

**UNICEF & Penal Reform International 2006: Juvenile Justice Training Manual**

**MODULE THREE**

**INTRODUCTION TO DIVERSION  
AND RESTORATIVE JUSTICE**

**FACILITATOR'S GUIDE**

**OBJECTIVES**

At the end of this module participants will:

- Understand the philosophy of diversion and restorative justice and how it applies to juvenile justice.
- Understand the importance of diversion and restorative justice and the fundamental criteria for using diversionary measures and restorative approaches.
- Learn about projects and experiences in the relevant field.
- Develop points of good practice for implementing restorative approaches.

**TIME** [3 Hours + 1 optional hour]

**CONTENT**

- 3.1 Diversion and Restorative Justice
- 3.2 Models of Restorative Justice
- 3.3 Experiences of Restorative Justice (OPTIONAL SESSION)
- 3.4 Implementing Restorative Schemes

**MODULE OUTLINE**

Sessions	Method	Resources	Time
3.1 Diversion and Restorative Justice	Presentation	Handout 1, Diversion; Handout 2, Restorative Justice; Handout 3, Comparing Retributive and Restorative Justice; Exercise 1, Comparing Retributive and Restorative Justice; Exercise 2, Models of Justice, the case of Paul. Slides 1 -.6.	1 hr 10
	Brainstorm		
3.2 Modules of Restorative Justice	Analyzing case studies	Exercise 3, Examples of Models of Diversion.	50
3.3 Experiences of Restorative Justice. OPTIONAL	Group work	If possible participants should prepare a one-page note with the details of a restorative justice approach from their country as a pre-workshop assignment.	60
3.4 Implementing Restorative Schemes	Role Playing	Exercise 4, Scenarios a) Mediation and b) Family Conferencing; Handout 4, Implementing Restorative Justice Schemes.	60

**SESSION 3.1      DIVERSION AND RESTORATIVE JUSTICE**

**Purpose**                      Participants should understand the concept of diversion and identify the benefits of diversion, and be able to distinguish between retributive and restorative justice.

**Preparation**              a) Write objectives on flip chart, review slides, photocopy handouts and Exercise 1.  
 b) Make four copies of Exercise 1 ‘Comparing Retributive and Restorative Justice’.

**Materials**                      Handout 1, Diversion; Handout 2, Restorative Justice; Exercise 1, Comparing Retributive and Restorative Justice, Handout 3, Comparing Retributive and Restorative Justice; Facilitator’s Note 1, Comparing Retributive and Restorative Justice; Exercise 2, Models of Justice, the case of Paul. Slides 1-6.

**Equipment**                      Laptop with PowerPoint, projector, flip chart and marker pens, four scissors

<b>Activities</b>	<b>Time Estimate (minutes)</b>
<ul style="list-style-type: none"> <li>• Introduce the module objectives.</li> </ul>	5
<ul style="list-style-type: none"> <li>• Introduce the session purpose.</li> </ul>	
<ul style="list-style-type: none"> <li>• Presentation to introduce the concept of diversion</li> </ul> <p style="margin-left: 20px;"><u>Steps:</u></p> <ol style="list-style-type: none"> <li>1. Ask the plenary for their responses to the following two questions:                             <ol style="list-style-type: none"> <li>a) ‘When a crime is committed, what needs to be done to ensure that justice has been done?’</li> <li>b) ‘What does ‘justice has been done’ mean for victims, communities and families of victims?’</li> </ol> </li> <li>2. Take a couple of comments and then show slides 1 – 3 giving the definition, conditions and types of diversion.</li> </ol>	10
<ul style="list-style-type: none"> <li>• Quick discussion on the benefits of diversion.</li> </ul> <p style="margin-left: 20px;"><u>Steps:</u></p> <ol style="list-style-type: none"> <li>1. Ask each table to spend a few minutes discussing the benefits and risks of diversion. The first table should focus on the benefits for the child, the second table should focus on the benefits for society, the third should look at the economic benefits and the last group should consider the potential risks. Encourage participants to draw on their experience.</li> </ol>	10

2. After 5 minutes ask each table to share their responses. Quickly note their points on a flip chart. Some of their responses should include:

**Benefits for the Child**

Through diversion, a child may gain insight into the consequences of his/her actions and take responsibility for them and make good the harm caused (by, for example, compensating the victim or performing some sort of community service or service to the victim).

Diversion ensures that the child does not obtain a criminal record, thereby granting him or her the opportunity to forge a path in life, unburdened by the stigma of a criminal conviction.

**Benefits for Society**

Diversion is likely to have a positive impact in reducing rates of offending.

Leads to considerably fewer children being held in pre-trial detention and therefore to improved conditions for those who are nonetheless detained

Reduces the workload of the courts, thereby allowing judges to spend more time examining the needs of children appearing before them and/or reduce the number of children receiving custodial sentences, thereby improving conditions for those who nonetheless do.

Allows the participation of victims where appropriate and the participation of the community.

**Economic Benefits**

Many non-formal justice options are also cheaper than court procedures and detention.

Imprisonment prevents people from contributing to their local economies and their families. Imprisonment is also very costly.

**Potential Risks of Diversion**

They are related to the accused child's right to a fair trial and due process.

Children are not diverted to a programme or other informal diversion option in lieu of the possibility of prosecution. In other words, if the state does not have sufficient evidence to prosecute a matter, it cannot resort to diverting the child in order to achieve a result it would otherwise not obtain.

Children should not be unduly influenced into accepting responsibility for an offence.

- Complete the table comparing retributive justice and restorative justice in groups.<sup>1</sup> 15

Steps:

1. Give each table a copy of Exercise 1, ‘Retributive Justice’ and ‘Restorative Justice’ and a scissors. Explain that they have to complete the table by putting the statements under the correct heading (either Restorative or Retributive Justice). Check that they understand the definition of restorative justice before they start.
2. Debrief the exercise by asking each group to call out a pair of statements until you have completed the table. Refer participants to Handout 3, ‘Comparing Retributive and Restorative Justice’ in the participant’s manual. Each group should check their responses.
3. Ensure that the debriefing mentions that a restorative justice framework is a way of thinking outside of the system, allowing for more community-based, holistic responses, while diversion operates within that system. 5
4. To conclude show slides 4–6 showing the benefits, legal issues and examples of restorative justice.

- Discussions of models of justice.

Steps:

1. Refer participants to Exercise 2, ‘Model of Justice’, in the participant’s manual. Ask participants to spend five minutes reading the case and then to discuss the following questions at their tables: “What is the harm resulting from the crime?” “What needs to be done to make it right or repair the harm?” and “Who is responsible for this repair?” 15
2. Ask each table to share their response in plenary. Ensure that the plenary debrief mentions the following points: 10

On retributive justice: The fact that Paul has committed the crime and theft and should therefore be punished by a criminal court. His personal circumstances are not relevant.

On restorative justice: The fact that Paul has caused a loss to the shop and repairs the damage caused by the loss. Paul’s personal circumstances will be a major factor in the process of deciding what to do with him. The victim (Shopy’s owner) plays a central role.

<sup>1</sup> If the group has more experience of restorative justice leave this exercise out and spend more time on exercise2.

Overall: Justice is about healing and reconciliation, 'putting the wrongs right', dealing with the effects of a crime, crime affecting victims, offenders and communities. Justice is about taking the victims into account.

- To conclude explain that you are going to look at different models of restorative justice and implementation issues in the next part of the module.
- Refer participants to Handouts 1, Diversion, and 2, Restorative Justice, in the participant's manual.

**SESSION 3.2 MODELS OF RESTORATIVE JUSTICE**

**Purpose** Understand diversion and restorative justice and how it applies to juvenile justice. Learn about projects and experiences in the relevant field.

**Preparation** Write objectives on flip chart, review slides, photocopy handouts.

**Materials** Exercise 3, Examples of Models of Diversion.

**Equipment** Flip chart, marker pens.

<b>Activities</b>	<b>Time Estimate (minutes)</b>
<ul style="list-style-type: none"> <li>• Introduce the session purpose on flip chart.</li> </ul>	
<ul style="list-style-type: none"> <li>• Discuss and analyze the restorative justice approaches.</li> </ul>	5
<u>Steps:</u>	
<ol style="list-style-type: none"> <li>1. Divide the participants into 5 groups, give each group a different example from Exercise 3 (give one group the two shorter examples 1 + 4). Ask the groups to spend 5 minutes reading through the example they have. Each group should appoint a scribe and presenter.</li> </ol>	15
<ol style="list-style-type: none"> <li>2. Ask the participants to discuss the project examples and record on flip chart answers to the following:               <ol style="list-style-type: none"> <li>i) "Who are the important role-players in ensuring that justice is done?"</li> <li>ii) "What does justice mean for each of these named?"<sup>2</sup></li> </ol> </li> </ol>	
<ol style="list-style-type: none"> <li>3. Explain that each group has 5 minutes to present their findings and remind them to start by giving a brief description of their example.</li> </ol>	30
<ol style="list-style-type: none"> <li>4. Ensure that the plenary debrief mentions the points:               <ul style="list-style-type: none"> <li>• Justice is about healing and reconciliation.</li> <li>• Justice is about 'putting the wrongs right'.</li> <li>• Justice is about dealing with the effects of a crime.</li> <li>• Crime affects victims, offenders and communities.</li> <li>• Justice is about talking the victims into account.</li> </ul> </li> </ol>	
<ul style="list-style-type: none"> <li>• Distribute copies of all examples to participants.</li> </ul>	

<sup>2</sup> If you don't use session 3.3 which draws on participants programme experience with restorative justice, include a third discussion question here iii) "Do you think it would be possible to implement a similar project in your country?"

**SESSION 3.3. EXPERIENCES OF RESTORATIVE JUSTICE  
(OPTIONAL SESSION <sup>3</sup>)**

**Purpose** Learn about projects and experiences in the relevant field

**Preparation** Write objectives on flip chart, review slides, photocopy handouts.

**Materials** If possible participants should prepare a one-page note with the details of a restorative justice approach from their country as a pre-workshop assignment.

**Equipment** Flip chart and marker pens

<b>Activities</b>	<b>Time Estimate (minutes)</b>
<ul style="list-style-type: none"> <li>• Introduce the session purpose on flip chart.</li> <li>• Sharing programmatic experiences of restorative justice approaches.</li> </ul>	
<p><u>Steps:</u></p> <ol style="list-style-type: none"> <li>1. In the same groups ask participants to share a story in their group of a project that they are familiar with that uses a restorative justice approach.<sup>4</sup></li> <li>2. The facilitator should give any participants that do not have programmatic experience the roles of small group facilitator, scribe and presenter.</li> <li>3. As the groups share experiences remind them to focus on: describing the approach taken, results, challenges and lessons learned.</li> <li>4. The group should choose one example to present back to plenary listing out the key points on flip charts.</li> <li>5. Ask each group to debrief in turn.</li> </ol>	<p>30</p> <p>30</p>
<ul style="list-style-type: none"> <li>• If participants bring their one-page summaries, make photocopies of the participants' examples for distribution.</li> </ul>	

<sup>3</sup> Note: The workshop planner/facilitator will need to judge whether the participants have sufficient programmatic experience to complete this exercise. You need at least five of the participants to have sufficient experience – and ensure that they are distributed one per group.

<sup>4</sup> Participants should prepare a one-page note with the details of a restorative justice approach from their country programme or find out what approaches are used in their country of work as their pre-workshop assignment.



**SESSION 3.4 IMPLEMENTING RESTORATIVE SCHEMES**

**Purpose** To develop points of good practice for implementing restorative approaches.

**Preparation** Write objectives on flip chart, review slides, photocopy handouts.

**Materials** Exercise 4, Scenarios a) Mediation and b) Family Conferencing; Handout 4, Implementing Restorative Justice Schemes.

**Equipment** Flip chart and marker.

<b>Activities</b>	<b>Time Estimate (minutes)</b>
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- Introduce the session purpose on flip chart.
- Explore issues around restorative justice through role play (Exercise 4, stolen VCR and assault of a teacher).

Steps:

- |  |    |
|--|----|
| 1. Divide participants into 4 groups. Give each group 10 minutes to prepare and decide on roles. <sup>5</sup> Give two groups a) Mediation session and the other two groups b) Family Group Conferencing. Refer all groups to the box showing practical tips on family group conferencing in Exercise 4, as a resource in completing the exercise. | 10 |
| 2. Explain that each group has 5 minutes to do the role play. Ask the group watching the role play to focus on: identifying points of good practice in implementing restorative justice approaches.  | 20 |
| 3. Do both role plays on case a) Mediation first, then move onto case b) Family Group Conferencing.  | 20 |
| 4. Debrief in plenary, ask the observers to first respond to the questions then ask the role play group to add.  |    |
- Refer participants to Handout 4, Implementing Restorative Justice Schemes, in the participant’s manuals.

<sup>5</sup> If possible give out the role play at the beginning of the session to give the groups time to think about it

## Power Point Slides 1 - 6

The slides are available on the CD-ROM

### Slide No

**What is diversion?**

- Diversion involves the referral of cases away from formal criminal court procedures and directs offenders towards community support
- Diversion options can come into play at any point of decision-making, either as a generally applicable procedure or on the decision of the police, prosecutor, court or similar body

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### Speaking Points

Before introducing the first slide ask participants to come up with a definition and examples of diversion. Give them a few minutes to think about it and then ask a few participants to call out a few suggestions in plenary. Show slide 1 on 'What is diversion?'

Mention that through diversion, a child who is alleged or accused of committing a crime or an offence is given the opportunity to take responsibility for his or her conduct and to make good for the wrongful action.

Diversion may involve a restorative justice component depending on the nature of diversion.

Mention that you can not just decide to use diversion; there are certain rules, ask them what they think might be the conditions for recourse to diversion, show slide 2.

**Conditions of diversion**

**Diversion procedures must follow five basic ground rules:**

1. Diversion options are to be used only where children admit to an offence and accept a non-judicial hearing
2. It must not be mandated to order deprivation of liberty in any form
3. The case must be referred to a normal court system if no solution acceptable to all can be reached or if the options of the diversion system are not appropriate
4. The child/offender always retains the right to a court hearing or judicial review
5. Human rights and legal safeguards must always be fully respected

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2

If the types of diversion options are not mentioned in the discussion show slide 3.

**Diversion options can include:**

- Police warnings
- Mediation
- Probation
- Family groups counselling
- Community service
- Conditional or unconditional release
- Behaviour contracts
- Referral to other services such as NGO's programmes and substance abuse centers

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3 Optional

Stress that diversion options are to be used only where children admit to an offence and accept a non-judicial hearing.

**Benefits of restorative justice**

- It recognizes that offenders harm victims, communities and even themselves
- It includes the victim if he/she wishes and also communities
- It measures how much harm has been repaired or prevented
- It recognizes the importance of community involvement and initiative in responding to and reducing crime, rather than leaving the problem of crime to the government alone

4

Restorative justice views criminal acts more comprehensively: rather than defining crime only as lawbreaking, it recognizes that offenders harm victims, communities and even themselves.

Restorative justice involves more parties: rather than giving key roles only to government and the offender, it includes victims if he/she wishes and communities as well.

Restorative justice measures success differently: rather than measuring how much punishment has been inflicted, it measures how much harm has been repaired or prevented.

Restorative justice recognizes the importance of community involvement and initiative in responding to and reducing crime, rather than leaving the problem of crime to the government alone.

**Legal issues**

- Equal protection against discrimination
- Due process rights
- Respect of victim's rights
- Proportionality
- Physical punishments prohibited.

5

**Examples of restorative justice schemes**

- Victim-offender reconciliation/mediation programmes
- Conferencing programmes
- Community reparative boards
- Circle sentencing

6

**Victim-offender reconciliation/mediation programmes** use mediators to bring victims and the offenders together in order to discuss the crime, its aftermath, and the steps needed to make things right.

**Conferencing** programmes are similar to victim-offender reconciliation/mediation, but differ in that they involve not only the offender and victim, but also their family members and community representatives.

**Community reparative boards** bring together the offender and the victim, a mentor, members of the community to discuss what happened, what impact it had on the victim and the community and what punishment is warranted.

**Circle sentencing** meetings are facilitated community meetings attended by offenders, victims, their friends and families, interested members of the community and (usually) representatives of the justice system or a small group of citizens prepared for their function by training, who conduct face-to-face meetings with offenders ordered by the court to participate in the process.

### ADDITIONAL READING

The Right Not to Lose Hope, Children in conflict with the law – a policy analysis and examples of good practice, Save the Children, 2005.

An Introduction to diversion from the Criminal Justice System, 1997 NICRO, Edited by LM Muutingh and RJ Shapiro [www.nicro.org.za/publications/](http://www.nicro.org.za/publications/)

An outside Chance, Street Children and Juvenile Justice – an International Perspective, Marie Wernham, Consortium for Street Children  
<http://www.streetchildren.org.uk/resources/details/?type=publication&publication=18>

### CHECKLIST FOR FACILITATORS

<b>Key Message/ Reflective Questions</b>
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Remember there are many different approaches to diversion and restorative justice and they should be encouraged at every stage of the proceedings before arrest to sentence determination.
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**SUCCESSFUL GROUP WORK**

Group work is an important part of the learning process of any workshop. It allows participants to digest information conveyed in a presentation and to think about how the key points relate to their work situation. Using a good combination of plenary and group work sessions will help participants concentrate and provide an opportunity for the quieter members of the group to voice their views.

Before you start ensure that you explain the purpose of the activity. If people understand the potential for their contributions they will feel motivated to participate

Make sure that the instructions are clear. Write the key points of the task and the question on a flip chart or make copies for everyone before the session. Go over the task in plenary asking if the task is clearly understood or if there are any questions. Remember! Don't assume they heard everything you said, and if they heard you, don't assume they understood. A good rule of thumb is to present instructions three times – show it, say it and give it.

Recommend that the groups assign roles for team members. For example, a group facilitator will help clarify the task and the best way to tackle it, ensure that all team members contribute to the discussion and help the team reach consensus. A rapporteur should record and report on the team's ideas on a flip chart or cards, making sure that these are the team's ideas and not personal ones! Appoint a timekeeper.

If there is a break before the group work, take the time to prepare. Anticipate any physical arrangements that may help group work such as the setting (it should not be too formal), the need for break-out rooms if needed (in a large enough plenary room, different groups can work in different corners), the set-up of the chairs and tables (so that participants can easily make eye contact...).

During the group work be available throughout the task to respond to questions, ensure the group is working together and is focused on the task. If you have any resource persons ask them to walk around and check the groups with you.

**MODULE THREE**

**INTRODUCTION TO DIVERSION  
AND RESTORATIVE JUSTICE**

**PARTICIPANT'S MATERIALS**

### OBJECTIVES

At the end of this module participants will:

- Understand the philosophy of diversion and restorative justice and how it applies to juvenile justice.
- Understand the importance of diversion and restorative justice and the fundamental criteria for using diversionary measures and restorative approaches.
- Learn about projects and experiences in the relevant field.
- Develop points of good practice for implementing restorative approaches

**TIME** [3 Hours + 1 optional hour]

### CONTENT

- 3.1 Diversion and Restorative Justice
- 3.2 Models of Restorative Justice
- 3.3 Experiences of Restorative Justice (OPTIONAL SESSION)
- 3.4 Implementing Restorative Schemes

## **Diversion**

### **What is Diversion?**

Diversion involves the referral of cases away from formal criminal court procedures and directing child offenders towards community support. Diversion of children is therefore best viewed not as diversion from the juvenile justice system but rather as diversion to appropriate services where the formal intervention of the juvenile justice system is not necessary or required.

Through diversion, a child who is alleged or accused of committing a crime or an offence is given the opportunity to take responsibility for his or her conduct and to make good for the wrongful action. Diversion is closely linked to restorative justice; it may involve a restorative justice component, depending on the nature of the diversion.

Diversion options can come into play at any point of decision-making, either as a generally applicable procedure or on the decision of the police, prosecutor, court or similar body. In theory, they can be used for children committing any kind of offence, though in practice they are rarely used for the most serious crimes or for persistent offenders. In the various measures to be adopted, the family should be involved to the extent that this is beneficial for the child, and States should ensure that the alternative measures comply with the human rights of the child, including the right to due process.

### **Conditions of Diversion**

To be consonant with the rights of the child, diversion procedures must follow five basic ground rules:

- i) Diversion options are to be used only where children admit to an offence and accept a non-judicial hearing.

At no stage should children be pressured either into an admission to an offence or into accepting diversions. Thus, diversion should be excluded where:

- The child has not understood his or her right to remain silent and/or has been unduly influenced in acknowledging responsibility.
- The child or his or her parents (or appropriate adult substituting for the parents) do not consent to diversion or the diversion option, and further:

- ii) Diversion must not be mandated to order deprivation of liberty in any form.

- iii) The case must be referred to a normal court system if no solution acceptable to all can be reached or if the options at the disposal of the alternative system are not appropriate.



- iv) The child offender always retains the right to a court hearing or judicial review.
- v) Human rights and legal safeguards in general must always be fully respected.

Physical punishments—whether imposed by formal courts or as a result of a diversionary process—amount to inhuman or degrading treatment, which is absolutely prohibited.

In addition, in selecting a diversion option, due regard must be given to a child's cultural, religious and linguistic context, the child's community of origin, the child's age and his/her best interests. No child must, however, be unfairly discriminated against based on race, gender, sex, ethnic or social origin, colour, sexual orientation, disability, religion, conscience, belief, culture, language, birth or socio-economic status in the selection of a diversion programme, process or option and all children must have equal access to diversion options.

### **Advantages and Potential Risks of Diversion**

#### **Benefits for the Child**

- Through diversion, a child may gain insight into the consequences of his/her actions and take responsibility for them and make good the harm caused (by, for example, compensating the victim or performing some sort of community service or service to the victim).
- Diversion ensures that the child does not obtain a criminal record, thereby granting him or her the opportunity to forge a path in life, unburdened by the stigma of a criminal conviction.

#### **Benefits for Society**

Diversion has benefits not only for the child, but also for society as a whole. Evidence shows that diversion is likely to have a positive impact in reducing rates of offending. It should lead to considerably fewer children being held in pre-trial detention and therefore to improved conditions for those that are nonetheless detained, and to reduce the workload of the courts, thereby allowing judges to spend more time examining the needs of children appearing before them and/or reduce the number of children receiving custodial sentences, thereby improving conditions for those who nonetheless do.

It allows the participation of victims where appropriate and the participation of the community. By sparing appropriately selected child offenders the expense of trial and the stigmatizing consequences of a criminal conviction, successful divertees are given the opportunity to make reparations to their communities through integration rather than isolation from social networks.

**Economic Benefits**

Many non-formal justice options are also much cheaper than court procedures and detention. Imprisonment prevents people from contributing to their local economies and their families. Imprisonment is also very costly.

**Potential Risks of Diversion:**

They are related to the accused child's right to a fair trial and due process.

As defined, diversion involves the referral of cases away from the criminal justice system where suitable evidence for charges or prosecution exists. It is, therefore, imperative that children are not diverted to a programme or other informal diversion option *in lieu* of the possibility of prosecution. In other words, if the state does not have sufficient evidence to prosecute a matter, it cannot resort to diverting the child in order to achieve a result it would otherwise not obtain. This would constitute a serious invasion of the accused child's right to be presumed innocent until proven guilty.

Diversion should be preceded by the child's acceptance of responsibility for his or her actions. There is a danger that a child could be unduly influenced into accepting responsibility for an offence at the expense of his or her right to remain silent.

## Restorative Justice

### Definition of Restorative Justice

Restorative justice is an approach to crime that recognizes how crime affects the victim, the community in which the crime was committed and the offender. Its primary focus is to repair damage caused by the offence, to make reparation to the community and to the victim and to return the offender to a productive place in the community. For justice to be truly restorative, the community, the victim and the offender must take active roles.

### Restorative Justice Presents the Following Criteria:

- Restorative justice emphasizes the ways in which crime hurts relationships between people living in a community.
- Restorative justice gives crime victims more opportunities to regain their personal power by stating their own needs.
- Restorative justice involves offenders taking personal responsibility for their actions, and then working actively to repair the harm that they have caused to the victims and the community – making things as right as possible.

Restorative justice encompasses a variety of practices at different stages of the criminal process, including diversion from arrest and prosecution, actions taken in parallel with court decisions, and meetings between victims and offenders at any stage of the criminal process. Restorative justice may be used not only in adult and juvenile criminal matters, but also in a range of civil matters, including family welfare and child protection, and disputes in schools and workplace settings.

### Differences between Retributive and Restorative Justice

Traditional criminal justice and restorative justice are two ways of thinking and working:

Traditionally, when a crime is committed, juvenile justice systems have been primarily concerned with three questions: Who did it? What laws were broken? What should be done to punish or treat the offender?

Restorative justice emphasizes three very different questions:

What is the nature of the harm resulting from the crime? What needs to be done to 'make it right' or repair the harm? Who is responsible for this repair?

Reconciling the needs of victims and offenders with the needs of the community is the underlying goal of restorative justice. Unlike retributive justice, which is primarily concerned with punishing crime, restorative justice focuses on repairing the injury that

crime inflicts. As a means to that end, the restorative justice process brings together victims, offenders, and other members of the community to hold offenders accountable not only for their crimes but for the harm they cause to victims.

### Benefits of Restorative Justice

Restorative justice improves upon traditional criminal justice in that it has the following benefits:

- It views criminal acts more comprehensively: rather than defining crime only as lawbreaking, it recognizes that offenders harm victims, communities and even themselves.
- It involves more parties: rather than giving key roles only to government and the offender, it includes victims if they wish, and also communities.
- It measures success differently: rather than measuring how much punishment has been inflicted, it measures how much harm has been repaired or prevented.
- It recognizes the importance of community involvement and initiative in responding to and reducing crime, rather than leaving the problem of crime to the government alone.

### Legal Issues

Restorative justice raises several legal issues related to its implementation:

- **Equal protection against discrimination:** no child should be subjected to discrimination based on sex or any other status by either formal courts or informal justice forums.
- **Due process rights:** The child retains the right to be presumed innocent until the child's guilt is proven, the right to a fair trial/coercion and the right to legal assistance.
- **Victim's rights:** Victims are interested parties who should have standing and should be granted rights accordingly.
- **Proportionality:** The notions of fairness within a restorative system are based on consensus of agreement given a range of alternatives e.g. participant satisfaction.
- **Physical punishment-**whether imposed by formal courts or an informal justice forum-amounts to inhuman or degrading treatment, which is absolutely prohibited.

**Restorative Justice and Diversion**

It is important to note the difference between a restorative justice programme and a diversionary programme (known also as 'alternative measures' or 'extra-judicial measure'). The goals of diversionary programmes are related to the formal court process and do not operate within a different paradigm or way of thinking about conflict. Although the processes used in diversionary programmes may be the same models as some restorative justice programmes use, the two are not the same.

A restorative justice framework is a way of thinking outside of the system, allowing for more community-based, holistic responses, while diversion operates within that system.

## Comparing Retributive and Restorative Justice

**Restorative Justice:** is an approach to crime that recognizes how crime affects the victim, the community in which the crime was committed and the offender. Its primary focus is to repair damage caused by the offence, to make reparation to the community and to the victim and to return the offender to a productive place in the community.

**Restorative Justice** emphasizes the ways in which crime hurts relationships between people living in a community. Restorative justice gives crime victims more opportunities to regain their personal power by stating their own needs. Restorative justice involves child offenders taking personal responsibility for their actions, and then working actively to repair the harm that they have caused to the victims and the community.

**ACTIVITY:** Decide whether the following twelve statements apply to retributive or restorative justice. Cut out and place each statement in the table under the correct column

1. Restitution as means of restoring both parties; goal of reconciliation/restoration

2. Community on sideline, represented by State

3. Direct involvement of participants

4. Community as facilitator in restorative process

5. Response focused on offender's past behaviour

6. Response focused on harmful consequences of offenders' behaviour; emphasis on the future

7. Dependence upon professionals

8. Focus on establishing blame or guilt (did he/she do it?)

9. Focus on problem solving, on liabilities and obligations (what should be done?)

10. Emphasis on dialogue and negotiation

11. Imposition of pain to punish and deter/prevent

12. Emphasis on adversarial relationship

## MODULE THREE

## EXERCISE 1

Retributive Justice	Restorative Justice
Crime is an act against the State, a violation of a law	Crime is an act against another person and the community
The criminal justice systems controls crime	Crime control lies in the community
Offender accountability	Accountability defined as assuming responsibility and taking action to repair harm
Crime is an individual act with individual responsibility	Crime has both individual and social dimensions of responsibility
Punishment is effective Threat of punishment deters crime Punishment changes behaviour	Punishment alone is not effective in changing behaviour and is disruptive to community harmony and good relationships
Victims are peripheral to the process	Victims are central to the process of resolving crime
The offender is defined by deficits	The offender is defined by capacity to make reparation

### Comparing Retributive and Restorative Justice

Retributive Justice	Restorative Justice
Crime is an act against the State, a violation of a law	Crime is an act against another person and the community
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Punishment is effective Threat of punishment deters crime Punishment changes behaviour	Punishment alone is not effective in changing behaviour and is disruptive to community harmony and good relationships
Victims are peripheral to the process	Victims are central to the process of resolving crime
The offender is defined by deficits	The offender is defined by capacity to make reparation
Focus on establishing blame or guilt (did he/she do it?)	Focus on problem solving, on liabilities and obligations (what should be done?)
Emphasis on adversarial relationship	Emphasis on dialogue and negotiation
Imposition of pain to punish and deter/prevent	Restitution as means of restoring both parties; goal of reconciliation/restoration
Community on sideline, represented by State	Community as facilitator in restorative process
Response focused on offender's past behaviour	Response focused on harmful consequences of offenders' behaviour; emphasis on the future
Dependence upon professionals	Direct involvement of participants



## **Model of Justice (Retributive or Restorative?)**

**Scenario:** Paul is a 15-year-old boy. He was a school student until the age of 12 when he had to drop out due to lack of funds. His father has disappeared and his mother is disabled. He has six siblings who are younger than he is. Paul helps his mother to look after his younger brothers and sisters. He has been looking for a job but is finding it difficult due to his lack of education. There is not enough money to feed and clothe the household. One day, Paul is asked by his mother to walk to the store 'Shopy' and purchase food for the evening meal. He buys the food but he also steals a bar of chocolate on his way out. Paul is apprehended by the security guards and taken to the Central Police Station.

After you have read through the scenario respond to the following: What is the harm resulting from the crime? What needs to be done to make it right or repair the harm and who is responsible for this repair?

## Examples of Diversion

### Example 1: Diversion option

Police cautioning is an effective primary diversion option; usually administered in the case of young, non-serious, first time offenders who admit to an offence immediately. An informal verbal warning can be delivered, or a formal caution if there is sufficient evidence to support a prosecution. Police officers may decide to visit a child's home before deciding on a course of action. Cautioning may also be used in conjunction with supervision, for instance, from a probation officer.

In some areas of the UK, there exist 'Cautioning Plus' schemes, which involve a caution plus an expectation to fulfill a condition, for instance, attendance at an alcohol addiction clinic. One successful Cautioning Plus scheme, run in partnership with Police and Probation services, involves the diversion from prosecution of offenders charged with minor drug possession on condition of attendance at drug education/counselling sessions, which includes rehabilitative treatment as necessary. Such a programme could be effective in reducing the number of child offenders sentenced to fines and/or imprisonment for drug possession offences.

### Example 2: Pilot Diversion Project for Children in Conflict with the Law in Kenya

Organizations: Save the Children UK, Police, Probation services, NGOS

**Issue:** Most of the children in the juvenile justice system in Kenya have been arrested by the police for being on the streets, even though they have committed no crime. Instead, they are charged with being in need of care and protection. They spend long periods of detention in police cells before they are taken to court, where they are treated the same as offenders, and are usually referred to approved schools. Most children in conflict with the law have no access to legal representation. Save the Children carried out studies and consultation with stakeholders, culminating in a workshop at which the framework was developed for a project to divert children away from the juvenile justice system.

**The project:** It was agreed to set up teams in three pilot districts to carry out diversion options for children in conflict with the law, including special children's desks at police stations for filtering child welfare cases. The District Diversion Core Teams (DDCTs) are made up of staff from children's services, Save the Children, the police, probation and aftercare services and NGOs active in the field of juvenile justice. A National Diversion Core Team oversees the work of the district teams and makes recommendations on policy changes.

#### Results:

- Child-friendly rooms have been set up at the pilot project police stations, where police officers are usually not in uniform. Children's cases are being handled appropriately, and there are attempts to base decisions on each child's individual circumstances.

- Between April 2001 and August 2002, the DDCTs teams handled a total of 592 children who had come through the pilot police stations. Of these, about 65 per cent had been successfully reintegrated into their communities.
- There have been some improvements in data management in the selected police stations, including the introduction of diversion registers.
- There is more collaboration and networking, with attempts to create links with the local councils, legal networks and the business community. There is also greater participation in the diversion process by government departments, NGOs, legal networks, community-based organizations, and community and local authority leaders.
- There has been an increase in child participation, with 500 children having been involved in diversion meetings where some had an opportunity to express their views.
- The principle of using custody only as a last resort is being implemented in the pilot areas.

**Challenges:** There have been a number of challenges to the project, including: lack of trust between government and NGOs; lack of an effective, centralized information management system in the juvenile justice system; the absence of policy on the administration of juvenile justice and the lack of any clear policy or legislation on diversion; a heavy reliance on institutional care for children who cannot immediately be returned to their families; scant resources available for the development of community-based care such as temporary care homes and fostering networks; ongoing need to address the root causes for children coming into contact with the law in the first place (poverty, family separation, lack of education etc.).

**Lessons learned:** The DDCTs, in their efforts to involve the wider community, significantly increased the number of NGOs involved in the process. This was done without ensuring that these organizations fully understood the principles of diversion and the objectives of the project. As a result, some misconceptions arose, one of them being that the project was concerned only with returning children to their families or communities and that no intervention would be undertaken where the home environment was not conducive to reunification. Efforts are now being made to ensure strictly defined and managed partnership arrangements. It became clear at an early stage that NGOs would be willing to cooperate only if they felt they were equal partners in the process. This led to the formation of interagency diversion core teams at both district and national level, comprising representatives of both government agencies and NGOs, to oversee the development and management of project activities and have equal control of finances.

Although the project has been very successful to date, one of the major problems still to be addressed is the fact that temporary care homes are full, and there is a scarcity of alternative places where children can be held while investigations are under way.

**Example 3: Community-Based Diversion Programme for Children in Conflict with the Law - Philippines**

A pilot project in Cebu City, Philippines implemented by Free Rehabilitation, Education, Economic and Legal Assistance Volunteers Association, Inc. (FREELAVA) and Save the Children UK, Philippines, which received also funds from UNICEF.

**Issue:** Thousands of children are at present confined in various prison facilities all over the Philippines, either serving sentence or awaiting trial in courts. In Cebu City for example, the city jail now houses more than 200 children charged with various offences, ranging from petty offences such as solvent use and theft to more serious crimes like robbery, murder and rape. The number of children placed in jail centres increases year after year. As their population increases, more and more children suffer deprivation and abuse inside detention cells. There are no separate detention facilities for children and they are incarcerated with convicted adult criminals. It is also a fact that the country in general lacks a comprehensive justice programme for children that includes in particular a standardized 'community-based diversion approach' so that children upon commission of an offence will no longer enter the formal criminal justice system. Moreover, there are inadequate recovery and reintegration services and strategies for children in conflict with the law. Most of these children who return to their communities are left on their own without adequate counselling and psychosocial services and corresponding community or family support.

**Project:** Based on the principles of restorative justice, the project introduces a holistic community-based diversion programme for children in conflict with the law (CICL) at the *barangay* level (the lowest level of government). The project encourages and supports the participation of the parents of the CICL, government and school officials and social workers by organizing a functional community level committee that implements a diversion programme in the community. As a community-based programme, it embarked on securing the active and ongoing participation of Community Volunteers (CVs) to provide support to the CICL. The CVs develop a relationship with the child, who at the same time is gaining the confidence to become an effective Peer Facilitator within the community. The project likewise introduces various psychosocial interventions to children, monitoring and follow-up mechanisms as well as crime prevention activities.

**Results:** The project was able to select, train and organize CVs from the selected areas in Cebu City. At present, almost a hundred CVs are actively backstopping (following-up and monitoring) children whose cases have successfully passed the diversion process. The Children's Justice Committee (CJC) has been formed to conduct mediation in the community. Children committing petty offences are no longer referred to the formal justice system. The strategy/approach used by the CJC is mediation and conflict resolution. So far, almost 100 cases involving children have passed through the programme. Instead of confining the children in jail or to residential care, they are either returned to their families or placed under the custody of

responsible persons, with the agreement of undergoing a rehabilitation programme that is being supervised by the CVs. To further facilitate monitoring and follow-up, the CVs, as part of their volunteer service, assist in the training of children as Peer Facilitators, and conduct regular one-on-one visits with them, either at home or in school. At the moment, each CV is backstopping an average of two CICL, including those former CICL in the communities whom the trained Peer Facilitators have so far contacted and who later became members of their network.

**Lesson learned:** A community-based approach, which addresses the support needs of CICL, is an effective alternative to residential care. However, the participation of CVs is a critical and important component in this programme as they provide the day-to-day support that is essential for CICL from the first moment they are reintegrated into the community until they are fully rehabilitated.

#### **Example 4: Community Reparative Board Session**

The reparative board convened to consider the case of a 17-year-old boy who had been caught driving with an open can of beer in his father's pickup truck. The boy had been sentenced by a judge to reparative probation, and it was the board's responsibility to decide what form the probation should take. For about 30 minutes, the citizen members of the board asked the boy several questions. The board members then went to another room to deliberate on an appropriate sanction for the boy. The boy awaited the board's decision nervously, because he did not know whether to expect something tougher or much easier than regular probation.

When the board returned, the chairperson explained the four conditions of the offender's probation contract: (1) begin work to pay off his traffic tickets, (2) complete a State Police defensive driving course, (3) undergo an alcohol assessment, and (4) write a three-page paper on how alcohol had negatively affected his life. The boy signed the contract, and the chairperson adjourned the meeting.

#### **Example 5: Family Group Conferencing Examples**

**New Zealand model:** A meeting at a time and place chosen by the family is attended by a child offender, his/her family, the victim, the police, a child advocate when appointed, and any other people whom the family wish to invite. The conference is organized by the 'Child Justice Coordinator' who acts as facilitator and mediator between family and police, although the Coordinator can invite others to act as facilitator (especially if this is considered culturally important). Usually, after introductions and greetings, the police describe the offence and the child admits or denies involvement. If there is no denial, the conference proceeds with the victim describing the impact on him or her of the offence. Views are then shared about how the matter could be resolved. The family deliberates privately, after which the meeting reconvenes with the professionals and the victim to

see if all are agreed on the recommendations and plans advanced by the family.

**Australia, Wagga model:** A meeting held as an alternative to traditional justice procedures is facilitated by a police officer. Those involved are: the perpetrator(s) and victim(s) of an offence, together with the families and friends of both the victims and offenders and others directly affected by the offence. Conferences are convened in cases in which the preliminary investigation has been conducted, where guilt is accepted and where the voluntary participation of both victim and offender is secured. Each conference is coordinated by a police officer (or other official or trained volunteer), whose role is to encourage participants to express their feelings about the offence and to reach some collective agreement about how best to minimize the harm resulting from the offending behaviour. Agreements usually involve some arrangements for appropriate restitution and reparation. These arrangements are formally agreed to but are not legally binding.

#### **Example 6: Circle Sentencing Session**

The victim is a middle-aged man whose parked car had been badly damaged when the offender, a 16-year-old, crashed into it while joyriding in another vehicle. The offender had also damaged a police vehicle.

In the circle, the victim talked about the emotional shock of seeing what had happened to his car and his costs to repair it (he was uninsured). Then, an elder leader of the community where the circle sentencing session was being held (and an uncle of the offender) expressed his disappointment and anger with the boy. The elder observed that this incident, along with several prior offences by the boy, had brought shame to his family. The elder also noted that in the old days, the boy would have been required to pay the victim's family substantial compensation as a result of such behaviour. After the elder finished, a feather (the 'talking piece') was passed to the next person in the circle, a young man who spoke about the contributions the offender had made to the community, the kindness he had shown toward elders, and his willingness to help others with home repairs.

Having heard all this, the judge and the public defender, who was also sitting in the circle, make statements and then asked if anyone else in the circle wanted to speak. The police officer, whose vehicle had also been damaged, spoke on the offender's behalf. The officer proposed to the judge that in lieu of required jail time for the offence, the offender be allowed to meet with him on a regular basis for counselling and community service. After asking the victim and the prosecutor if either had any objections, the judge accepted this proposal. The judge also ordered restitution to the victim and asked the young adult who had spoken on the offender's behalf to serve as a mentor for the offender.

1. In each example, who are the important role players in ensuring that justice is done?
2. What does justice mean for each of those you name?

**A. Mediation Session**

The victim is a middle-aged woman. The offender, a 14-year-old neighbour of the victim, had broken into the victim's home and stolen a VCR. The mediation session is taking place in the basement of the victim's church.

Prepare a 5 minute role play using the scenario above showing a mediation session. The roles you will need include: a victim, offender, mediator).

Each role player should speak about the offence and its impact.

**B. Family Group Conferencing Session**

A family conferencing group is convened in a local school to consider a case in which a student had injured a teacher and broken the teacher's glasses in an altercation.

Prepare a 5 minute role play using the scenario above. The roles you will need include: a child offender, his mother and grandfather, the victim, the police officer who made the arrest, and other interested parties (including two of the offender's teachers and two friends of the victim).

The conferencing process must begin with comments by the offender, his mother and grandfather, the victim, and the arresting officer. Each should speak about the offence and its impact. The coordinator would next ask for input from the other group members and then would ask all participants what they thought the offender should do to pay back the victim and the community for the damage caused by his crime.

**Family Conference: Some Practical Tips**

At the Family Conference, a Coordinator will:

- Welcome and introduce all participants
- Explain the purpose and aims of the conference
- Ensure that everyone is familiar with the details of the offence (this will be done by the police representative who will read a summary of the offence)

- Ensure that all participants, including the child offender and victim, have an opportunity to participate in the conference by discussing the child's offending behaviour and the effects and consequences of that behaviour.



- Assist the participants in deciding an appropriate and mutually acceptable outcome; and once an outcome has been agreed upon, formalize the agreement in writing and ensure that all participants understand it, especially the child offender.

If the child denies the offence, which the police officer alleges, he/she will be charged and sent to court. If the Conference cannot reach agreement, the child is referred to Court.

The Family Conference may require the child to do any or all of the following things:

- Apologize to the victim.
- Pay compensation to the victim for the damage he/she caused or the goods he/she stole.
- Carry out hours of community service.
- Anything else that everyone at the Family Conference agrees is appropriate to prevent the child from offending again.

If the child thinks the conference has been too hard on him/her, he/she can refuse to sign the agreement and the matter will go to court where the judge will decide what penalty to impose.

If the child does not turn up or does not carry out what was agreed at the conference, he/she may be charged with the offence and go to court.

All Family Conference proceedings are official and an official record will be kept of the outcome.

**After the Conference:** The Coordinator will record the outcome of the conference, including any undertakings agreed to. The Coordinator will monitor the completion of undertakings. If a child fails to complete any part of an undertaking within the required time, the Coordinator may refer the matter back to Police for the laying of a charge for the original offence in the Court. The Coordinator might also arrange for someone at the conference to supervise any undertakings that a child has agreed to. This will often be the parents or other family members. Sometimes it may be a victim who will supervise the child's compliance with an undertaking. This might happen where, for example, a child has damaged the property of the victim and has undertaken to repair that damage.

In addition, where the Coordinator is of the opinion that there are other issues (e.g. care or welfare issues) that need to be addressed, she/he may refer the child and family to an appropriate support agency. This will be done after consultation with and agreement of the family.

## **Implementing Restorative Justice Schemes**

A number of programmes have become associated with restorative justice because of the processes they use to respond to and repair the harm caused by crime. They are not specific to child offenders but are largely used with them.

They are:

- **Victim-offender reconciliation/mediation programmes** use trained mediators to bring victims and their offenders together in order to discuss the crime, its aftermath, and the steps needed to make things right.
- **Conferencing** programmes are similar to victim-offender reconciliation/mediation, but differ in that they involve not only the offender and victim, but also their family members and community representatives.
- **Victim-offender panels** bring together groups of unrelated victims and offenders, linked by a common kind of crime but not by the particular crimes that have involved the others.
- **Victim assistance programmes** provide services to crime victims as they recover from the crime and proceed through the criminal justice process.

This section focuses on four restorative models involving the community: victim-offender mediation, community reparative boards, family group conferencing and circle sentencing.

Although these four models by no means exhaust the possibilities for community involvement in decisions about how to respond to child crime, they do illustrate both the diversity and common themes apparent in the community's participation in the sanctioning processes.

### **VICTIM-OFFENDER MEDIATION**

The victim-offender mediation process offers victims an opportunity to meet offenders in a safe, structured setting and engage in a mediated discussion of the offence. With the assistance of a trained mediator, the victim is able to tell the offender about the crime's physical, emotional, and financial impact; receive answers to questions about the crime and the offender; and be directly involved in developing a restitution plan for the offender to pay back any financial debt to the victim. In addition, the process should not be primarily focused on reaching a settlement, although most sessions do in fact result in a signed restitution agreement.

### Procedures and Goals

Cases may be referred to victim-offender mediation programmes by judges, probation officers, victim advocates, prosecutors, defence attorneys, and law enforcement. In some programmes, cases are primarily referred as a diversion from prosecution. In other programmes, cases are usually referred after a formal admission of guilt has been accepted by the court, with mediation being a condition of probation or other disposition (if the victim has volunteered to participate).

During mediation sessions, victims explain how the crime affected them and are given the opportunity to ask questions about the incident and help develop a plan for restoring losses. Child offenders are given the opportunity to tell their stories and take direct responsibility through making amends in some form.

The goals of victim-offender mediation include the following:

- Supporting the healing process of victims by providing a safe, controlled setting for them to meet and speak with offenders on a strictly voluntary basis.
- Allowing offenders to learn about the impact of their crimes on the victims and take direct responsibility for their behaviour.
- Providing an opportunity for the victim and offender to develop a mutually acceptable plan that addresses the harm caused by the crime.

### Considerations in Implementation

In implementing any victim-offender mediation programme, it is critically important to maintain sensitivity to the needs of the victim. Primarily, the mediator must do everything possible to ensure that the victim will not be harmed in any way. Additionally, the victim's participation must be voluntary. The child offender's participation should also be voluntary. Although offenders almost never have absolute choice, they should never be coerced into meetings with victims. The victim should also be given choices, whenever possible, about procedures, such as when and where the mediation session will take place, who will be present, and who will speak first. Cases should be carefully screened regarding the readiness of both victim and offender to participate. The mediator should conduct in-person pre-mediation sessions with both parties to clarify the issues to be resolved. The mediator should also make follow-up contacts and monitor any agreement reached.

### COMMUNITY REPARATIVE BOARDS

#### Background and Concept

The community reparative board is a recent version of a much older and more widespread community sanctioning response to crime, generally known by such terms as neighbourhood boards, community diversion boards or, where applicable to children, as child panels.

Reparative boards typically are composed of a small group of citizens, prepared for their function by intensive training, who conduct public, face-to-face meetings with child offenders ordered by the court to participate in the process. The boards develop sanction agreements with offenders, monitor compliance and submit compliance reports to the court.

#### Procedures and Goals

During reparative board meetings, board members discuss with the offender the nature of the offence and its negative consequences. Then board members develop a set of proposed sanctions, which they discuss with the offender until an agreement is reached on the specific actions he/she will take within a given time period to make reparation for the crime. Subsequently, the offender must document his or her progress in fulfilling the terms of the agreement. After the stipulated period of time has passed, the board submits a report to the Court on the offender's compliance with the agreed-upon sanctions. At this point, the board's involvement with the offender ends.

The goals of community reparative boards include the following:

- Promoting citizens' ownership of the criminal and juvenile justice systems by involving them directly in the justice process.
- Providing an opportunity for victims and community members to confront offenders in a constructive manner about their behaviour.
- Providing opportunities for offenders to take personal responsibility and be held directly accountable for the harm they caused to victims and communities.
- Generating meaningful, community-driven consequences for criminal activities, thereby reducing costly reliance on formal justice system processing.

#### Considerations in Implementation

The following factors have been identified as important in implementing community-driven reparative board programmes:

- Marketing the programme effectively to the justice system (to judges, prosecutors, and defence attorneys).
- Having a committed, well-trained staff.
- Working with victim organizations and ensuring that victims are represented and provided adequate opportunity to participate.
- Processing cases expeditiously and in a manner that is easy for community members to understand.
- Supporting the programme with adequate resources (e.g., space, time, and staff).
- Striving for successful outcomes for offenders, victims, and community participants in the board's initial cases.
- Getting support from judges in limiting the time the offender is in the programme and on probation.

### **FAMILY GROUP CONFERENCING**

Family group conferencing is based on the centuries-old sanctioning and dispute resolution traditions of the Maori of New Zealand. In its modern form, the model was adopted into national legislation in New Zealand in 1989, making it the most systemically institutionalized of any of the four models. In South Australia, family conferencing is now widely used in modified form as a police-initiated diversion approach known as the Wagga model (developed by the Wagga Police Department, this model uses police officers or school officials to set up and facilitate family conferencing meetings.)

A variety of offences has been resolved through family group conferencing, including theft, arson, minor assaults, drug offences, vandalism, and, in a number of States, child maltreatment cases. In New Zealand, conferencing is used in the disposition of all but the most violent and serious delinquency cases.

Family group conferencing involves the community of people most affected by the crime, the victim, the offender, and the family, friends, and key supporters of both, in deciding the resolution of a criminal incident. The affected parties are brought together by a trained facilitator to discuss how they and others have been harmed by the offence and how that harm might be repaired.

The aim of Family Conferences is to provide a mechanism for dealing effectively and justly with offenders, victims of crime and others affected by a child's offending behaviour. The objectives of the conference process are to:

- Divert child offenders from the court system.
- Make child offenders aware of the consequences of their behaviour and accept responsibility for their behaviour.
- Provide victims with an opportunity to participate actively in the process of seeking reparation.
- Arrange compensation, where appropriate, for material damage.

- Involve the family and close friends of a child whose behaviour has offended in the process of dealing with the consequences of that behaviour.
- Allow all participants to deal with the issues not only at the level of rational debate but also at the emotional level; and lay the foundations for the gradual restoration of trust between the offender, his/her family and others directly affected by the crime.

### **Procedures and Goals**

The conference facilitator contacts the victim and the offender to explain the process and invite them to the conference. The facilitator also asks the victim and the offender to identify key members of their support systems, who also will be invited to participate. The conference typically begins with the offender describing the incident. The other participants then describe the impact of the incident on their lives. Through these narrations, the offender is faced with the impact of his or her behaviour on the victim, on those close to the victim, and on the offender's own family and friends, and the victim has the opportunity to express feelings and ask questions about the incident. After a thorough discussion of impacts, the victim is asked to identify desired outcomes from the conference; in this way, the victim can help to shape the obligations that will be placed on the offender. All participants contribute to the problem-solving process of determining how the offender might best repair the harm he or she has caused. The session ends with participants signing an agreement that outlines their expectations and commitments.

### **Considerations in Implementation**

The family group conferencing process has been implemented in schools, police departments, probation offices, residential programmes, community mediation programmes and neighbourhood groups. Conferencing is most often used as diversion from the court process for child offenders but can also be used after adjudication and disposition to address unresolved issues or determine specific terms of restitution.

Participation by all involved in conferences is voluntary. In addition to the victim and offender and their family members, a conference might involve teachers, other relatives, peers, special adult friends and community resource people.

## **CIRCLE SENTENCING**

### **Background and Concept**

Circle sentencing is strategy designed not only to address the criminal behaviour of offenders but also to consider the needs of victims, families, and communities. Within the 'circle' crime victims, offenders, family and friends of both, justice and social service personnel and interested community residents speak in a shared search for an

understanding of the event. Together they identify the steps necessary to assist in healing all affected parties and prevent future crimes. The significance of the circle is more than symbolic: all circle members, police officers, lawyers, judges, victims, offenders, and community residents, participate in deliberations to arrive at a consensus for a sentencing plan that addresses the concerns of all interested parties.

### **Procedures and Goals**

Circle sentencing typically involves a multi-step procedure that includes (1) application by the offender to participate in the circle process, (2) a healing circle for the victim, (3) a healing circle for the offender, (4) a sentencing circle to develop consensus on the elements of a sentencing plan, and (5) follow-up circles to monitor the progress of the offender. In addition to commitments by the offender, the sentencing plan may incorporate commitments by the justice system, community, and family members. Specifics of the circle process vary from community to community and are designed locally to fit community needs and culture.

The goals of circle sentencing include the following:

- Promoting healing for all affected parties.
- Providing an opportunity for the offender to make amends.
- Empowering victims, community members, families, and offenders by giving them a voice and a shared responsibility in finding constructive resolutions.
- Addressing the underlying causes of criminal behaviour.
- Building a sense of community and its capacity for resolving conflict.
- Promoting and sharing community values.

### **Considerations in Implementation**

The success of the circle sentencing process depends largely on a partnership between the formal juvenile justice system and the community. Participants need training and skill building in the circle process and in peacemaking and consensus building. It is critically important that the community's planning process allow sufficient time to develop strong relationships between justice professionals and community members. Implementation procedures should be highly flexible, because the circle process will evolve over time based on the community's knowledge and experience. As it gains experience, the community can customize the circle process to fit local resources and culture.

In many communities that have implemented the circle-sentencing concept, direction and leadership have come from a community justice committee that decides which cases to accept, develops support groups for the victim and offender, and helps to conduct the circles. In most communities, circles are facilitated by a trained community member, who is often called a keeper.

Although circles have been used as a response to serious and violent crimes, circle sentencing is not an appropriate response to all offences. Key factors in determining whether a case is appropriate for the circle process include the offender's character and personality, sincerity, and connection to the community; the victim's input; and the dedication of the offender's and victim's support groups. Moreover, circles are often labour-intensive and require a substantial investment of citizen time and effort; circles should not, therefore, be used extensively as a response to first offenders and minor crime.