

## SUBMISSION ON THE CHILD JUSTICE BILL

TO: THE PORTFOLIO COMMITTEE ON JUSTICE AND CONSTITUTIONAL DEVELOPMENT

BY: The Restorative Justice Centre



PLEASE NOTE THAT WE WISH TO MAKE AN ORAL SUBMISSION AND ADDRESS THE PORTFOLIO COMMITTEE AT ANY PUBLIC HEARINGS THAT MAY OCCUR ON 5 FEBRUARY 2008 OR ANY OTHER TIME SPECIFIED, AND ACCORDINGLY REQUEST AN OPPORTUNITY TO DO SO.

### **Introduction**

This submission will focus specifically on issues in the Bill relating to restorative justice.

### **Definition**

The definition in the Bill reads as follows:

Restorative justice means the promotion of reconciliation, restitution and responsibility through the involvement of a child, the child's parents, the child's family members, victims, communities.

This wording has been repeated in the Probation Services Act, 1991, as amended.

At the time of drafting the Bill, there were very few articulated definitions in existence. Since then, many definitions have been formulated. Although there is no single definition that has become universally accepted, there is a great deal of consensus in most of the definitions.

It is our submission that the definition in the Bill is inadequate and should be updated in line with international thinking. It is our view that as restorative justice and its applications are referred to very explicitly in the purpose of the Bill and throughout the text, it is essential that the Bill contain a well formulated definition.

The following proposal has been crafted drawing on the current statement in the Bill, a well-known text in the field<sup>1</sup>, together with the UN Handbook on Restorative Justice Programmes<sup>2</sup>

“Restorative justice is an approach to justice that seeks to involve, to the extent possible, those who have an interest in a specific offence (particularly victims, communities, the child offender and such child’s family members) and to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible. This involves encouraging the acceptance of responsibility, making restitution, taking steps to prevent a recurrence of the incident and promoting reconciliation.

### **Diversion options and sentencing options (sections 58-62 and 73-80)**

Family group conferences, victim offender mediation, or any other restorative justice process which is in accordance with the definition of restorative justice are specifically referred to in sections 58 (7) and 74 and then detailed in sections 61 and 62.

We are extremely pleased that these options have been given such explicit attention and priority in the Bill.

However, given that both the concept of restorative justice as well as its practice is still emerging, it is our submission that it would not be wise to be too prescriptive about the details of the applications. This is all the more pertinent in view of the fact that it is widely accepted that traditional African justice contains many practices that are restorative, and we believe the Act should allow for such practices to be integrated into the administration of child justice where appropriate and possible. Furthermore, since the original drafting of the Bill, Minimum Norms and Standards for Diversion have been published by the National Department of Social Development which contain a reference to restorative justice processes. In addition, a civil society grouping, the Restorative Justice Initiative Southern Africa has developed detailed Practice Standards for Restorative Justice.

Our proposal is that:

- sections 61 and 62 be deleted in their entirety
- the references to family group conference and victim offender mediation be removed and that the phrase “a restorative justice process, as prescribed” be inserted into sections 58 (7) and 74 (1) to make provision for regulations about these matters.

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<sup>1</sup> **Zehr, H (2002)** The Little Book of Restorative Justice **Good Books, USA**

<sup>2</sup> **UNITED NATIONS OFFICE ON DRUGS AND CRIME UNITED NATIONS 2006.** Handbook on Restorative Justice Programmes **CRIMINAL JUSTICE HANDBOOK SERIES** available on [http://www.unodc.org/pdf/criminal\\_justice/06-56290\\_Ebook.pdf](http://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf)

