“Strengthening the Justice System for Children by the use of Restorative Practices.”

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Restorative Practices
WHAT JUSTICE SYSTEM FOR CHILDREN?

- complies with Convention on the Rights of the Child (CRC);
- uses alternative/diversion measures, e.g. restorative justice;
- responds to children in conflict with law in accordance with umbrella principles of the CRC, namely:
  i. non-discrimination;
  ii. best interests of the child;
  iii. child’s right to life, survival and development;
  iv. right to be heard; and
- recognizes societal interests.
DIVERSION MANDATE:
Standards, norms in child justice:

- Convention on the Rights of the Child (CRC): *art. 37, 40 (3) (b)*
- UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines): *rule 58*
- UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules): *rule 11(2)*
- Guidelines for Action on Children in Juvenile Justice System: *General Principles-action 15*
- Child Rights Committee General Comment No. 10 (2007). Children’s rights in juvenile justice: *paragraphs 3 & 22- 39*
DIVERSION

- **Diversion** - removal of child offender from formal youth justice system and directing them to community support, yet making them accountable for their actions.

- **Diversion** may occur at different stages of youth justice system: pre-arrest, post-arrest, in court process, after adjudication, pre-sentencing.

- Practised by different youth justice personnel: police, prosecution, probation, social services, court.
WHY DIVERSION? What research says:

- results of contact with youth justice system: labelling and stigmatization, social isolation, contamination;
- makes rehabilitation/ reintegration difficult;
- stigmatization gives credibility to self-fulfilling prophecy;
- **Diversion** allows youthful offender to -
  - exit child justice system at different stages of justice process;
  - have access to a variety of programmes aimed at rehabilitation and reintegration and thus reduces recidivism;
  - frees court of a number of cases.
DIVERSION: Guiding Principles (CRC Gen.Comment No. 10)

- Respect and protection for human rights, legal safeguards;
- Admission of responsibility/finding of guilt;
- No pressure must be applied-free and voluntary consent to be given in writing by child, parent/guardian;
- Law/policy empowering police, prosecutor, to divert;
- Availability of legal advice/appropriate assistance;
- Opportunity for review;
- Completion of diversion should bring end to case.
RESTORATIVE JUSTICE

Restorative Justice - origin- first nations people-Africa, Asia, America, Australia, Europe.

Modern day RJ evolved: victim-offender mediation.

Definition: process to involve, to the extent possible, those who have a stake in a specific offence and to collectively identify an address harms, needs and obligations, in order to heal and put things as right as possible (Zehr).

Restorative justice sees crime as a violation of relationships, not law-breaking, and seeks to restore those broken relationships. Who has been harmed? How to repair that harm? Not, what law was broken? How to punish offender? What’s in a name? Many things called RJ, which are not.
RESTORATIVE JUSTICE

- holds offenders accountable for their wrongdoing;
- brings a greater understanding of the harm the person wronged has suffered by listening to the person harmed say how he/she has been affected by the wrongdoing;
- helps the wrongdoer to experience remorse;
- gives victims a voice, an opportunity to understand what has happened and participate in justice process, helps to bring about healing.
- gives community opportunity to be active stakeholders.
Restorative justice takes place in a restorative conference, which is a structured meeting.

It is voluntary and involves the wrongdoer, the person wronged and their supporters.

For a conference to be held:

- wrongdoer must admit blame and be willing to make amends;
- the person wronged must be willing to participate in the process;
- both sides should have their respective supporters.
RESTORATIVE PRACTICES

- evolved from restorative justice
- social science discipline drawing from many fields including: education, counselling, social work, criminal justice, psychology, organizational management
- proactive and reactive
- **proactive** - to build relationships, foster a sense of community, prevents isolation
- **reactive** - respond to wrongdoing, conflicts, problems in schools, the family, community and workplace;
- may restore relationships broken by wrongdoing;
- Restorative justice is a sub-set of restorative practices.
- (Costelloe, Wachtel)
**Restorative Practices Continuum**

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<td>formal conference</td>
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(Wachtel et al)

**Most popular restorative justice practice - Circles**

Circles provide occasions for people to come together in situations of equality, share thoughts and feelings, support/comfort one another, celebrate one another, diffuse conflict and engage in problem-solving in a safe place. Circles of support and accountability help to prevent recidivism.
Reforms in the child justice system in the Caribbean

Abolition of death penalty pre-dates CRC in most Caribbean countries.

Concerns in Concluding Observations of Child Rights Committee

- Age of criminal responsibility (7-12)
- Upper age limit for child justice (16-18)
- Abolition of life sentences
- Cruel and unusual and degrading punishment, including corporal punishment
- Legal representation of children
- Decisions without delay (challenge)

Need for alternatives/diversion from child justice system.
Restorative Practices

- A hard sell in Caribbean - punitive culture - slavery.
- Hopeful signs - restorative initiatives:
  - Drug treatment courts,
  - Bail Boys Project in Trinidad and Tobago;
  - Restorative justice legislation in Child Justice model legislation and enacted in OECS, Jamaica.
- Trinidad and Tobago recently enacted Children Courts with Peer Resolution as a diversion measure.
Pre- requisites for Restorative Practices/ Justice

- Advocacy/Sensitisation/Training/Readiness/ Cooperation.

Article 45 recommends technical support for implementation of CRC;
Two excellent examples of international cooperation:

**Improved Access to Justice in the Caribbean Project**

**IMPACT JUSTICE (Canadian Government);**

**US Agency for Development (USAID) (United States Gov’t)**

- financial assistance to Caribbean for juvenile justice reform.

**Impact Justice** has trained numerous juvenile justice personnel and educators in restorative justice, as well as restorative practices.

**USAID** project has also supported such training and even infrastructure.

**UNICEF** has been our main and most consistent funding agency for capacity-building of juvenile justice personnel over the years.
Benefits of R.J. for child in conflict with the law- well- documented by researchers:

- lowers rates of recidivism;
- lessens school violence, stops the bullying;
- combats misbehavior in general;
- provides variety of dispositions- individual needs
- results in fewer school dropouts, suspensions and expulsions
- curbs school -to- prison pipeline
- helps reintegrate even ISIS returnees.
Final Words

The year 2019 marks:

- 30th anniversary of CRC.
- 120th Anniversary of the 1st. juvenile court started in Chicago by Child Savers in 1899.
- Child offenders must be treated differently from adults - their greater vulnerability.
- It is the rationale for a child justice system.

W.E.B. Dubois: “The chief problem in any community cursed with crime is not Punishment of the criminals but the preventing of the young from being trained to crime.” ( “Souls of Black Folk”)
Child justice : The way forward

Restorative justice complies with CRC’s general principles: non-discrimination, best interests of the child, right to life, survival and development and the right to be heard.

- It offers child offenders their best chance for successful rehabilitation and reintegration. It affirms the human rights of children; condemns wrongdoing, but not wrongdoer.

- The questions for child justice practitioners considering restorative justice/restorative practices should not be: what? how? but, instead: When?

- The answer: NOW.
Thank you for your kind attention.