

## THE IMPLEMENTATION OF A DIVERSION PROGRAMME FOR JUVENILE OFFENDERS: PROBLEM AREAS AND 'PITFALLS'<sup>1</sup>

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### INTRODUCTION

According to the 2001 South African census, about 35% of the South African population can be classified as youths, that is, below the age of 35 years, while 22% is below 20 years of age (Statistics South Africa, 2003). Schönsteich (1999:22) emphasises that South Africa faces some serious challenges because of the high proportion of young people in the population. Referring to criminal behaviour in particular, he suggests that juveniles and young adults commit crimes "...far in excess of their proportion of the general population", and that these rates seem to be similar all over the world. He also points to conviction rates that show that young males in South Africa are at greater risk of being convicted for a wide range of crimes than older males or females of any age group.

International research suggests that crime amongst the youth, as with any criminal act, can be attributed to many factors and the negative influences of the community, low socio-economic status of families, dropping out of school and single-headed households are but a few of the factors that could contribute to young people turning to crime (Moore & Tonry, 1998:9). They also argue that the involvement of the community is pivotal in preventing youths from both becoming and remaining involved in deviant behaviour. Breaking the cycle of crime could prove to be difficult for young people who have to leave behind not only their criminal behaviour, but also old friends and 'hang-out' places (Higgins & Butler, 1982). In this regard social support from families and peers is important in encouraging youths to feel accepted by conventional society. Yet getting the community involved can be a difficult task, because adults in the community are often so preoccupied with employment issues and trying to keep afloat in the midst of excruciating poverty that there is often little or no time to give youngsters the attention and support that they so need and desire.

Not all young offenders are criminally prosecuted. In South Africa NICRO (National Institute for Crime Prevention and Reintegration of Offenders) offers some alternatives for young offenders that ensure that they do not get criminal records. According to NICRO's annual 2001/02 report, 5788 young people in conflict with the law were channelled away from the criminal justice system into a range of options in the Western Cape alone. The YES programme offered by NICRO is one such alternative that attempts to reintegrate young offenders in conflict with the law back into conventional society without the negative implications often associated with the criminal justice process. It serves the largest number of clients – 8371 clients for the period 2001/02.

This paper focuses on the YES programme and examines the implementation of this programme in three groups of young offenders with the specific aim of identifying problems and pitfalls integral to the implementation process. These problems have important consequences for the intended outcomes of the programme. The paper consists of six sections. The first part addresses the theme of restorative justice. A brief overview of the juvenile justice system in South Africa is provided in part two. Part three examines diversion as an integral part of the child justice system in Western countries, while part four provides information on the nature and goals of the YES programme.

<sup>1</sup> The research on which this paper is based was undertaken by M Cupido. It formed the basis for the MPhil degree in Youth Development and Policy at the University of Stellenbosch.

Following a description of the methodology used to obtain data on the implementation of the YES programme, the main section identifies and examines in greater detail a range of problems related to the implementation of the programme. The concluding section proposes certain recommendations for the successful implementation of the YES and similar diversion programmes aimed at assisting young offenders to become re-integrated into society.

## RESTORATIVE JUSTICE AND DIVERSION

The idea that juvenile offenders require a different response to that afforded adult offenders originated during the 19<sup>th</sup> century in the United States of America and Britain (Muncie, 1999:253). According to Muncie (1999:253), juvenile justice has since then been "...riddled with confusion, ambiguity and unintended consequences". The debates regarding juvenile justice include different opinions regarding (i) the objectives of the process, e.g. punishment vs. rehabilitation and treatment, (ii) whether juveniles should be held accountable for their behaviour as is the approach in the conventional liberal justice model or whether juveniles should be seen as the innocent victims of adverse social environments, as was argued in the so-called welfare model in the mid-20<sup>th</sup> century, (iii) the relative importance of the state, professionals and community members and organisations in the process, and (iv) whether punishment/treatment should take place in institutions or in the community. As part of this continuing debate many commentators on juvenile justice currently argue that the conventional criminal justice system's emphasis on retribution and imprisonment should be restricted to that minority who are too dangerous to live in the community - the preferred alternatives for others being restorative justice and diversion.

Consedine (1995) argues that constructive and non-violent options that allow offenders to take responsibility for their actions and help victims could be a better option than imprisonment. He states that among British teenagers 92% of offenders re-offend after being released from detention; therefore in his opinion detention does not work and diversion should be given serious consideration. Leschied (1989) comes to a similar conclusion based on research done in Canada about the effect of a punitive approach towards juvenile offenders. He further adds that this response to crime may neglect intervention that is in the interest of both the young person and his/her community. Both these commentators advocate a new model of justice, that is, restorative justice as an alternative to a retributive approach and institutionalisation.

The goal with restorative justice is that offenders will be part of a process of mending the wrong and again becoming a part of the law-abiding community (Sloth-Nielsen, 2000:420-421). A fundamental part of restorative justice is that all the role-players (offenders, victims, family, community) are actively involved in meaningful participation. Braithwaite (1989) provides a theoretical rationale for restorative justice in his theory of reintegrative shaming. Extending labelling theory, he argues that offenders should be reintegrated into society and not stigmatised and rejected (disintegrative shaming) as is often the case in a retributive approach. Reintegrative shaming entails the process of showing disapproval for the offender's deed(s) by law-abiding members of the community, while maintaining a relationship of respect and ultimately forgiveness. It is important to note that reintegration only takes place after repentance by the offender is accompanied by restitution to the victim.

In a study done on youth justice in Egypt Griffith, Kennedy and Mehanna (1989) found that traditional negotiating systems of social control were operating in villages and that only more serious cases were referred to courts. According to the authors, these systems appeared to be more effective in addressing the issues of all concerned: the deviant youth, the victims and the community. The community and extended family support networks are used extensively to assist

in this traditional method of justice. The primary objective of the system is to restore harmony and order to the community rather than just assigning blame and imposing sanctions. Wright (1996) also found that restorative justice offers a way for victims to be involved and compensated, and it is hoped that this would encourage them to report crime instead of taking the law into their own hands. Therefore Wright (1996) suggests that restorative justice is not to be seen as a new form of punishment or rehabilitation, but rather as a principle that aims to repair the damage and hurt caused to victims and communities. For Wright (1996) restorative justice can be summed up as follows: support and reparation for the victim; the offender should be active in this reparation for the victim and co-operate in rehabilitation. Detention is only used as a last resort. Wright (1996) further assumes that this could lead to the community becoming involved and participating in the process, as it is their right to do so.

Diversion is currently one of the popular options in an attempt to treat juvenile crime differently. As currently practised it involves restorative justice principles as well as elements of traditional rehabilitation programmes. According to Sloth-Nielsen (2000:418), diversion is seen as a referral away from either custody or the formal court procedures, and has become an integral part of child justice systems in most Western countries. It can include "...cautioning, alternative methods of resolving the dispute, referral for counselling or supervision, and a host of other options". Shapiro (1994:90) defines diversion as the "...channelling, on certain conditions, of prima facie cases away from the criminal justice system to extra-judicial programmes at the discretion of the prosecution". Diversion also involves an appropriate intervention in order to bring about a change in the behaviour of the child. Diversion also involves giving communities a bigger stake in justice. The guidance of families and communities, supported by professionals and specific interventions, can make children understand the impact of their crimes on others and ensure that they put right the wrong they have done.

Shapiro (1994) identifies some of the advantages and disadvantages of these programmes. Diversion programmes allow the offenders to repair any damage caused by their actions; it also helps in the process of rehabilitation and education; it encourages offenders to take responsibility for their actions and enables them to be accountable; problems which may have led to the offending behaviour can be identified; offenders will not acquire a criminal record; and it lessens the load of the formal justice system. She argues that the biggest disadvantage of the diversion programmes currently on offer is that they do not offer follow-up sessions or support.

## **JUVENILE JUSTICE IN SOUTH AFRICA**

Article 28 of the Constitution of the Republic of South Africa (Act 108 of 1996) determines that no young person who gets into trouble with the law should be detained in prison or police custody, and that detention should only be used as a last resort. If the young person is held in detention, it should be for the shortest possible time. The Constitution also makes provision for the fact that steps taken against young people should always be in their best interest. Relevant articles in the South African Constitution coincide with the recommendations of the United Nations Convention on the Rights of the Child, which state that the best interest of the child should be paramount in all actions taken on their behalf. The child has the right to participate in making decisions that will affect his/her life. He/she has the right not to be discriminated against and has the right to survival and development (Sloth-Nielsen, 2000:387).

Unfortunately, Nilsson (2000) found in his studies that these constitutional requirements are not always met. According to Nilsson, young people who get into trouble with the law, and therefore get detained, will be turned into criminals, especially if they spend long periods in detention because of being labelled as a criminal and being in interaction with 'hardened' criminals.

According to Shapiro & Shaprio (in Muntingh & Shaprio, 1997:12), young people are not held accountable for their actions within the criminal justice system, and therefore are usually not in a position to apologise, repair the damage or make plans to prevent re-offending. Instead, the experience often leaves youths more hardened and willing to repeat their offending behaviour.

In the context of the normative guidelines for juvenile justice referred to above as well as the proven disadvantages of retributive criminal justice interventions, fundamental changes to the juvenile justice system are envisaged in the South African National Crime Prevention Strategy (Department of Justice, 1996). To give effect to the proposed changes, legislation was introduced in the South African parliament in 2002 (Department of Justice, 2002; Sloth-Nielsen, 2001).<sup>2</sup> Apart from separating the procedural system for children charged with offences from that of adults, the proposed legislation is also in favour of restorative justice and diversion procedures, which will now receive statutory recognition. It is foreseen that restorative justice and diversion will serve the following purposes: it will encourage the child to take responsibility for the harm he/she caused; it will also create an opportunity for the victim to express his/her views; encourage restitution; and promote reconciliation. It will help in reintegrating the child into his/her community, prevent stigmatisation and prevent the child from acquiring a criminal record. Diversion programmes should, however, meet certain requirements so that the human rights of the individual cannot be violated. Therefore diversion can only be arranged with the child or his/her parents' consent to their involvement. Thus the programme should protect the child from harm, exploitation or disproportionately severe outcomes in relation to the harm caused by the offence. It is also important to note that the protection of the rights and interests of the child should be balanced against the protection of the community (Sloth-Nielsen, 2000). This implies that under certain conditions a more punitive approach and institutionalisation are envisaged.

## THE YES PROGRAMME

While restorative justice and diversion form a fundamental part of the Child Justice legislation, similar programmes are already presented in certain areas in South Africa. As indicated in the introduction, one of the organisations involved is NICRO, which has been presenting programmes since 1993 in an attempt to curb the problems associated with children defying the law. A NICRO study in 1998 showed that 75% of children attending diversion complied with programme requirements, and that the recidivism rate for the sample was 6.7% (Sloth-Nielsen, 2000). One of the programmes, the YES programme, is a life-skills training programme aimed at helping youths take responsibility for their actions and correcting the wrong done (Rooth, n.d.). Therefore, diversion programmes should not be seen as a means for the young offender to 'get off easily'. Rather diversion is recommended in those cases where it will be in the interest of the offender, victim (if present), the criminal justice system and society, if the offender is not prosecuted or convicted (Muntingh, 2001:6). The prosecutor, investigating officer and social worker of the court select participants in the programme. Identified youth offenders are then presented to the senior prosecutor for approval (Darling, 1996). Adolescents selected for the programme, as well as their parents, should be made aware that participation in the programme is completely voluntary and that successful completion of the programme would mean that their case would be officially removed from the court roll.

Initially the programme was designed and used as a pre-trial option to prevent youths from getting a criminal record at such a young age, but it can also be used as part of their sentence (Muntingh &

2 It is envisaged that the Child Justice Bill introduced in 2002 will finally be enacted during the 2005 parliamentary session.

Shapiro, 1997). The YES programme normally deals with first-time offenders of less serious crimes such as shoplifting, theft and common assault. However, juveniles do not have to be first-time offenders to be included in the programme. The programme is most suited for youths between the ages of 12 and 18 years, but prosecutors may use their own discretion to include juveniles of 19 years with special circumstances and normally still attending school. NICRO further requires that the youths have a fixed address. This ensures that there is a certain degree of control that can be exercised over the whereabouts of the young person. The youths' parent/guardian must be present at the court and commit to attending the first and last session of the programme, because the programme also aims to facilitate communication between parent and child. The young offender must also admit guilt, before he/she can be admitted into the programme (Muntingh & Shapiro, 1997). This could be viewed as part of taking responsibility for the crime. Both young offenders and their parents should be made aware of these requirements for attending the programme through the probation officer. The fact that attendance of the programme would lead to the charges being withdrawn and that attendance is fully voluntary should be stressed. After completion of the programme, the offender returns to the court with an evaluation from the programme facilitator. This document is discussed with the senior public prosecutor and further action is taken. Usually the case will be withdrawn and any other recommendations by the facilitator are considered.

Through this programme youths are encouraged to conform to societal norms in order to prevent further criminal activity. It also gives the youth an opportunity to reflect on his/her behaviour and the consequences of his/her actions (Muntingh & Shapiro, 1997). The underlying philosophy of the YES programme emphasises taking responsibility on the part of the young person and correcting the wrong that has been committed. With this programme NICRO aims to:

- provide young people with the skills that will help them to understand themselves, to relate to others and to take responsibility for their actions;
- provide young people with an opportunity to express their ideas, opinions and feelings in a constructive way;
- provide young people with the skills to cope with the challenges in their environment;
- open up communication between young people and their parents/guardians;
- encourage self-respect, self-worth and respect for others based on a human rights culture;
- encourage and foster parental responsibility (Rooth, n.d.).

To accomplish these goals, the programme consists of weekly sessions of two hours for eight weeks, concentrating on life skills. The sessions normally consist of 15 to 25 participants (Muntingh, 2001). It should also be mentioned that NICRO relies heavily on the help of volunteers, who are given adequate training that enables them to facilitate these programmes. In these sessions the consequences of the youth's behaviour are discussed: the crime; the consequences and seriousness of the offence, and the consequences of a criminal record; the importance of a positive self-concept; the importance of being assertive rather than aggressive; conflict management and responsible decision making. The course also helps parents and children understand each other fully (Muntingh & Shapiro, 1997).

The programme also relies on interactive and experiential learning techniques, such as games and role play (Muntingh 2001). This helps to make the programme more accessible and the youths can better grasp how these skills can be applied in their daily lives. It also requires of the young people to perform tasks in preparation for each session, so that the programme does not become a two-

hour session per week, but rather something that the young people have to work at continuously, thinking about their actions and plans throughout the programme. One of the tasks that they have to perform is writing a letter of apology to the victims of their crime. This helps them to accept responsibility for their actions and also realise that they are not the only ones affected by their actions.

## METHODOLOGY

The researcher contacted the NICRO head office in Cape Town to obtain permission to work with the social worker in charge of programmes at one of the branches. The social worker also facilitated the programme that the researcher was involved in and arrangements were made that the researcher would observe some sessions but also facilitate most of the sessions. As previously mentioned, NICRO is highly dependent on trained volunteers to facilitate sessions. However, since the researcher has a background in social work, she was allowed to facilitate. It was arranged that the researcher be introduced to the participants at the beginning of each new programme and explain to them and their parents that, whilst facilitating she would also be recording data for this study. An analysis of the implementation of the YES programme in three different age groups (13 to 14, 15 to 16, and 17 to 18 years) was done.

A qualitative design was used in the study. Qualitative techniques can produce a holistic view of the behaviours, actions and, attitudes of the participants in everyday life settings (Kane & O'Reilly-De Brun, 2001:198). The study was based on participant observation as well as interviewing. Participant observation involved sitting in on sessions as well as facilitating sessions. Interviews were conducted with the social worker as well as informal interviewing (entailing conversations) with others involved in the process, such as parents, participants and other facilitators (Spradley, 1980). The present study was exploratory, because it aimed to provide a basic understanding of the implementation of the YES programme through a description of the sessions and youths involved in these sessions, thereby determining priorities for future research (Babbie & Mouton, 2001:80).

Initially it had been decided to make use of focus groups including individuals who were part of the YES programme and also those who had at some stage of their life been a part of the YES programme. However, accessing individuals who had been part of the YES programme was a difficult task, because NICRO does not at present have any follow-up sessions. Thus the researcher had no means of getting into contact with such individuals. Individuals who are currently involved in the programme are expected to attend weekly sessions of two hours and it was anticipated that they would not want to sacrifice more time (not to mention money in terms of travelling costs) attending one or more focus group sessions.

The programme sessions involved intensive discussion groups and participants were expected to share their thoughts and feelings. Therefore it was decided that the use of a tape recorder might either inhibit participants or have the opposite effect of allowing them to 'act out'. Thus the researcher made use of extensive note taking as a recording method. In those sessions where the researcher was strictly observing, taking notes was straightforward and the researcher was able to ask questions that were of interest to the study. It was especially in discussions with parents that valuable insights were gained. During sessions where the researcher took on the role of facilitator, note taking became more difficult. Much of the focus was on getting participants involved and making sure that everyone understood tasks and assignments, while at the same time observing participants and gaining insights that were of importance to the study. Only shorthand notes were taken and elaborated on after the sessions. As notes were analysed, themes were identified. The sessions are discussed in terms of these identified themes.

## DISCUSSION

### Sentiments regarding the impact of NICRO programmes

The researcher's first impression of this programme was that the participants were not learning much from these sessions. Each week they came to a two-hour session, sat around, joked with each other and played games. In fact, when probing the participants on what they had learned or gained from the programme, quite a few only remarked on the different games that were played and the new friendships that were established.

It is also notable that throughout the sessions both parents and children never named offences committed by the adolescent, as shoplifting, robbery or assault; instead words like *'the thing that happened'* or *'wat ek gedoen het'* (what I had done) was used when referring to the offence. This can be interpreted as a way of denying responsibility for what happened or not wanting to take responsibility at all. It was noted that in later sessions when participants were asked to share their stories with the group, this opened the way for discussions on what they had done wrong and how they could have acted differently. Yet even in these discussions participants shifted the blame for their transgression to either their choice of friends, or in some instances, lawyers and court proceedings.

At the final session involving an evaluation of the programme, however, it became evident that there were some of the participants, especially those who had been rather quiet throughout and only spoke when questions were directed at them, who had learnt valuable lessons about themselves and the situation that they had created for themselves. Therefore the programme can be deemed as useful in that it does reach some participants, even if not all.

### Miscommunication amongst officials

Another point of concern is the miscommunication between the magistrate's office and NICRO. There are sessions on Mondays, Tuesdays and Wednesdays, and each session targets a different age group. The 13- to 14-year-old youths meet on Mondays, Tuesdays are for the 15- to 16-year-old youths and Wednesdays are for youths between the ages of 17 and 18 years. It is argued that if the youths are in groups of their peers that they would be able to feel less anxious and participate adequately. Dates are set at the beginning of the year for all the programmes that will run for the remainder of the year, and the list is faxed to the magistrate's office in advance. Yet there are still parents turning up with their children on the wrong day or in the middle of a programme. These youth are then turned away and have to wait until the next programme starts - sometimes two months down the line. Parents become despondent because of money spent on getting to the venue as well as having to take days off from work, and the youths - who in some cases already do not feel up to the challenge of the programme - might even decide not to return to the programme.

### Attendance

In addition to the participants who get turned away, there are also those participants who only start attending from the second or third session. These participants had also been given the wrong dates by the courts and were required to complete those sessions that they missed when the next programme commenced. However, these participants were allowed to join the programme into the second or third session. It is believed that the group is not yet close-knit at this stage and introducing someone new would not significantly affect the other participants.

Apart from these participants, there are also those who do not attend all the sessions. Most of the groups start with between 10 and 16 participants. However, by the last session there are often only

between 6 and 10 left. The Monday group, for example, started with 6 participants and ended up with only 3 participants taking part in the final session. In the other groups participants turned up for every other session, while some attended the first two sessions only to be seen again at the last two sessions.

As the researcher understood the process, the adolescents are obligated to complete the full programme in order for their case to be withdrawn. However, this was not the case at all. At the last session participants are warned of the implications of absenteeism and are therefore required to attend the session(s) that they have missed as soon as the next programme starts. This is also part of the recommendations included in the social worker's report to the court. Yet in the time that the researcher was facilitating sessions, she was aware of only one participant who had attended a later programme. In the interview with the social worker, she attributed this to a 'loophole in this system'. In fact, she recommends that youths who do not complete the full eight weeks either complete those sessions that they have missed, repeat the whole eight sessions, or complete some other form of community service.

It would appear that some of the participants get away with absenteeism because of court arrangements. At some of the courts youths are referred to the programme and do not get another date to report back to the courts. It is assumed that youths will participate in the programme and therefore the case is withdrawn. Others have to report back to the courts and this makes it more difficult for them to get away with absenteeism. Unfortunately these arrangements impact negatively on the programme's effectiveness.

### **Assignments**

At the first meeting parents are made aware of the fact that the adolescents would be required to finish assignments at home and parents are encouraged to get involved by assisting their children with these assignments. The first assignment is the letter of apology. However, participants were found not to take these assignments very seriously, as most of the letters only came in near the end of the programme. These letters were not dealt with after being submitted. Also most of the participants never inquired about them again, primarily (it would appear) because they had not really put any effort into writing these letters. Some participants handed in letters consisting of only two lines omitting their names. Yet there were participants who went to great pains to write letters and therefore did inquire about them. In one of the groups there were a couple of participants who had committed acts against each other (assaulted their friend) and therefore wondered what happened to those letters. Most of the participants start out in the group not knowing how to express their thoughts and feelings in an appropriate manner. The writing of the letter could have been used in a more constructive way. Allowing participants to repent for their wrongdoing could have helped them to go on with their lives without the offence hanging over their heads forever.

Apart from the letters, participants were also given other assignments, but not everyone did them. Unfortunately there is no real way of forcing participants to do homework, especially because the programme is voluntary and the responsibility therefore lies with the participant. It does, however, make sessions more difficult when only a few of the participants have done homework and are thus able to participate in the discussion. Yet it should be kept in mind that assignments, especially those that require participants to use their writing and reading skills, could be difficult for those who are not interested in investing effort in such skills. In other groups the researcher allowed the participants to decide on appropriate 'punishment' for not completing assignments. One group decided on doing twenty push-ups. Surprisingly, there were still at least two or three participants each week who did not complete assignments, indicating that they did not take the process

seriously. While some did not want to be part of the programme, others viewed it as an easy way to 'stay out of trouble'.

### Real and imagined differences among participants

The programme is set up in such a way that it does not accommodate significant differences among participants. Some of the youths are adolescents who were excelling at school and sport prior to entering the programme. Facilitators should consider moving away from the preconceived idea that every adolescent who participates in the programme is a school dropout, or drug addict, or in some or other way a 'trouble child'. In fact some of the participants referred to this when they discussed the programme. In their view the programme is not challenging enough and is aimed at adolescents with a 'lower IQ'. Some of the participants wrote their names with great difficulty and struggled to grasp and perform basic instructions. Many Xhosa- and Afrikaans-speaking adolescents struggled with elementary English. This suggests that groups should be formed on the basis of level of schooling, mother tongue and degree of maturity rather than age only.

There was a remarkable difference between the adolescents who were in school and those who had dropped out of school. Those who were still in school seemed to be more mature; they understood instructions better; they understood that there is a time and place for everything. Even though they also joked and clowned in the group, they knew when to be serious and when to have fun. Those who had not completed school or were in a lower grade because of only recently returning to school were more difficult to handle; they could not debate with the others during small-group discussions and everything seemed to amuse them. These are often young people that are constantly in trouble and whose parents are desperate for some 'miracle cure' to 'save' them. It appears as though the programme had no effect on them. At the final session when evaluation of the programme was taking place, for example, each person was asked what they had learnt from the programme and what they had found useful to apply in later life. One of these 'difficult' participants replied: "*Ek het baie papiere gekry en ek moet hulle altyd hou*" ("I received many papers and I must keep them always"). He was referring to hand-outs received during sessions. When probed about what he should do with these 'papiere', he explained that perhaps one day, when he had nothing else to do, he would read them.

As noted earlier, the different groups are composed in terms of age. This was done in an attempt to limit differences amongst the adolescents that might disrupt group sessions. However, in our opinion group dynamics would be better accommodated if groups were composed in terms of youths' intellectual abilities, level of school education as well as their language usage and fluency. Significant differences amongst group members in terms of these criteria make it difficult for facilitators to succeed in realising the objectives of the various sessions.

### Time constraints

Quite often sessions are abruptly cut short because of time limits. Each session has activities and discussion with instructions on how much time should ideally be allocated to each activity. Unfortunately because of the language barrier, the differing intellectual levels and participants not coming prepared with the assignments, these time limits are not always realistic. In some session it often happens that there are other pressing concerns that the participants would rather be discussing and this also takes up valuable time. While such issues are important to the participants and need to be attended to, it is equally important that facilitators focus on the aim of the session and not attempt to squeeze too many activities into one session.

## Lack of support

Another concern is the way in which the programme is terminated. Participants start an eight-week programme during which they get to make new friends as well as get to know a facilitator who provides support. Completion of the programme means that this support network no longer exists as participants go their own way after being thanked by the facilitator for their participation at the final session. Some form of follow-up will go a long way towards assisting and supporting these young people to apply the skills that they have may have acquired through the programme. No form of follow-up exists at this stage and it is assumed that these young people are sufficiently equipped to deal with 'life after the programme'.

Uncertainty also exists regarding court procedures after completion of the programme. NICRO provides the court with a report on the progress that each child made during the implementation of the programme. These reports form the basis on which the court decides whether to take any further steps against the child or not. At the time of the final session not all parents will have received such court dates, however, and are hoping for some guidance at the final session. However, the only additional information they receive during the final session is that a report will be forwarded to the court and that if they receive a court date they should attend. Parents who do not receive a date should assume that the matter has been settled. For many parents this uncertainty creates unnecessary anxiety that can be prevented with better communication.

## Parents' expectations

Parents' attendance of the programme is an indication of their commitment to their children and their expectations regarding the positive outcomes of the programme, that is, their children's changed behaviour. While parents are required to attend the first and last sessions, there were parents who could not get time off from work. Despite this, they still made the effort to attend the first session for the first couple of minutes to register the adolescents and leaving the latter in the care of a grandparent, aunt, uncle or older sister.

Parents are not obliged to attend all the sessions and the facilitators' manual suggests that having the parents present may inhibit the participants. The parents of a male participant had decided that they wanted to attend the sessions with their son and at the second session, his mother accompanied him. Having his mother there did make the young man noticeably uncomfortable especially because his mother actively participated in the group. However, this did not seem to have any negative effect on the other participants. From the third session onward his father came along and sat in the background with a newspaper. Being present seemed to help the father feel part of the group and did not at all discourage him or any of the other participants from actively taking part in the group discussions. According to the father, his participation meant that he and his son were able to spend time together and to get to know one another better. Many of the parents, however, expected a '*miracle cure*' for their children. It was apparent that parents expect significant changes in the lives of their children and are noticeably disappointed when such changes do not occur.

## Content of the sessions

In view of the fact that many of the participants respond to conflict and disagreement by resorting to physical means such as assault, the sessions pertaining to conflict and communication could have been used more productively. Conflict management and a clear understanding of the difference between aggression and assertiveness can assist these young people to deal with conflict in a more constructive way. It was also clear that the sessions concerning the themes of 'socialisation', 'rights' and 'responsibilities' were based on concepts not adequately understood by

participants. Sessions dealing with these themes took on the form of lectures and contributed to participants not showing any interest in these topics and not being willing to invest in the sessions.

The first and last sessions seemed to be an emotional experience for both the participants and their parents. At the first session parents appeared to be angry and to feel disappointed. Adolescents, on the other hand, were equally anxious. They attended the first session not knowing what was in store for them. Some of the young people expected the programme to be some form of harsh treatment meted out in the fashion depicted in military-style movies. The final session was equally emotional and fraught with tension. Parents are usually anxious to see whether the programme had been a turning point in their child's behaviour. For some of the adolescents 'performing' successfully in the programme may be the only chance they have to prove to their parents that they have learnt from their mistakes. Therefore the final session is as emotional for them. Many parents come to this session only to find that their son or daughter had not attended all the sessions. These parents are angry and desperate and fear that nothing will help their child. Knowing that they have not been attending all the sessions, these young people are anxious and unsure as to what will happen to them next. On the other hand, some parents arrive at the final session anxious to meet a child who has changed his/her behaviour for the 'better'. These adolescents attend the final session wanting to prove to their parents that they have learnt some important lessons and should be trusted again.

Youths and parents are promised assignments that are rarely given and, even then, most participants do not make an effort to complete the assignments. The manual for the YES programme suggests that participants keep a journal. This can be a useful tool, especially if it can be successfully incorporated into each session. Some of these adolescents experience great difficulty in articulating what they think and feel, and keeping a journal throughout the process can facilitate and assist them in dealing with their own emotions and feelings.

The participants and their parents need to be more thoroughly informed about the programme and the procedures involved. They are unsure about what happens after the eighth session and the final session does not address many of their concerns. What happens to the court case? Will there still be a court case? Will there still be some kind of record of their involvement in the programme? Will there be follow-up sessions?

### **The fear of being labelled**

One of the aims of the YES programme, and diversion in general, is to sanction youths in such a way that it does not label or stigmatise them (Sloth-Nielsen, 2000: 418). Yet the fear of being labelled is still very real for these youths and their parents. Both parents and youths often go to great lengths to hide their involvement in the programme from people outside of their immediate family and, in some cases, siblings are not even informed. As noted earlier, parents are especially anxious about how much information to share with the schools. They fear that this information could later lead to their child being the first to be accused when things go wrong at school. Similarly, the youths do not share their involvement in the programme with those outside family networks. They fear being '*flavour of the month*' (being talked about) and in those instances where adolescents' criminal behaviour and involvement in the programme are known by members of the community, it seems that they are in fact often labelled.

The stereotype of what a criminal or offender looks like is an issue that should be addressed. At the final session some of the parents also touched upon this. According to parents, they had been quite surprised at the first meeting to find parents and children who, like themselves, were trying to make some sense of an unfortunate situation. They were expecting a room filled with unsavoury

characters with lists of offences. The adolescents had the same expectation, even though some of them knew what the programme was about, because they had friends who had attended the programme before. One participant (who was also the only white boy in his specific group) admitted to feeling worried about fitting into the group; he too had a preconceived idea of what the participants would be like. It is to be expected that adolescents and their parents would have these fears, especially because they do not know what to expect.

## CONCLUSION

Restorative justice and diversion have now become officially accepted in South Africa as an integral part of dealing with young offenders. As such, they form an important part of the criminal justice pillar of the South African National Crime Prevention Strategy announced in 1996 as well as the Child Justice Bill currently in the parliamentary process. Once the Bill becomes enacted, diversion programmes will have to be presented on a larger scale than is presently the case. This is indeed a daunting but important prospect, if South Africa wants to address the continuing high crime levels afflicting communities.

The aim of this paper was to examine the implementation of the YES programme in order to identify problems and pitfalls in the implementation process. Perhaps the main conclusion to be drawn from the present study is that, while the principles of restorative justice and diversion may be attractive in themselves, this does not ensure the successful implementation of programmes based on these principles. On the one hand, clear programme objectives will have to be formulated and communicated to all participants. On the other hand, there will also have to be clear guidelines for the implementation of such programmes. This requires that structures be put in place to ensure coordination between relevant role players in the process. Continuing monitoring of the implementation process with the aim of ensuring effectiveness and efficiency will be of the utmost importance to guard against these programmes becoming another costly and disappointing episode in the saga of seeking justice for juveniles.

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