



INDABA

Programmes to support the Child Justice System

**Held at the Kopanong Conference Centre, Benoni,
Gauteng**

20 – 21 June 2001

REPORT

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INTRODUCTION

This report presents a summary of the proceedings of a national Indaba on programmes to support the proposed Child Justice system in the area of diversion and alternative sentencing. The conference was organised by the United Nations Child Justice Project and it was held in Benoni from the 20th to the 21st of June 2001.

The objective of the Indaba was to explore critical issues relating to the availability and implementation of appropriate programmes and services aimed at protecting children from the damaging effects of courts and prisons. The resolutions and recommendations made by representatives of various organisations that attended the Indaba will help in the implementation of the Child Justice Bill, which will be introduced to parliament later this year.

The Bill proposes a new system of dealing with children who are in conflict with the law. It places emphasis on the use of diversion and community-based alternative sentencing as effective means of protecting these children.

The deliberations of the Indaba also attempted to develop a national strategy to ensure that adequate and effective programmes are developed, implemented, strengthened and sustained.

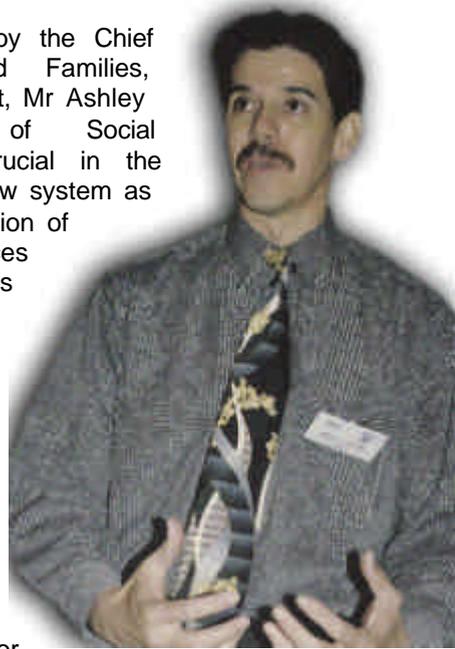


A typical debrief on an Adventure based Diversion programme.

DAY ONE

1. SESSION 1: LEGISLATIVE FRAMEWORK

The conference was opened by the Chief Director: Children, Youth and Families, Department of Social Development, Mr Ashley Theron. The Department of Social Development's involvement is crucial in the implementation of the proposed new system as it plays a central role in the provision of amongst others, assessment services by Probation Officers. This assessment guides Prosecutors in deciding whether to divert or to prosecute children's cases brought before them. The Department of Social Development is also tasked with ensuring the availability of programmes for diversion and alternative sentencing and will be responsible for registration of diversion programmes as well as maintaining minimum standards for aforementioned programmes, based upon a quality assurance process. It was, therefore, appropriate for Mr Theron to set the tone for the conference and align the Child Justice Bill with other internal policies within his department.



“Central to an effective and integrated child justice system is the collaboration and cooperation between the Departments of Justice, Social Development, SAPS, Correctional Services as well as non-governmental organisations”
Mr Ashley Theron

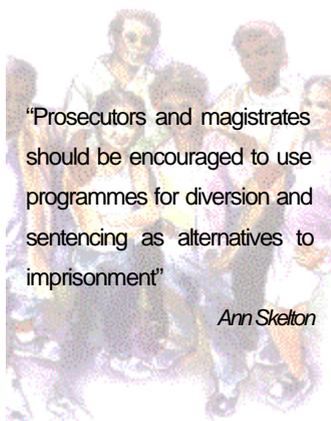
Mr Theron outlined the role of legislation in child protection programmes' design and implementation and emphasised the need to explore critical issues, so as to make diversion programmes effective. He further alluded to the need for an integrated justice system, characterised by collaboration and co-operation between the departments of Justice, SAPS, Welfare and Correctional Services. He indicated that these departments would benefit from working closely with non-governmental organisations, which have relevant experience in the field.

1.1 The Child Justice Bill: Implications for Implementation, by Adv. Ann Skelton

Adv. Ann Skelton, National Coordinator of the Child Justice Project, presented an overview of the Child Justice Bill and gave the implications for implementing diversion and alternative sentencing programmes. She emphasised that diversion forms an integral part of working with children in conflict with the law. She also noted that decisions about diversion are based upon



the assessment of the individual and seriousness of the offence. She also stressed the importance of using creative sentencing programmes because they provide scope for recognising the uniqueness of each child. There was agreement that magistrates and prosecutors need to be encouraged to utilise these programmes, particularly in instances where there is consent and acknowledgement from the offender, demonstrating his / her commitment.



“Prosecutors and magistrates should be encouraged to use programmes for diversion and sentencing as alternatives to imprisonment”

Ann Skelton

Ann also distinguished the three levels of diversion (which would be used throughout the conference)

- **Level One** diversion includes less intensive interventions, implemented through various orders such as compulsory school attendance, placement under guidance or family time orders.
- **Level Two** diversions are more intensive than those at level one. They tend to be group orientated - focusing more on group activities, community service and family group conferencing. At this level, the period of diversion does not exceed six months.
- **Level Three** diversions apply to children that are 14 years or older and they are more intensive. These include referral to counselling, performance of duties without remuneration and referral to a programme with a residential component.

1.2 Audit of diversion Programmes

Buyi Mbambo of the UN Child Justice Project (CJP) shared on the audit of diversion programmes run between 1999 and 2000, which is being conducted by her office. She mentioned that it is estimated that approximately 10 500 children were diverted to NICRO's community-based programmes. In addition, the Department of Social Development estimates that Probation and Assistant Probation Officers diverted approximately 4000 children to programmes run throughout the country. The study concluded that for the child justice system to work smoothly approximately 55 000 diversions and 5000 alternative sentencing options will be required per annum.

Therefore, the implications of the Bill are that the system will require more diversion programmes and alternative sentencing options than are currently available. This means that more creative and innovative programmes should be identified, designed and strengthened to support the system. Programmes should be seen and used in a holistic sense – as prevention, early intervention, diversion, alternative sentencing, as well as for reintegration into family and community.

She also stated that the CJP audit is a “work in progress” and has focused on the following to date:

- An audit of programmes by NGO's including NICRO, currently used for diversion and alternative sentencing;
- An audit of diversion programmes implemented by Probation and Assistant Probation Officers throughout the country;
- An audit of other NGO and CBO programmes currently not used by the system but with potential to support the system if adjusted to meet the needs of children;

INDABA Programmes to support the Child Justice System

The audit will also explore programmes of other government departments (such as Education, Health, Sports, Agriculture, etc) that have the potential to be used to support the child justice system.

Various categories of diversion programmes have been identified and these include:

- Developmental Life Skills Models
- Peer / Youth Mentorship
- Adventure Therapy Programmes
- Restorative Justice Programmes (e.g. family group conferencing and victim-offender mediation)
- Counselling / Therapeutic and treatment programmes
- Skills training and Entrepreneurship programmes
- Specialised Family-Based programmes (e.g. family prevention services, foster care and house arrest)
- Combination Programmes

The latter combine different initiatives such as creative arts and school-based initiatives. Preliminary findings of the audit indicate that there is a need for extensive collaboration so as to maximise output and minimise duplication and wastage. She also suggested that programmes would need to be evaluated so as to determine their effectiveness.

(See attachment at the end of this report for a description of these categories)

An FGC in progress during the Family Group Conferencing Pilot



Finally she highlighted programmatic gaps that have been uncovered through the auditing process and mentioned that with few exceptions, these were gaps that were reflected countrywide.

- Vocational Skills development programmes for children over the age of 14 years. Many existing programmes that offer vocational and job training skills target youth over the age of 18 years. Alternative educational programmes for older children who left school in lower grades were also found to be lacking.
- Programmes with a residential component were found to be lacking in many parts of the country.
- Restorative Justice programmes. It should be noted that after the Family Group Conferencing Pilot, which was conducted in Pretoria a

few years ago, more FGC facilitators were trained. There has been a gradual increase in the number of FGCs and VOM type of programmes. However this is a category that needs to be developed further and there is a need for quality assurance for such programmes.

Diversion options for children requiring alcohol and drug treatment include:

- Counselling and therapeutic programmes for children with serious emotional, behavioural and personality problems
- Treatment and counseling programmes for children who have committed sexual offences. The models of Child Line in Durban and SAYStOP in Cape Town are good examples of programmes for this group of children.

2. SESSION 2: ENABLING MECHANISMS FOR DIVERSION – PANEL DISCUSSION

This session was chaired and facilitated by Ms Ooshara Sewpaul, Director: Children and Youth at the Department of Justice, where the UN Project is located. The panel comprised Professor Julia Sloth-Nielsen, Mr Lukas Muntingh and Mr Henry Mokwehvo.

2.1 Formal and informal mechanisms to enable diversion

Julia Sloth-Nielsen of UWC's Faculty of Law pointed out that there are both formal and informal mechanisms through which diversion programmes can be accessed. She outlined three options, which may be regarded as formal mechanisms for enabling diversion:



- Unconditional withdrawal of charges accompanied by a referral to NICRO or to a Probation Officer. This option is generally not favoured.
- Conditional withdrawal with referral upon successful completion of trial, accompanied by withdrawal of charges. This option tends to be favoured by courts.
- Postponement of a case. Whilst this option is not appropriate for diversion, it is favoured for monitoring and supervision. The advantage presented by postponing the case is that it provides an opportunity for tailoring a specific programme for each child.

A concern was raised regarding conflict with the law. The courts' power to review the Prosecutor's decision causes problems when there is no consistency in sentencing. A case in point is that of two girls who were found guilty of a similar offence (shoplifting), but who received different sentences. It is therefore critical that like cases are treated alike, so as to avoid causing confusion. There is also a suggestion that a preliminary enquiry might assist in this regard. The utilisation of formal mechanisms in diverting children has its own limitations. Apart from the inconsistency in sentencing, research has shown that Judicial Officers have had a role to play in diversion even though they are not supposed to. The identification and implementation of informal methods is likely to circumvent these challenges. There is, therefore, a need to further explore other informal but legitimate means of diverting children. Multiple access routes to diversion should be encouraged - for instance, if Probation Officers and Police negotiate cases, instead of allowing all cases to go through the court system, cases will be resolved more speedily. There was also a recommendation for negotiated settlements between NICRO, offenders and victims.

2.2 The Role of Prosecutors and their attitudes towards diversion

Mr Lukas Muntingh from NICRO reported on a study conducted by the Department of Justice in 1998, which analysed factors that influence Prosecutors' decisions. The study revealed that while it was difficult to assess if prosecutors had any detailed understanding of diversion (i.e. its meaning and application), it was clear that there are factors, which form a common thread in their decision-making:

- Prosecutors regard the nature of an offence as an important variable and little consideration is given to socio-economic factors;
- There was no coherent view in relation to perceptions of children and crime. Some Prosecutors were conscious that children should be treated differently from adults but some did not apply their minds to the difference between adults and children;
- Previous offences tend to weigh heavily on out-of-school children whereas school-going children are treated more leniently
- Generally, the offence was regarded as the most important variable for making decisions to divert, than the needs of the child;
- Diversion was seen as more suitable for minor first time offences. Gang involvement and previous crimes weighed heavily against diversion;
- Diversion and due process rights – the general attitude was that children benefit from diversion (the “it is good for them” attitude) and as a result their due process rights are ignored;
- Decisions to divert were highly subjective - hence the inconsistency;

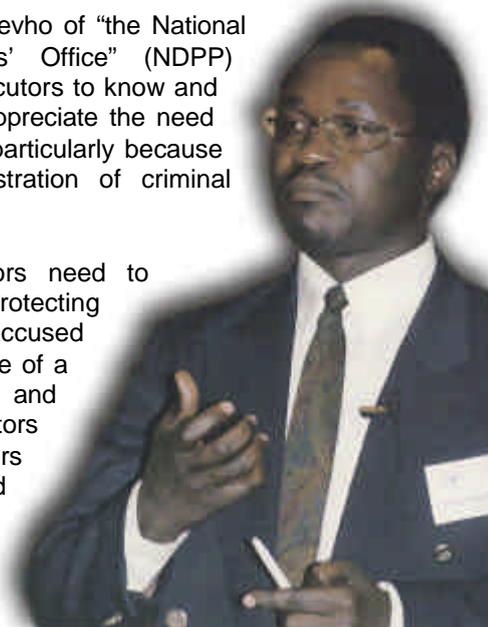


- Prosecutors had little or no knowledge of the diversion programme content;
- Most Prosecutors were opposed to “informal diversion” at police level – They believe that it will create more problems than solutions

The positive things that this study revealed were that, in general, there was consensus that adults and children should be treated differently and that diversion is suitable for first time offenders. Prosecutors were also supportive of the view that Probation Officers and Non Governmental Organisations should make decisions about diversion, provide supervision and follow up to support diversion programmes. Whilst Prosecutors prefer to be given detailed guidelines regarding when and how to divert, there is concern that this will undermine the creativity that is required and recommended. Obviously these are debates that will continue as the new system gets implemented.

A presentation by Henry Mukwevho of “the National Director of Public Prosecutions’ Office” (NDPP) stressed that it is critical for prosecutors to know and understand diversion as well as appreciate the need for diversion in our legal system, particularly because they are central to the administration of criminal justice in the country.

He mentioned that prosecutors need to balance the interest of justice in protecting the society and the rights of the accused prior to prosecuting. In the absence of a coherent policy regarding when and how to divert, some prosecutors diverted children whereas others did not. This, however, changed when the National Prosecuting Authority was introduced, with the NDPP issuing directives regarding diversion.



Furthermore, the NDPP, through its Sexual Offences and Community Affairs Unit (SOCA), has also revised policy directives in an attempt to find a way of accommodating the rehabilitation of child offenders, because the South African justice system was not designed to deal appropriately with child offenders.

In an effort to ensure implementation of diversion in all courts, his office conducted an audit of diversion practises across the country. The objective of the audit was to establish the extent to which diversion is practised, ascertain problems experienced in implementing diversion and identify diversion programmes that are utilised by courts. The findings of the study include the following:

- A total of 10 000 children were diverted by the courts between July 1999 and June 2000.
- NICRO was the most utilised service provider for diversion programmes.
- In the North-West province, the former Bophuthatswana territory does not practise diversion.
- Diversion is mainly practised in urban areas, such as Durban,

Gauteng, Pretoria, Pietermaritzburg and Cape Town.

- The Western Cape province has the largest number of diverted cases at 2491, followed by KwaZulu Natal at 2030.
- Former homeland territories of Ciskei and Transkei have low numbers compared to others, with 205 and 125 cases respectively.
- Just over 100 courts out of 500 practise diversion

Challenges facing prosecutors practising diversion include the following:

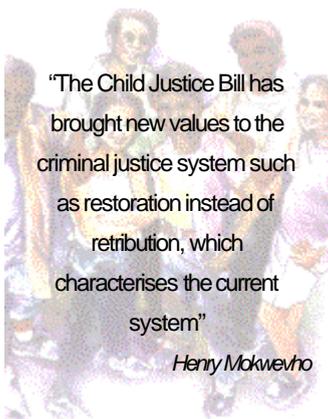
- Lack of diversion programmes and institutions in most areas
- Lack of co-operation from children and their parents
- Some prosecutors are not aware of the existing programmes
- No contactable addresses for some children.
- Lack of co-operation from other stakeholders, particularly the department of Social Development.
- Lack of training on diversion. As a result, policy directives are not appropriately applied.
- The implementation of Family Group Conference programmes is difficult because most children have no sound family base.

These problems have been attributed to a lack of policy on how to implement diversion. Mr Mokwehvo stressed that his office was working on developing policies in line with the new Bill to change the prosecutions' approach to the system. He also emphasised that for diversion to be implemented in all courts, all stakeholders need to demonstrate acceptance of diversion as an alternative form of sentencing.

He further highlighted that the office of National Prosecutions has arranged workshops to sensitise and train prosecutors. The same office has prepared business plans in an attempt to raise funds for more training. There is also a need for the department of Justice to co-operate and collaborate with other stakeholders such as non-governmental organisations. To this end, the department is organising a consultative conference with NGO's in August 2001 in order to foster closer working relationships.

There was also a suggestion that representatives from non-governmental organisations should also attend the training of Prosecutors in order to promote a common understanding of diversion and its implications.

Questions that followed these two presentations focused on improving and changing the attitudes of Prosecutors towards children and diversion. Participants felt that sometimes some Prosecutors ignore policies and guidelines due to their attitudes and lack of skills. It was agreed that there is a need to provide the right kind of training for Prosecutors that takes on the children's rights perspective. Lukas Muntingh mentioned that if assistance and support is provided at local level, Prosecutors are willing to learn and implement good practices.



3. SESSION 3: INNOVATIVE APPROACHES TO THE DEVELOPMENT AND USE OF PROGRAMMES

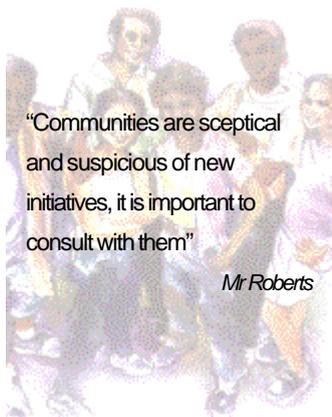
Numerous organisations outlined their youth programmes, which are either utilised for alternative sentencing or have the potential to be utilised for this purpose. A common thread that appeared to emerge in most of the programmes is that they struggle to get the co-operation of courts and that the absence of the offenders' family members during therapy often hinders the achievement of successful therapy. Typical programmes that were presented include:

- School based programmes
- Social Crime Prevention
- Life Skills training programmes
- Programmes that utilise youth mentors
- Aftercare programmes
- Community based care programmes and
- Programmes for sexual offenders

3.1 Creating Community based diversion options with limited resources

A Panel Discussion involving Mr C.J Roberts, Ms Rene Botha, Ms Carol Bower, Ms Joan van Niekerk and Mr Coenie du Toit from the Department of Social Development (who chaired the session) was held.

3.1.1 The development of Noupoort Youth and Community Programme



"Communities are sceptical and suspicious of new initiatives, it is important to consult with them"

Mr Roberts

Mr C.J. Roberts, a magistrate from Noupoort (Northern Cape) highlighted that in his area they have instituted a diversion and preventative programme aimed at ensuring that children do not get into conflict with the law. The key challenge in his experience was to get the co-operation of the community, which tends to be sceptical of new programmes, especially when those programmes deal with young people in conflict with the law. Noupoort had no diversion before this initiative and to introduce the notion of a programme to divert children was a challenge. As a magistrate in a small town he was able to encourage community structures to come together to discuss the needs of children in conflict with the law and to explain to them that sending children to prison to await trial is not the right thing to do. When this breakthrough with the community was achieved, it became easy to work with them. They now co-operate with the court by identifying children that show signs of deviant behaviour. The community decided that young people from the community should be utilised to run diversion programmes. With the help of NICRO in the province (De Aar) these young people were selected and trained to run a life skills diversion programme. This programme has been so successful that community partners have decided that it should be run in

schools as a preventative measure. Schools are able to identify those children that are at risk of getting into the criminal justice system and are then referred to the programme to attend sessions facilitated by the trained young people from the community. The programme is now used as both a diversion and preventative programme, with success. They are now developing a youth development centre, which would address the wide-ranging needs of the children in the community. These children will then be made to attend programmes in this centre.

3.1.2 Community Perceptions and development of programmes with limited resources

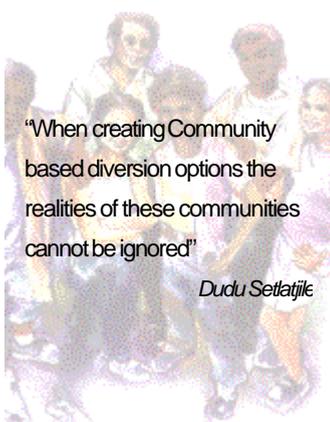
A presentation by Ms Dudu Setlatjile, of the Restorative Justice Centre, highlighted findings of a research study commissioned by the UN Child Justice Project and conducted by her organisation. The study explored why alleged child offenders sometimes become victims of communities taking law into their hands. This study followed recent media reports on cases where communities victimised alleged child offenders harshly - one recent case having resulted in the death of a child. Another much-reported case was that of a girl who was painted white for allegedly having stolen some goods from Pep Stores in the Northern Province. The RJC studied two communities - Ratjjepane (North West) and Louis Trichardt (Northern Province).



Dudu emphasised the need to take into consideration the realities of these communities when creating community based diversion options. She also indicated that these diversion options should be aimed at empowering the offenders in skills that would steer them away from committing crimes again. A typical example of such options would be a diversion that involves families and other relevant community members, such as traditional leaders, priests, teachers etc. A tailor-made conferencing model would be suitable in this case.

She indicated that some of the programmes experience challenges or dilemmas, which still need to be resolved. These include differing views on what is regarded as a good outcome, the amount of time that is spent by children in programmes, society's views towards offenders, the question of community's' interpretation on what constitute a crime and what constitutes justice, as well as the issue of rights and further disclosures and disclosure of what happens in sessions with child offenders.

Dudu then offered some recommendations for creating community-based diversion options. Such options should be based on the realities of the community and the strengths of the community should be built upon. The diversion options for these communities should have the following characteristics:



"When creating Community based diversion options the realities of these communities cannot be ignored"

Dudu Setlatjile

- Inexpensive and accessible
- Acknowledge the norms and values of these communities
- Support whatever other structures are already in existence in these communities (*role of the church, tribal courts and extended family not to be undermined*)
- Should not take the responsibility of child rearing away from the adults concerned (*the role of the tribal court, for instance in the case of the girl who was painted white*)
- Interpretation of crime and the meaning of justice for a particular community should not be ignored (*Rural communities have their own way of interpreting a crime. In Ratjjepane, for instance, the crime committed most is the breaking of windows by young children. This is generally considered a petty offence, but we need to acknowledge that in such a community where resources are scarce when a window is broken it causes a lot of other expenses to the victim – the owner of a house has to go to town, get money for bus fare, borrow money to buy a window etc to have the window fixed.*)
- Children's Rights should be upheld (*Corporal punishment issue should be addressed and alternatives be provided*)
- Measurable
- The Restorative Justice yardstick needs to be used. The yardstick asks the following questions:
 - Do victims experience justice?
 - Do offenders experience justice?
 - Is the victim-offender relationship addressed?
 - Are communities concerns taken into account?
 - Is the future being addressed?

"We need to develop a home grown definition of restorative justice; to develop a culture & facilitate understanding in order that people may get involved and buy into the restorative justice model"

*Restorative Justice
Discussion Group*

Therefore, examples of such diversion options would be a diversion option that involves families and other relevant community members and parents, such as a tailor-made conferencing model. When a young person has committed an offence, the family, community leaders, the offender, the victim and any other relevant party should be able to attend a conference and hold the young person accountable. (Working within the traditional court framework, which is still prevalent in many rural communities)

We need to be creative in terms of empowering young people to not commit crimes again (older siblings could be involved). Churches and other structures or individuals in the area can play a major role in monitoring this kind of diversion and linking up with relevant authorities where necessary. They can also be used in community empowerment and education. Young offenders can be referred to serve a particular period in 'internship' ("putting the wrong right") leaving with skills that will help them make a living in future.

In the case of Louis Trichaardt it is important to point out that the primary need of the Nesane family was not seeking justice from the courts, but getting a formal and genuine apology from the offenders and not necessarily PEP stores. There is a need that as we look at diversion options, that such interpretations be taken into consideration. The needs of victims should not be ignored.

3.1.3 School based programmes

Ms Thenji Mayekiso of Business Against Crime highlighted her organisation's schools based programmes, which involve other stakeholders, such as parents and police as well as social crime prevention programmes, which seek to bring about social change. She emphasised the need for co-operation amongst stakeholders and suggested that this has proved to be the cornerstone of successful crime prevention programmes. She gave indicators for sound partnerships:



- Define roles, identify stakeholders, get partners involved in design and implementation
- There should be clear communication re expectations and consequences
- It is important to document achievements
- Clarify roles
- Make programmes accessible to participants
- Follow up after programme implementation
- Community training and capacity building is critical – use parents for sustainability
- Funding should be outsourced, with clear measures or indicators of success – do not lose objectives
- Evaluation and monitoring should be built into the programme.

3.2 Innovative approaches: Peer and Youth Mentorship



Rene Botha, the Director of Youth Development Outreach (YDO) in Pretoria, informed participants about their youth development programme that offers youth mentorship services to children and young people at risk, including those accused of crimes. This is a community-based model that utilises trained mentors from the community, who are matched with young people referred to their organisation. Her presentation covered the definition of mentors and the mentoring relationship, the recruitment and screening of mentors and the attributes as well as competencies that mentors should have or acquire once selected. Mentors receive training in Family Preservation strategies, youth development strategies, skills in facilitating family group conferences, and skills to run the Adolescent Development Programme (ADP). She further outlined the referral process by stating that following a referral by court, children are assessed and matched with a mentor who works with them for a minimum of three months. Another component of the programme is ADP, which children attend for a period of three months, after which the mentor provides aftercare support and monitoring. YDO also offers youngsters a range of preventive



"For mentoring to be credible as a diversion option, there should be a strong accountability component by mentors"

Rene Botha

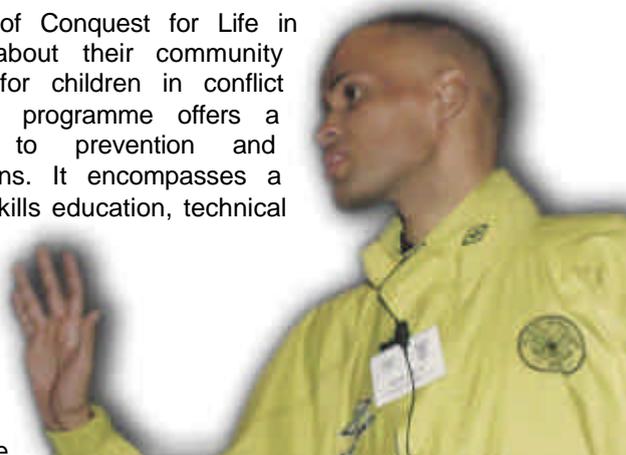
programmes such as recreation, music, computer literacy and other life skills. (See attached presentation)

Rene stressed that the programme has a high level of accountability. Mentors are expected to write and submit reports to court and they also receive intensive support

Mr Glen Steyn of Conquest for Life in Westbury shared about their community based programme for children in conflict with the law. The programme offers a holistic approach to prevention and diversion interventions. It encompasses a combination of life skills education, technical skills training, peer mentorship as well as victim offender conferencing.

Conquest for Life uses previous gang members as role models, who give

talks to youth in an attempt to influence them to take responsibility for their own lives and change their communities.



3.3 Programmes for Children requiring specialised services



Joan van Niekerk of Childline shared on their programme for sexual offenders. The objective of the programme is to prevent long-term patterns of sexual offending. Their programme targets youth, as it is estimated that 40% of sexual offences that are reported to Childline are committed by youth. She mentioned that their programme tends to be structured around the needs of the child - hence age and language are used as criteria for allocating children into different groups.

She highlighted that the acceptance of children into their programme is a process that begins with an assessment, which looks at the needs of the child as well as safety issues. Assessment is followed by appropriate intervention strategies, which would either be individual, group or family orientated. She also referred to the need to find solutions to the challenges that confront workers all the time in this sector. These include the absence of close biological family members in therapy, denial, differing views on what is regarded as a good outcome, time periods in programmes, attitudes towards sex offenders (of professionals and communities) and further disclosures. She suggested that the issue of what to do with further disclosures, still needs to be debated, as it is a problem that is experienced by most professionals that work with children who are in conflict with the law. To conclude, she highlighted that there is a need for training in working with child sex offenders and a need for networking and information sharing, as this is a complex but necessary field. She also stressed the need to focus on prevention, which is a neglected area.

Carol Bower of the South African Young Sex Offenders Programme (SAYStOP) in Cape Town reported that the programme was established with the objective of seeking innovative and effective interventions to treat and manage young sex offenders in order to prevent a pattern of deviant behaviour from being established. This is done against the background presented by evidence that between 50% and 65% of adult offenders commit their first offences as youngsters.



The programme focuses on sex offenders, who are under 18 years of age, are first time offenders and those that plead guilty to their offence. Its main objective is to encourage the child to take responsibility for his/her actions. SAYStOP believes that any intervention for child sex offenders should address issues such as socialisation, sexuality, gender power balances, victim empathy, self-esteem and anger management. Carol mentioned the fact that partnerships between different service providers ensured the success of the programme. The programme partners include NICRO, Rapcan and the Institute of Criminology. The buy-in from the Department of Justice has also been the critical factor in developing the credibility of the programme.

She recommended that for the development of initiatives to address the young sex offenders, the following be considered:

- Motivation of Probation Officers and senior managers of the justice system;
- Extending the programme to include a residential component;
- Looking at cost implications for participating in the programme;
- Addressing resistance to programmes for young sex offenders, particularly the backlash from victim serving organisations;
- The strength lies in consortiums or organisations working collaboratively and such collaborations should be strengthened and supported financially
- There is also a need to look at support and follow-up as well as prevention.

Nosisa Madikizela, a Probation Officer from the Eastern Cape, gave a presentation on a Professional Foster Care programme that is used in Tsolo (Eastern Cape) as a diversion model. In this Project foster parents, who are trained in Professional Child and Youth Care strategies, are recruited from the community and are supported by the team from the project. When a prosecutor diverts a young offender who does not have a stable family background, he/she is placed with Professional Foster Parents as diversion. Whilst in the programme, the child gets access to life skills programmes, attends school and the parents get support to be able to deal with the challenges presented by the child. Part of the programme is to facilitate the reunification of the child and their family. This model works for street children as well as those children who have parents or families who are unable to address their needs.



4. SESSION 4: GROUP DISCUSSIONS



We need to look at ourselves and our resources when planning for the future of Diversion in this country

Five groups discussed topics associated with child justice. A set of questions designed to assist group discussions were addressed by participants. They suggested strategies for the way forward and it is hoped that the Child Justice Bill will take these into account:

Group One looked at issues pertaining to community involvement in the implementation of Levels One and Two diversion options.

Guiding questions included the following:

- What strategies do you think should be used to promote community partnerships in the provision and supervision of diversion services?
- How can we ensure constructive community participation in the delivery of level one and two options?
- Level one and two diversion options create room for the entry of small NGO's and CBO's who have not serviced the criminal justice system formally. How can we ensure effective service delivery and what strategies can we use to convince the courts of the efficacy of these smaller organisations?
- How can we ensure parental involvement in diversion options at these levels?
- What makes for best practice programmes for level one and two?
- What recommendations would you make for the development of level one and two diversion options?

Responses from Group One:

- ✓ There was general agreement that the involvement of communities in the implementation of alternative sentencing programmes is critical to the success of these programmes. Increasing community awareness would lead to an increased level of participation. It was also suggested that tribal and community meetings, as well as schools could be used as vehicles for relaying the message to communities.
- ✓ It is imperative that links be established with various stakeholders such as Chiefs, church leaders, schools, volunteers, community based organisations and non-governmental organisations. The need to develop the capacity of these organisations to deliver effective diversion services was also acknowledged. To this extent, the Bill needs to provide guidelines regarding the involvement of community structures in monitoring the implementation of diversion.
- ✓ Prosecutors need to be aware of the significance of involving communities. Proper recording of statistics and providing feedback to communities would not only open the channels of communication, but it would also assist with tracking. Community programmes need to be sustainable and there has

to be clarity with regard to accountability and transparency.

- ✓ It was also recommended that the Department of Social Welfare would need to create access to funding for communities. Both parties need to strengthen their relationships so as to increase viability of programmes. Community organisations need to be committed to the principle of delivering on agreements and standards set by stakeholders.

Without participation from many stakeholders - the community, government, NGOs and Prosecutors – Diversion will not get off the ground effectively.



Group Two focused on questions related to the development of Level Three diversion options

Guiding questions were:

- Are you aware of any programmes with a residential component that could be used for level three? What is the capacity in the country for the development of these options at these levels?
- What potential is there in the current residential facilities in this country to include diversion options?
- If residential care facilities are to be used, what support and resources should be channelled to them?
- What vocational training possibilities are there at present in the community? Do any of them have a residential component?
- Please comment on how such programmes can be developed?
- What can be done to improve level three options?

Responses from Group Two:

- ✓ This group acknowledged that there is a definite need for capacity building for all professionals that deal with diversion programmes. It was, therefore, suggested that individuals / organisations that need training ought to be identified. In addition, an audit of individuals / organisations that are available to train others, needs to be conducted. Furthermore an audit of existing programmes will facilitate the process of enhancing those programmes.

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- ✓ Whilst there are organisations with a residential component, which could be used for level three diversions, these are not sufficient. Organisations with experience in this field such as NICRO could assist with the enhancement of existing programmes as well as the establishment of new programmes.
- ✓ The need for sensitising other significant community structures such as tribal authorities, teachers and parents was seen as paramount.
- ✓ The department of Justice was identified as the department that should assume responsibility for implementing awareness-training courses for prosecutors, magistrates and probation officers, possibly at the Justice College. It was also suggested that prosecutors and magistrates would need to investigate the feasibility of programmes in order to gain insight and give advice. The departments of Justice and Social Development also need to provide the required funding for research, skills training, new programmes as well as the enhancement of existing programmes.

Group Three looked at Alternative Sentencing issues.

Guiding Questions:

- How do we put the communities' mind at rest and enable members of the community to support these types of sentences?
- How do we inspire the confidence of prosecutors and magistrates in community-based sentences?
- What are the important aspects/components for effective alternative sentencing options?
- Alternative sentencing might include a residential component, which is still an alternative to imprisonment. What recommendations can be made in this regard?
- Should programmes be especially designed for sentencing or should existing programmes be used?
- If existing programmes are to be used, are there any special aspects that should be added to make for effective sentencing options or what adjustments should be made to current programmes?
- If new programmes are to be designed, what are the guiding principles and what specific aspects should be considered from the outset?
- What recommendations would you make for the development / adjustment of programmes to be used for sentences?

Responses from Group Three

- ✓ The group that deliberated on these issues suggested that the successful implementation of alternative forms of sentencing requires the interaction of all the role players i.e. magistrates, prosecutors, probation officers, victims, offenders and the community at large. Existing programmes need to be enhanced

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and documented while new programmes and new components need to be researched and accredited. There is also a need to educate all stakeholders on existing and successful programmes. This could be achieved through the use of local radio stations, community newspapers and other existing community structures.

- ✓ Typical programmes that need to be researched include correctional monitoring by electronic devices, mediation, use of programmes developed for technical skills training and residential programmes. Minimum standards and special accreditation must be a requirement for all residential programmes.

Group Four discussed the development of specialised programmes to address specific emotional and behavioural issues experienced by children

An example of Art Therapy, used in Diversion Programmes



Guiding Questions:

- The Bill makes provision for referral to counseling or therapy for a period not exceeding three months as part of level one options. How practical is this provision?
- List the areas of special support children may need.
- What is currently being done to support these children who come into the criminal justice system?
- Is the assessment process geared towards identifying such needs? If not, what recommendations can you put forward to improve assessments?
- If a recommendation to the court is for the child to receive treatment / therapy or special counselling, are prosecutors and magistrates amenable to this as a diversion or alternative sentencing option?
- Are you aware of any special treatment programmes for children in this country, which could be used for children who come into the system?
- What appropriate interventions should be developed for this group of children?

Responses from Group Four

- ✓ It was highlighted that specialised services are limited, ad hoc and require a resourced national strategy. There were concerns about cases being remanded repeatedly and it was suggested that non-governmental organisations have a role to play demystifying diversion for prosecutors and other stakeholders, more so when child offenders need specialised treatment services.
- ✓ The issue of whether prosecutors should have information on previous diversions was debated and it was felt that the Department of Justice / Correctional Services needs to keep a register of cases which can be accessed by prosecutors only when it is absolutely necessary.
- ✓ Some programmes were criticised for lack of flexibility and failure to promote effective communication between the key players, particularly during the preliminary enquiry.
- ✓ It was suggested that an audit of existing programmes needs to be conducted in order to identify gaps and that available resources should be utilised for maximal benefit of victims and offenders. Tertiary institutions, Alcoholics Anonymous, Drug Anonymous, Big Brothers-Big Sisters were identified as organisations with a potential of developing and managing effective diversion programmes.

Group Five discussed issues pertaining to promoting Restorative Justice Options

Guiding Questions:

- What practical problems are we likely to encounter when restorative justice programmes are used and how can we deal with these?
- What is the community perception of this approach? What can be done about it?
- How do we know that restorative justice programmes are effective as diversion and sentencing options?
- What strategies could we use to inspire the confidence of magistrates and prosecutors in restorative justice programmes and processes?
- How can we expand restorative justice programmes throughout the country?

Group Responses:

- ✓ Community perceptions of restorative justice vary according to cultural norms, beliefs and practises but in general most communities appear to be intolerant of crime and perpetrators of crime. The perception that there is lack of support for victims of crime creates further tension and resistance from communities who view restorative justice as a soft option.
- ✓ The issue of insufficient understanding of restorative justice by all relevant stakeholders was reiterated and the need for



From enemies to friends – two participants from an FGC leave together

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integration and education emphasised. Micro opportunities such as safe schools programmes can be used to create an understanding of restorative justice as central to the aims of punishment and victim empowerment to achieve win-win situations.

- ✓ At a local level, there is a need to involve communities in decision-making and implementation as well as publicly acknowledging successful programmes. At national level, the challenge is to educate society about the Child Justice Bill, build infrastructure and capacity prior to implementation to ensure that there is agreement on how to measure the success.



THE SHOPPING SPREE



DAY TWO

5. SESSION 5: RELATIONSHIP BETWEEN GOVERNMENT AND THE CIVIL SOCIETY

The day started with a presentation from LoveLife, which is a youth development organisation addressing youth health issues. The reason for inviting LoveLife was to explore the degree to which LoveLife programmes and activities could be used to support the child justice system, since its approach is attractive to youth. Ms Nomonde Gongxeka of Lovelife informed delegates that her organisation works closely with the Departments of Health and Education. They manage Youth Centres, which operate as one-stop shops where sex education, counselling and life skills training courses are provided. Two new centres in KwaZulu Natal are expected to open before the end of the year. She further related that Lovelife has also formed a partnership with the United Schools Association of South Africa (USSASA). This partnership promotes positive lifestyles through sports and other educational programmes. Participants agreed that it is important to forge relationships with LoveLife centres, especially since they aim to provide counselling and vocational skills training, which can be used as diversion options (level one). Nomonde left detailed packs of information and encouraged participants to contact her for more information.

5.1 Contractual arrangements between Government and Service Providers

The session on relationships between government and civil society then followed, chaired by Ms Cheryl Frank of the Open Society Foundation. There was a panel discussion made up of Ms Soraya Solomon, NICRO's Executive National Director, Ms Eunice Maluleke from Corporate Social Investment at Transnet and the Chief Director, Mr Ashley Theron.



"Funding agreements between government and civil society should be flexible, creative and dynamic"

Soraya Solomon, NICRO

Soraya Solomon highlighted the need to review the autocratic relationship that existed between government and civil society in the past. A shift from autocratic to a participatory relationship is beginning to emerge. It is essential for government to recognise that there are organisations that have developed good models for financial and project management. It was further suggested that a small working group with organs of society be formed in order to assist government with developing a strategy for funding development related programmes across the country.

She then addressed the question of "outsourcing" services to NGO's and highlighted the following:

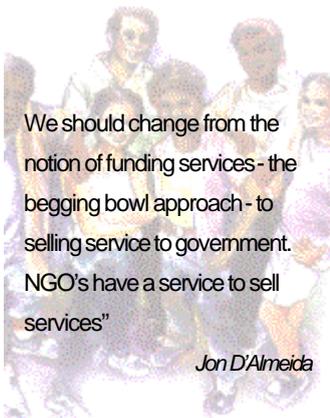
- The need to learn from existing models of purchasing services that are available in South Africa
- The importance of developing systems of costing the partnerships
- Evaluation – what has been achieved and what the impact has been
- Developing clear agreements between partners on how and what to

evaluate

- Being careful when entering into an agreement with partners, because of lack of capacity or skills to evaluate programmes. In such cases it is important to look for specialist researchers for support.

In terms of the way forward on the subject of funding relationships between government and civil society, she proposed that:

- Contracts should not be just contracts on paper – they should be based on sound agreements and partnerships
- The nature of partnerships should be clearly defined and not stated in general terms
- The relationship must be based on trust, equality, accountability and respect
- The private sector must be included in this partnership
- Partnerships must ensure output / impact
- They must also be flexible, creative and dynamic
- They must include a transfer of skills and information



We should change from the notion of funding services- the begging bowl approach- to selling service to government. NGO's have a service to sell services"

Jon D'Almeida

Finally, she proposed the development of a structure, which will coordinate, monitor, evaluate and source funding for diversion options. The time is ripe to explore intersectoral funding. We must also move away from ad-hoc funding arrangements with government that only serve short-term goals and come to an end after a short space of time without having ensured sustainability.

Eunice Maluleke indicated that the private sector had indeed joined forces with government to improve the quality of lives, by decreasing dependency and increasing self-reliance. She highlighted that while Transnet had funded numerous projects, there were serious concerns regarding the evaluation of the impact of these projects. Their funding criteria therefore takes into account the sustainability of the programme, its significance nationally and the extent to which its impact can be measured. She further highlighted that in terms of strategic gaps, there is always little agreement between the corporate sector and NGO's on measurement of impact of services. Evaluation and accountability remain a gap in this relationship. NGOs seeking funding from the corporate sector should be aware that this sector prioritises goals that are of national importance, looks for sustainability, as well as a return on investment (ROI) for the company. Packaging of the product is also of importance to the corporate sector. This is a skill that many NGO's lack - hence the failure to access funding. That is unfortunately the operational nature of the corporate environment.

The response of the Department of Social Development emphasised the need for partnerships with other stakeholders and acknowledged that there were challenges, which need to be overcome. These include blockages in the Criminal Justice System, inadequate Places of Safety, and lack of understanding of alternative forms of sentencing. There is a view that all professionals involved in individual assessments should be capacitated in order to assist in this regard. Individuals and organisations were invited to join the Justice Alliance, which has been formed with the objective of promoting informed debate within civil society.

6. SESSION 6: DIVERSION STANDARDS

Ann Skelton dealt with a section on minimum standard for programmes, as set out in the Bill as well as the registration of programmes by the Department of Social Development as proposed in the Bill. She stressed the responsibility of the Department of Social Development as follows:

Section 50 (1) of the Child Justice Bill places the responsibility for ensuring the availability of diversion options on the Minister of Social Development. However, this provision does not preclude any other department or non-governmental organisation from developing suitable diversion options. This provision has three implications:

- Financing of services for diversion and alternative sentencing: A far greater involvement by government is required especially in the area of funding existing programmes as well as for covering gaps where services are currently not available.
 - There is a need to discuss and debate viable ways and mechanisms for the purchasing of services from NGO's and CBO's.
- The need for registration of programmes:
 - For effective delivery of programmes and evaluation of the impact thereof, there is a need to ensure that all programmes for diversion and alternative sentencing are registered and that they adhere to prescribed minimum standards as set out by the Department of Social Development.
- Monitoring and Quality Control:
 - Ongoing monitoring, evaluation and quality control for such programmes should be ensured. The Department of Social Development has a very important role to play in this regard.

Finally, the Bill proposes that a register of children who have been diverted is to be kept by the Minister of Social Development. The department therefore needs to develop a system of keeping registers at all levels for children who have been diverted.

There is a need to acknowledge that community involvement in finding solutions to justice issues has inherent risks. It is therefore imperative for the government to issue guidelines setting out the minimum standards required for these programmes. These would include registration, quality assurance, accountability and so forth.

The challenge is to strike a balance between regulation by the state and allowing enough room for creativity. Too much regulation may have an adverse effect on the development of indigenous models. It is thus advisable to have consultative and inclusive processes in developing standards and registration regulations. Samantha Stern from the Youth Development Network gave a brief presentation on the tool that has been developed to measure the impact of youth programmes. The tool measures competencies in skills, knowledge, values, attitudes etc. The use of such tools might provide a means of enhancing the quality of programmes. She mentioned that the tool will be piloted and finalised soon and encouraged participants to look at it and use it creatively in their programmes, as it is a dynamic tool.

The question of who will be responsible for quality assurance and accountability where programmes are funded by corporate organisations needs to be answered, as part of the ongoing discussions. There was a further recommendation that a register of children who have been diverted be kept by the Minister of Welfare & Population Development, so as to facilitate the assessment process.

7. SESSION 7: ACTION PLANS

The workshop ended with recommendations made by different groups. These addressed:

- bridging of the gap where diversion services are not offered;
- training and capacity building for service providers in the areas of diversion and alternative sentencing
- funding, contractual arrangements and partnerships

7.1 Bridging the gaps

The following suggestions and recommendations were made:



"Bridging the gaps"

- all relevant, existing and potential diversion service providers should be identified so that they may be utilised;
- there needs to be a clarification and co-ordination of services provided by the departments of Social Development and Correctional Services;
- there is an insufficient supply of Probation Officers. Social Workers are either overworked or not trained on restorative justice. The Department of Social Development should develop a plan to increase the availability of Probation Officers to help create an effective child justice system;
- relevant government departments must be informed about the need for 55 000 diversions so that they may plan accordingly. It could be possible to utilise services and programmes of other government departments, that have not been used for children in the criminal justice system before;
- most life skills programmes must be adapted to suit the needs of children in conflict with the law;
- provincial indabas on programmes to support the child justice system should further explore these service gaps and make recommendations at provincial and national levels.

7.2 Training and capacity building

The following recommendations addressed the issue of capacity building for service providers:

- The Justice College should run awareness training courses on the Bill and diversion programmes for the prosecutors, magistrates and probation officers;
- there needs to be training for other community structures i.e. chiefs

and volunteers;

- An audit of existing programmes and their enhancement is to be conducted;
- Existing skilled organisations e.g. NICRO, Association of Child Care Workers etc. are to be used;
- CBO's and NGO's need to be supported and skilled in developing and delivering and sustaining quality diversion options;
- Committees to monitor ongoing training are to be established;
- Training organisations and institutions should be contracted to conduct training, until the department can implement it on an ongoing basis.

7.3 Funding, contractual arrangements & partnerships

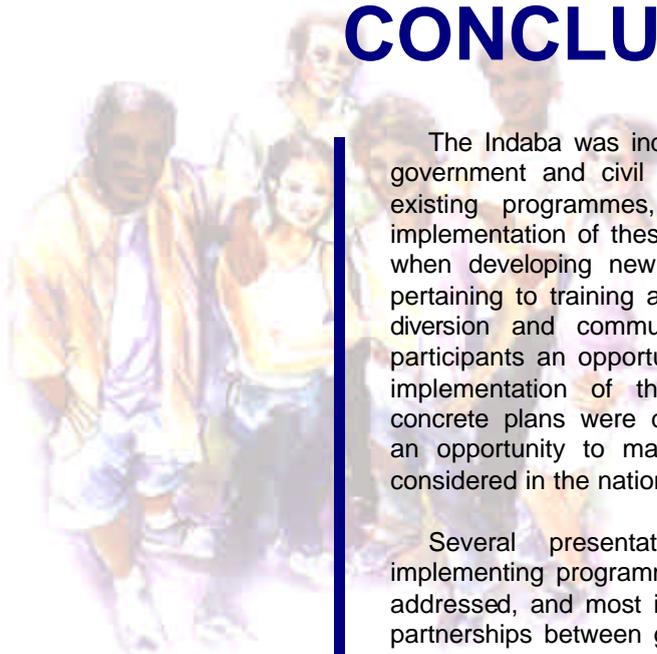
The Department of Social Development needs to provide a breakdown of the budget for diversion and alternative sentencing programmes in the province:

- There needs to be a formation of a working group with organs of civil society which will assist the government with developing a strategy for funding development related programmes nationally;
- Disclosure regarding tenders and amounts of funding available is crucial so as to avoid overlaps and duplication of services.



*There should be no overlaps re funding,
but strategic partnerships should be
sought*

CONCLUSION



The Indaba was indeed a resourceful and constructive forum (involving government and civil society) for creating an awareness of the Bill, of existing programmes, programmatic gaps, and challenges regarding implementation of these programmes as well as factors to be considered when developing new programmes. It further raised a range of issues pertaining to training and funding as well as sustainability of services for diversion and community based alternative sentencing. It also gave participants an opportunity to make suggestions, which will assist in the implementation of the proposed child justice system. Although no concrete plans were developed, the Indaba did provide participants with an opportunity to make recommendations for issues that need to be considered in the national plans.

Several presentations highlighted the practical challenges of implementing programmes - ethical and rights dilemmas that should be addressed, and most importantly, the need for developing and sustaining partnerships between government and civil society for the success of the new system.

The shopping spree, where participants engaged with one another at various displays was another highlight of the Indaba. In closing the Indaba Buyi identified issues that the Child Justice Project will take forward - including some of those identified through group discussions. These were:

- Completing an audit of programmes for diversion and alternative sentencing, which will be a resource for the partners in the system.
- Conducting provincial Indabas on programmes to support the new system in all nine provinces - to explore at provincial level programmatic and geographical gaps, share information and assist in the development of plans to expand the delivery of programmes.
- Since there is such an extensive need for sharing information and tools to enhance the development of diversion services, the Project plans to develop a practice manual or resource manual with information, guidelines, tools, examples of programmes and relevant information linked to the proposed legislation.
- Another of the Project's activities is to assist in developing training manuals for the professionals in the system. In fact it is not only Prosecutors that need training. Probation Officers, Police, Magistrates also need training and support in implementing the new system.
- Community involvement and education will be addressed through awareness campaigns, requiring the cooperation of civil society.
- The issue of contractual relations with government, outsourcing or purchasing of services will also be addressed. The Project will convene a small group to explore issues identified during the sessions.