The greater portion of time is allocated for preparation in VOC and FGC, while the actual conferencing takes anything up to four hours. Results are documented in written reports, signed by both parties and sent to the national office. Follow-up is done for all diversion programmes once each in three months and six months respectively. There is no fee for the programmes.

ODI COMMUNITY LAW CENTRE

The Odi Community Law Centre (OCLC) was established in 1995 as a legal aid organisation serving the local community. There are nine employees, but some have been retrenched. Volunteers, who are currently law students, are used in the non-restorative justice programmes.

The OCLC was one of four organisations brought together by the Restorative Justice Initiative to promote victim-offender conferencing as well as other restorative justice philosophies. The mediators of the restorative justice programme were trained by the RJC.

In 1999, a pilot VOC project was led by an association of local NGOs, and the OCLC became involved in 2000. This pilot study sought to alleviate the burden on the formal justice system, while also establishing a community-based approach to dealing with crime.

During the pilot study period and until 2004, the Open Society Foundation funded the OCLC's restorative justice programmes. The organisation facilitated 134 VOCs during this period, involving charges of varying degrees of severity.²⁴ The majority of these cases were referred by the court, and the VOCs would be conducted as described in Chapter Two.

Currently, there is no funding for restorative justice programmes, so none are being conducted. The OCLC identifies lack of funding as the most serious hindrance to running restorative justice programmes.

NORTHWEST PROVINCE: PROVINCIAL REPORT

North West Province is one of the biggest provinces in the country, the majority of its population living in rural settlements. Although communities in rural settlements practise the traditional method of restorative justice, there is a very limited working relationship between the traditional authorities and the formal justice system in terms of case referrals. The survey has revealed that there is a serious need for restorative justice training for magistrates, prosecutors and the SAPS in most areas of the province.

Case referrals for VOM and FGC to the probation services are also significantly low, with most areas conducting fewer than ten annually. Other probation services are understaffed. Brits has one probation officer servicing an area with a 70km radius and Klerksdorp has two probation officers covering four towns, five districts and 14 courts. The two main NGOs, NICRO and Khulisa, both established practitioners of restorative justice, have a limited presence in the province, with only one office each in Rustenburg.

Khulisa has introduced what they call the Community Restorative Justice programme, which involves traditional leaders and the community. In August

2004 they conducted a Forgiveness Workshop involving five offenders from the Rustenburg Prison and the community. The offenders had gone through the My Path programme and had requested the opportunity of apologising to the community for their actions. In September of the same year, Khulisa facilitated an FGC involving the paroled offender, who had committed murder, the murdered victim's family, the traditional leader and his counsellor, as well as the community of Bakwena-ba-Morare. Emotional as it was, it yielded positive results, as is apparent from the case study supplied by Khulisa. These two incidents encouraged the community to embrace restorative justice practice for dispute resolution.

From among the traditional leaders who were supposed to have met the interviewers, only one interview was successful. Kgosi Tshepo Mankuroane of the Batlhaping-ba-ga-phuduhutswana is one of the chiefs who receive case referrals from the formal justice system and vice-versa. He regards traditional leaders as custodians and practitioners of restorative justice. The court of Taung, under senior magistrate Mr. S. Tlhabathaba, refers cases concerning domestic disputes, traditional marriage disputes and theft of less than R300 to the traditional court, while the latter also refers unresolved disputes and serious offences to the formal justice court. Community members who are dissatisfied with the traditional court verdicts have the right to appeal to the justice system within 21 days of the verdict.

WESTERN CAPE

CHRIS GIFFARD: KALK BAY

Chris Giffard is a private consultant with a particular interest in correctional service issues. He has done research and run workshops on restorative justice and prisons. His first involvement with prisons was as a political prisoner in the late 1990s, when he spent two years in Pollsmoor. He began to work in prisons in 1995, as an ANC prisons researcher in parliament. Later that year he was seconded by Idasa to the Secretariat of the Transformation Forum on Correctional Services.

In 2001 he began work in the Prisons Transformation Programme at the Centre for Conflict Resolution (CCR). While the CCR organised conflict resolution and mediation workshops for both prison staff and inmates, it was decided that 70% of the time should be dedicated to working with staff members and only 30% with inmates. The rationale was that, if prisons were to be fundamentally transformed as institutions, changing the mindset of the prison staff was a precondition for rehabilitating inmates.

Chris is of the opinion that, because rehabilitation and restorative justice

programmes in prisons have been promoted by the Religious Affairs Department in the Department of Correctional Services, restorative justice has come to be understood primarily in religious terms. This has resulted in an almost exclusive focus on guilt and forgiveness, to the exclusion of the other elements of restorative justice.

Chris suggested that prisoners should also be involved in reparation projects. These may include reparations made directly to the victim. But also important is reparations made by offenders to victimised and poor communities. This community work may take the form of building play parks in poor communities or painting and renovating schools. What is important is that when prisoners engage in these projects, they should be doing it within the framework of an understanding of taking responsibility for past actions, community (or individual victim) mediation, and reparation. Many prisoners respond well to these projects.

COMMUNITY NETWORK: GUGULETHU TOWNSHIP, CAPE TOWN

During the Apartheid years, people lost trust in the justice and the police system to protect them, and lawlessness was rife in the township. The communities saw the need to do something about the crime around them. This gave birth to Kangaroo courts, which proved extremely brutal in resolving disputes and the community had to think of a new strategy. The Community Network introduced street committees, which proved very effective.

In 2003 the Community Network decided to formalise their crime prevention strategy to start working in collaboration with the formal justice system and the police. With the help of Ms Zelda Holzman, the Executive Director of Restorative Justice Initiative in Muizenberg, Cape Town, the Community Court was launched. Ms Holzman, who had been a police officer before registering an NGO, provided training for the communities of Gugulethu, Langa and Khayelitsha Townships. More than 300 people were trained in running community courts and conducting restorative justice processes. During the time of survey, only Gugulethu had launched a court.

The Community Court receives case referrals from the courts, the SAPS and the community. The mediators and arbitrators are elected from street committees. Gugulethu Township is divided into four sections, each with approximately 20-30 street committees. There are 12 executive members and 13 adjudicators, and all members are volunteers. The court deals with no less than 50 cases per month and their *modus operandi* is similar to the traditional African method of conflict resolution, involving the community in decision making. Serious cases reported by the community are referred to the formal

justice system.

The prosecutors and the SAPS are often invited to attend the process. Parties who are dissatisfied with the Community Court verdict are advised to lodge an appeal with the magistrates' court within twenty-one days. Besides restorative justice practices, members are also trained in human rights structures, citizenship and conflict resolutions. The main problem facing community courts is lack of funding. Donations from local businesses are used to buy stationery. With more substantial funding, the backlog of cases at the courts could be considerably reduced.

THE COMMUNITY PEACE PROGRAMME:

SCHOOL OF GOVERNMENT, UNIVERSITY OF THE WESTERN CAPE

The Community Peace Programme (CPP) was established in 1997, when the organisation implemented a pilot programme based on community capacity for self-governance in Zwelethemba, a black township in Worcester, Western Cape. The CPP mobilises communities to organise Peace Committees (PCs) to resolve disputes through Peace Gatherings (PGs). One of the aims of the organisation is to establish gender and age balance in PCs so that all the parties concerned feel represented.

Disputants participate on a voluntary basis. They and the PC may invite people they believe will be helpful in resolving the problem to participate in the PG. Of the 10,000 cases the CPP has analysed in detail, there is an average gap of 3.06 days between the complaint and the PG. The PG is very informal in its tone, but carefully structured in its process. At least two PC members must be present at each PG. It is usually the responsibility of a PC member to monitor and follow up a case, the method and extent of this process differing from case to case. Currently no statistics are kept on the number of people who refuse to participate in a PG. However, of the people who do participate, only 2% do not reach an agreement. Currently, 20 communities support active PCs, which, in total, have conducted 11,000 PGs since 2000. Most of the PCs are in the Western Cape, four are in the Free State, and one is in Durban, KwaZulu-Natal. Unlike most restorative justice models, this programme is community-owned within the confines of the law and with the acceptance and support of the formal justice system. It is not a state-controlled diversionary model.

The CPP does not consider itself simply a practitioner of restorative justice, because it believes "restorative justice" is too loaded a term and the organisation does not want to falsely label itself as a restorative justice programme or

restrict itself to a conventional diversionary restorative justice model. It regards itself as a programme of governance and encourages people to take on responsibility.

The Swedish Embassy funded the CPP for the first three years of the organisation's existence; the Finnish Embassy then took over the funding. Local government has provided some funding but it is neither substantial nor consistent. In order to cope with lack of funding, the CPP resorted to a decentralised business model of PCs.²⁵ CPP employs three salaried staff and pays R100 to the PC members who worked on a completed case. It also contributes R50 to the PC purse, which funds a community-based project selected by the PC, according to agreed criteria and by means of a structured process. The CPP conducts regular reviews of the PCs as well as occasional refresher courses for PC members.

PCs address a range of disputes which include money lending, child maintenance, assault, and goods not paid for. In principle, the PG process could deal with any crime as long as all parties are willing to participate and the community accepts the process.

However, rape may be a crime which the programme is not equipped to handle because of cultural stigmas and trauma. The PC can also mediate in cases that are being handled by the formal justice system.

The CPP and the SAPS work in cooperation with one another and two-thirds of the matters the police received during the first year of this agreement were referred to the PC. Police receive the PGs positively because the work they do enables the police to focus on the more serious offences. CPP has not yet actively explored the possibility of receiving referrals from prosecutors and magistrates. However, in Worcester, the PCs have had support from one of the magistrates who involves the PC if a sentence involves community service.

One challenge is the question of how to define the relationship between PCs and traditional authorities (where they exist) which could regard PCs as a threat to their position and power. Finances are also an issue. Because the members of the PC receive payment for each completed case, it is very tempting to make up a case to increase payment. Strict monitoring curbs this problem. Finally, many people in positions of formal authority regard the cases before PCs as petty, which can lead to reduced acceptance of the programme by conventional donors. However, 'petty crimes' are not petty to those involved, and, if not dealt with at source, may escalate into more serious problems that require state intervention. The CPP conducts regular reviews of the PCs and occasional refresher courses for PC members.

DEPARTMENT OF SOCIAL SERVICES : CAPE TOWN

The DSS began working with diversion programmes in 1994, when they were established by social workers for youth in trouble with the law. Currently, approximately 70 probation officers are employed in the Western Cape, most of whom have been trained by the DSS, although some training in restorative justice has been outsourced to the RJC.²⁶ The DSS offers a variety of diversion programmes incorporating restorative justice elements, including:

- the YES programme
- a drug information school programme
- the SAYStOP programme and
- home-based supervision.

VOCs or FGCs can be coupled with any of these programmes, although neither is used regularly. The DSS provides all the funding for probation officer activity, including restorative justice programmes.

The DSS's YES programme is aimed at youth who have committed minor offences. The programme teaches life skills to these children in the hope of providing them with alternatives to crime. The Department's drug information programme is offered to youth arrested for drug-related offences. The SAYStOP programme is for young sex offenders charged with minor sex offences so that they can learn appropriate behaviour. The home-based supervision is used either for children awaiting trial or as an alternative to sentencing. In this programme, the children are taken on educational excursions and also participate in courses on drug education or life skills.²⁷

In each of these programmes, the probation officers encourage the offenders to contact their victims, but very few actually do this. The effort to make contact is especially encouraged on the SAYStOP programme, but, since all parties have to give consent, and most victims and offenders are under the age of 18, this can be difficult to obtain. Conferencing is conducted according to the standard procedure described in the Training Manual and the probation officer has no authority to enforce any agreements reached in the conference.

DSS probation officers facilitate approximately 30 conferences annually. This number is significantly lower than in previous years, when the DSS was running more than 100 annually. They would like to see those numbers return to peak levels, but resources are currently scarce. The DSS has identified shortage of personnel as the most serious problem, while the courts' unwillingness to participate in restorative justice training is also a hindrance, as this limits the number of conferencing and diversion referrals.

GOODWOOD PRISON: CAPE TOWN

Goodwood Prison is one of the larger prisons in the Western Cape, taking only male offenders. Like most prisons today, it has an active rehabilitation programme. Inmates participate in life skills education programmes, such as;

- New Beginning
- Crossroads
- Re-dream your World (a musical programme)
- Healing of Memories and
- restorative justice practice.

Unfortunately the initial restorative justice programme collapsed owing to lack of financial resources, but in 2004 Khulisa revived it. Ministries involved in prison church services, the Peninsula Technikon, the Institute for Healing of Memories and the Centre for Conflict Resolution supported the idea by pledging financial support. In January 2005, inmates were divided into six groups per unit and preparations for the programme are now under way.

The inmates represent a variety of racial and cultural groups of varying socio- economic status. All official languages are used, especially Xhosa, English and Afrikaans. Interpreters are involved if necessary. The staff is currently dealing with offenders in the area of restorative justice practice, while victims and families will be involved at a later stage. Other programmes focus mainly on understanding emotional pain, dealing with guilt and taking responsibility. There is unfortunately a staff shortage, which presents problems.

HOPE NOW: WESTERN CAPE

Hope Prison Ministries have 14 employees two of whom are assigned to restorative justice practice. Four others are expected to be trained in 2006 to expand restorative justice practice in other prisons. Of the 99.9% funding from overseas donors, 10% is set aside for restorative justice.

There is cooperation with the SAPS, the Department of Justice, the Social Services and various community forums. Currently, three programmes, male, female and youth programmes, are conducted annually. Each programme is divided into three courses: an introduction which takes one week, a course lasting for four weeks and, finally, mediation, which is a long and challenging process. About 150 inmates interact with programmes annually.

The clients, all offenders, represent a diversity of races and cultures, mostly black, but including coloured and white. Most clients speak one or two of Xhosa, English or Afrikaans. They are referred by the prison social workers

and religious facilitators at the various Pollsmoor institutions at the trial and post-sentencing stages. Participation in programmes is free and voluntary. Because of the sensitivity of bringing offenders and victims together, VOM can be conducted only by a mediator who has completed an advanced training course. VOM is carried out according to the standard practice as described in Chapter Two.

INSTITUTE FOR THE HEALING OF MEMORIES: CLAREMONT

The Institute for Healing of Memories (IHoM), which grew out of the Healing of Memories Chaplaincy Project of the Trauma Centre for Victims of Violence and Torture, was established in 1998. IHoM is a trust that seeks to contribute to the healing journey of individuals, communities and nations through workshops, seminars, talks and sermons. The workshops are designed to create a safe space where issues of race and gender, with a particular focus on the impact of apartheid, can be discussed. These workshops have become the principal focus of IHoM, and have been conducted over the past four years in the Western Cape. All the workshop participants are regarded as victims and no offender is identified. The programme is belief-based. A workshop runs from Friday evening through Sunday afternoon. Each workshop has about 15 participants, who pay a fee of approximately R300.

LYNDI FOURIE FOUNDATION: CAPE TOWN.

The Lyndi Fourie Foundation is the joint venture of Mrs Ginn Fourie and Letlapa Mphahlele. Mrs Fourie is the mother of Lyndi, who was killed during the Heidelberg Tavern massacre in December 1993, and Letlapa Mphahlele is the former commander of Apla, who gave the order for the massacre. In 2003, whilst working at UCT and studying for a doctorate on Forgiveness and Reconciliation in South Africa, Ginn was approached by an ex-combatant who asked her to participate in a Forum for the Release of Political Prisoners.

After the Forum, Ginn and Letlapa launched the idea of a project for ex-combatants that focused on the release of those in prisons and the reintegration of those outside into the SANDE. This resulted in a number of meetings with other NGOs at the Centre for the Study of Violence and Reconciliation (CSVR), with representation from the Trauma Centre for Victims of Violence, Ndabikuni, the South African Military Veterans' Association, MKVA and Paul Haupt, a psychologist, conducting research for the Institute of Justice and Reconciliation.

Most of the ex-combatants are suffering from post-traumatic stress disorder and substance abuse. They feel betrayed and left in the cold, without skills,

housing, food and dignity. The symptoms of PTSD include re-experiencing their trauma through nightmares and flashbacks, difficulty in sleeping and feelings of detachment and alienation. The danger exists that they may see a counter revolution as the answer to their problems.

The aim and objectives of the Lyndi Fourie Foundation are, in order to support the process, to mobilise a range of resources to accelerate healing and life-skills training, to manage an effective and dynamic rehabilitation centre and to help families of ex-combatants deal with challenges and family dysfunctions. The proposed models to bring healing include:

- conventional medical and psychiatric expertise
- therapeutic spiral model to maximise the effectiveness of psychodrama
- *capacitar*, a Spanish word meaning to empower, to encourage and to bring one another to life
- the Journey Process, for those who are out of touch with their emotions
- the Twelve Step Programme, to deal with addiction by dependence on a greater power, a method used by Alcoholics Anonymous.

NICRO : MITCHELL'S PLAIN

The National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) is a non-profit organisation dedicated to development and crime prevention in South Africa. NICRO was founded in September 1910 as the South African Prisoners' Aid Association, serving prisoners and their families. After much growth within the organisation, as well as the development and modification of services, it was renamed NICRO in 1970. In the late 1980s NICRO began serving victims of crime, focusing specifically on abused women. The introduction of the Diversion and Youth Development Programme in 1992 was followed closely in 1993 by the Economic Opportunities Project as well as the Youth Empowerment Scheme (YES). 1996 saw the introduction of the Journey Programme, a component of NICRO's Diversion Programme, based on the Rite of Passage theory and wilderness therapy. This programme is also suitable for high risk and repeat offenders. The FGC was initiated in the same year. The organisation broadened its scope to include services to other victims of crime in 1997, which marked the launch of the Community Victim Support Programme. In that year, the word 'rehabilitation' was replaced by 'reintegration' to give a more accurate reflection of NICRO's work with offenders.

NICRO is the largest and most organised civil society organisation practising restorative justice nationally, with established offices in all nine provinces.

As outlined in Chapter Three, NICRO was the first organisation to introduce restorative justice to South Africa. Restorative justice in all its aspects is now integral to all NICRO's programmes.

In line with its focus on children, NICRO has concentrated on FGCs rather than VOCs, although it appears that staff members do not all use the term in the same way. FGCs are utilised as a decision-making forum that promotes a restorative justice principle of rebuilding disrupted relationships, where the focus is on putting things right and not punishment. Through FGCs, families are put in charge of decision making and reclaiming responsibility for various aspects of community and family life.

The Journey Programme is an intensive experiential intervention programme aimed at high-risk children, while the pre-trial community service allows children who have offended to do volunteer work at community service centres or at other public institutions. The organisation has forged a good relationship with the government by identifying the needs of children at risk and in conflict with the law and designing relevant programmes. Their reliability in service delivery has also impressed donors. NICRO is funded by both government and private donors.

The offender reintegration programme, the Tough Enough Programme, or TEP, is a voluntary programme for prisoners who are within one year of their release date. It is a six-phase programme aimed at helping the prisoner make the transition from incarceration to release. It involves individual assessments of a prisoner's concerns and needs, group education on topics like drugs and HIV/AIDS, community networking and support and conducting a job search. It also assists released prisoners who wish to continue their education.

These programmes do not really differ from province to province, as the core programme remains the same. However, programmes are implemented according to clients' needs, which means that, in essence, some content may differ but processes are consistent.

NICRO Mitchell's Plain has a diversion project manager, ten employees, one auxiliary worker and nine probation officers conducting programmes. Established in 1993, the restorative justice programme was linked to the campaign called NO CHILD SHOULD BE CAGED. The campaign was successful in most magisterial districts around the Western Cape, particularly in rural areas. NICRO welcomes the opportunity of formally participating in the transformation of the child justice system.

The organisation has welcomed a child justice system that utilises FGCs and VOMs, thereby increasing the involvement of families and communities. Between 1 April 2004 and 31 March 2005, NICRO Western Cape diverted 2,946 children and conducted 16 VOMs. The FGC and VOM programmes are car-

ried out according to the procedures described in Chapter Two. NICRO deals with criminal cases referred by the formal justice system and schools at the diversion and pre-trial stages. It also runs an offender reintegration programme designed for prisoners who are about to be released or paroled at the post-sentencing stage. Other programmes offered are the Journey Programme, involving volunteers, the YES Programme and PTCS. Volunteers are refunded for expenses incurred during service delivery.

NICRO's target group consists mainly of child offenders for diversion and adults for the reintegration programme. Clients come from all racial and cultural groups and are of varying socio-economic status. They use all the official languages, especially Xhosa, English and Afrikaans. Interpreters are involved if necessary.

RESTORATIVE JUSTICE INITIATIVE, MUIZENBERG

Zelda Holtzman is Executive Director of the Restorative Justice Initiative in Cape Town. An ex-police officer, she has dedicated her time to assisting township communities in establishing community courts, as well as providing training based on conflict resolution and Peace Development projects. More than 300 people in Gugulethu, Langa and Khayelitsha townships were trained by the RJI during 2003. Holtzman also established a forum for facilitating discussions on restorative justice practice, based on the community's need to resolve their own disputes.

As far as funding is concerned, the Restorative Justice Initiative received R500, 000 from the Department of Community Safety, which was used for training and to launch a community court in Gugulethu. This will be followed by similar launches in Langa and Khayelitsha in the near future.

The community court in Gugulethu has case referrals from the formal justice system, the SAPS, SANCO and the community at the pre-reporting and pre-trial stages. Cases are tried in the traditional African manner, which involves the community in decision making. Both victims and offenders are supported by their families and friends throughout the process, which is facilitated by trained mediators. Clients who are dissatisfied with a verdict have the right to appeal to the formal justice system within 21 days of the verdict. Prosecutors and the SAPS are often invited to attend these proceedings.

Besides receiving training in restorative justice practices, members are also trained in human rights structures, citizenships rights, and crime prevention strategies. Because the RJI has targeted townships, clients are mainly from the black and coloured communities. Languages most commonly used are Xhosa, English and Afrikaans. Cases referred from the community are initially re-

ported to street committees, who in turn report them to the community court. The SCs help trace offenders or defendants to notify them of the complaints and to set a date for a hearing. SAPS assistance is requested if necessary, and serious offences that are above the court's jurisdiction are referred to the formal justice system. Lack of funds and infrastructure are two of the main problems facing the community court.

PROVINCIAL REPORT: WESTERN CAPE

The survey revealed an interesting mix and range of programmes in the Western Cape.

Probation services in the province have been at the forefront of implementing a range of programmes, including conferencing and other diversion options. NICRO provides its usual programmes.

In this province, more than any other, there is significant activity by chaplains and church ministers focused on integrating rehabilitation and restorative justice, particularly in the Goodwood and Pollsmoor prisons. A caution was sounded by one observer that, if restorative justice is perceived as being exclusively aligned with one religion, it might be regarded as irrelevant by those who do not identify with that religion.

Another feature that appears unique to the Western Cape is that of the programmes focusing on community disputes. The Restorative Justice Initiative (Western Cape) and the Community Network in Gugulethu, Khayelitsha and Langa follow one model, integrating aspects of traditional African justice, while the Community Peace Programme follows another.

The Lyndi Fourie Foundation provides programmes for political ex-combatants based on elements of restorative justice. A project of the CSV (see under Gauteng, but operating from the Cape Town office) also deals specifically with political cases and is more specifically focused on addressing the needs of survivors and bringing parties together. Generally, this province provides a base that could be greatly expanded with a specific strategy and allocation of resources.

ENDNOTES

- 1 This PO felt it was important for the victim's mother to participate in the FGC. Because attending this conference would mean her missing work and therefore losing income, the PO personally paid the parent her lost wages.
- 2 Either the mother or the father.
- 3 Tribal authority jurisdiction is determined by the complainant's jurisdiction. Nkosi is not aware of any cases heard by the tribal authority referred from the formal justice system.
- 4 The Centre representative described the VOC process for a DCS referral concerning a woman due to be released on parole from her eight-year sentence. She had locked someone in a house, poured petrol around it and then set it on fire. The pre-conference work of preparing her family took five days because intensive counselling was required. After that, the Centre had to confirm whether the woman herself wanted to continue. Here again, the standard procedure was followed.
- 5 Children who have committed serious or multiple offences are detained at the prison. At the time of the interview there were more than 40 young offenders in the prison.
- 6 When children are referred by schools and the community, the community inquiries are conducted by probation officers. These children are not formally assessed, but a consultation can be held with the parents and children. The children are referred to external resources if necessary.
- 7 Amanda Dissel, Piloting Victim-Offender Conferencing in South Africa, in T Maepa (ed), *Beyond Retribution: Prospects for Restorative Justice in South Africa*, 2005, pp 91-92.
- 8 See the separate report on the RJI, the reports on each of the members of the consortium and the research reports on the pilot, all of which were compiled by the CSVr.
- 9 The project is managed by the CSVr's Cape Town office.
- 10 This mediator is not funded by DCS, but has applied for private support.
- 11 Volunteers do not assist in the mediation, but instead are used to help in tracking participants.
- 12 Information provided by Mike Batley, chairperson, and Tshego Maswabi, coordinator of RJISA and also drawn from Amanda Dissel, Piloting Victim-Offender Conferencing in South Africa, in *Beyond Retribution: Prospects for Restorative Justice in Southern Africa*, 91-92 (Traggy Maepa ed., Institute for Security Studies & Restorative Justice Centre 2005).
- 13 These NGOs were the Wilgespruit Fellowship Centre (WFC), the Community Dispute Resolution Trust (CDRT), and the Centre for the Study of Violence and Reconciliation (CSVr). In the second two years the VOC project was run by the Restorative Justice Initiative, a consortium made up

of the following organisations: Restorative Justice Centre, Odi Community Law Centre, Peace Building Network of the Mennonite Central Committee, Conquest for Life, the Alexandra Community Law Clinic, Community Dispute Resolution Trust, and the Centre for the Study of Violence and Reconciliation.

- 14 The project was run during three 12-month periods in the years 1999/2000, 2001/2002, and 2002/2003.
- 15 Mediators were paid a small fee for each mediation.
- 16 C Stauffer, Victim Offender Conferencing Funding Proposal, unpublished, 1999.
- 17 Amanda Dissel, Piloting Victim-Offender Conferencing in South Africa, in T Maepa (ed), *Beyond Retribution: Prospects for Restorative Justice in South Africa*, Institute for Security Studies & Restorative Justice Centre, 2005).
- 18 See R Palmer, Justice in whose interests? A proposal for institutionalised mediation in the criminal justice system, *SACJ*, 33, 1997, and L. Meintjies van der Walt, Towards victims' empowerment: strategies in the criminal justice process, *SACJ*, 157, 1988.
- 19 See South African Law Commission Discussion Paper 10, Project 74, Simplification of Criminal Procedure, out-of-court settlements in criminal cases, p 28.
- 20 Headman or headmen. Induna can be appointed by the Inkosi with community approval or by the community itself. The position can also be inherited. Induna is appointed for life unless the community removes him. There are roughly one thousand Induna in the Zulu kingdom.
- 21 The tribal authority will also refer such cases to social workers if the husband does not cooperate; there are social workers who make rounds in Inkosi's community.
- 22 He provided an example of how he personally conducted a VOC (rather than prosecuting) for youth offenders who broke into their school's shop and stole goods. The boys agreed to restock the shop if they were allowed to go back to school.
- 23 For example, prosecution is the accepted form of action in the case of statutory rape, but often the families themselves might wish to settle the matter out of court.
- 24 A Dissel, Piloting Victim-Offender Conferencing in South Africa, in *Beyond Retribution*, pp 91-92.
- 25 The Durban PC is currently suspended owing to lack of funding, but CPP is working with the University of KwaZulu-Natal to locate funding.
- 26 This is a decrease from 108 probation officers in 1998.
- 27 This programme is limited as to the number of children it may take, since the expenditure for home-based supervision is much higher than for the other programmes.