



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

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Restorative Practices



**STRENGTHENING JUSTICE SYSTEMS FOR CHILDREN**  
 Challenges, including disengagement from violent extremism

# 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)**
- ▶ United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDL Rules/ Havana Rules): **preamble (1)**
- ▶ 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

- ▶ 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

INFORMAL

FORMAL

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affective statements	affective questions	small impromptu conversations	circle	formal conference
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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.

# Child Justice Reform Initiatives in Caribbean

## ▶ 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.

# Restorative Justice

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 :

- ▶ 30<sup>th</sup> anniversary of CRC.
- ▶ 120<sup>th</sup> 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.

