"Challenges regarding the implementation of some provisions of the Child Justice Act: Lessons from South Africa"

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Abstract

The Child Justice Act (75 of 2008) is an important piece of legislation, as it puts forth a separate criminal justice system for children and youth who come into contact with the law, acknowledging that their needs are different to their adult counterparts. While the Act has been perceived by some as one of the best pieces of legislation relating to child justice in the world, challenges in implementation are still experienced in practice. This article explores the challenges involved in the implementation of selected provisions of the South African Child Justice Act and proposes recommendations on how these challenges could be overcome to achieve the overall aims and objectives of the Act. The provisions of the Act this article focuses on include training probation officers as specialised youth justice authorities, pre-trial assessments, accreditation of youth diversion programmes, pre-sentence reports, and restorative justice sentences. With these provisions in mind, the greatest effort is needed in order to advance the overall aims of the Act which seek to promote a rights-based approach to managing children and youth accused of crimes while also encouraging accountability in order to break the cycle of crime. The article offers insights on solving implementation challenges; firstly, recommendations to the employers of probation officers regarding the nature of support and infrastructure they will require to be able to deliver efficient probation services in South Africa; and, secondly, lessons for other countries with a similar socio-economic background to South Africa, on establishing separate laws for managing child and youth offenders.

Key words: Child Justice Act; specialised youth justice authorities; probation officers; pre-trial assessments; accreditation of youth diversion programmes; pre-sentence reports; restorative justice sentences; family group conferencing.

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Introduction

In South Africa (SA), crimes are getting more serious while the offenders are getting younger. As a result of this, there is often public outrage and reigning perceptions that the judiciary is too lenient in dealing with child and youth offenders (C&YOs) who commit serious crimes, often desiring harsher punishment for them. In this context, there is a lack of awareness around the international, regional and constitutional imperatives within which the legal systems of any given country operate (Abdulraheem-Mustapha 2020; Skelton 2018). These international and regional instruments informing the administration of youth justice require judicial systems to uphold the rights of C&YOs and treat them in a manner that considers their age, and the circumstances surrounding the offences committed. In particular, the United Nations Convention on the Rights of the Child (1989) (UNCRC) is the primary international instrument which provides substantial guidance[4] to countries seeking to promote the rights of children and enhance the delivery of rights-based services and programmes (Abdulraheem-Mustapha 2020; Skelton 2018). The UNCRC (1989) and the Administration of Juvenile Justice (1990) (Beijing Rules) provide a framework of minimum standards for the treatment of childrenand this includes those who are found in conflict with the law. The UNCRC is guided by four core principles: non-discrimination, the 'best interest of the child', the right to survival and development, as well as child participation. The UNCRC Article 3(1) states that inall actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the 'best interest of the child' shall be a primary consideration. The 'best interest of the child' is further emphasised by the Constitution of SA (1996), which notes this as a primary consideration. Thus, this principle is overarching, and will therefore be the central consideration of this article.

In light of the above discussion, this article conceptually and theoretically explores certain challenges regarding the implementation of selected provisions of the Child Justice Act (CJA), and proposes recommendations on how they could be overcome to achieve the overall aims and objectives of the CJA. This is of importance because if challenges in the implementation are not identified and addressed, the overall system may be less effective in managing C&YOs, thus, failing to reach the objectives of the CJA, and by extension the UNCRC and the Beijing Rules. By highlighting these implementation challenges we hope to raise awareness among implementers and legislators who seek to establish and implement separate laws for dealing with C&YOs, particularly those from developing countries with a similar socio-economic background as SA. The provisions of the CJA this article will focus on include the following: probation officers as specialised youth justice authorities as stipulated in the UNCRC Article 40 (3), pre-trial assessments (Chapter 5 of the CJA), accreditation of youth diversion programmes (Chapter 8 of the CJA Section 56 (1)–(3), pre-sentence reports (Chapter 10 of the CJA Section 71 (1)-(4), and restorative justice(RJ) sentences (Chapter 10 of the CJA Section 73 (1)-(4).

Brief background to the Child Justice Act

Prior to 1994 and the beginning of a democratic SA, the country was void of legislation that adequately protected children and their rights, particularly those who came into conflict with the law (Singh & Singh 2014). Thus, C&YOs were exposed to harsh prison conditions and deprived of interventions that addressed their particular needs (Singh & Singh, 2014). With the move towards democracy, a great deal of policy reform ensued; including a rigorous process aimed at establishing a criminal justice system specifically for young people (Naidoo & Sewpaul 2014). This was ultimately articulated through the CJA which serves as an essential tool in the management of C&YOs as it

acknowledges that the needs of children are different to those of adults, and thereforeshould be treated and dealt with accordingly (Terblanche 2013). Informed by international instruments as well as the Constitution of SA (1996); the Act seeks to protect children, their rights, dignity and worth, while also encouraging accountability, and appropriate justice proceedings, in order to break the cycle of crime and allow children to become contributing members of society.

Despite having ratified the UNCRC, many African countries still have not established separate legislation specifically aimed at dealing with C&YOs (Abdulraheem-Mustapha 2020). However,SA has succeeded in establishing a separate and formal criminal justice system for C&YOs despite facing similar problems and challenges as many other developing countries in the world. The CJA has become a yardstick for many African countries who desire to have a separate and formal youth justice system, and has been described by Hargovan as "one of the best pieces of child justice legislation in the world" (2013: 25). The words 'youth justice' are used interchangeably with the words 'child justice' to refer to a criminal justice system that is intended to deal with persons between the ages of 10 and 21 years who are in conflict with the law.

Probation Officers As Specialised Youth Justice Authorities

Article 40 (3) of the UNCRC requires state parties to not only establish laws and procedures but to also employauthorities specialised in the administration of youth justice. The establishment of specialised services and authorities is important and urgent due to the direct bearing it has on the quality of services that are rendered in the youth justice system. In the past, generic social workers who were registered with the South African Council for Social Service Professions (SACSSP) and under the employment of the national Department of Social Development

(DSD) were designated to provide a range of probation services according to the Probation Services Act 116 of 1996 and the Probation Services Amendment Act 35 of 2002 as amended. However, the challenge regarding generic social workers rendering probation services to the courts came under scrutiny when the re-drafted Child Justice Bill 75 of 2002 was brought before parliament on the 5th to 6th February 2008 for the final round of public hearings in SA. One of the authors participated in these hearings in his capacity as a member of the Driver Group of the Child Justice Alliance. The Child Justice Alliance is a lobby group and inter-organisational coalition made up of NGOs, CBOs, academic institutions and individuals who campaigned for the Bill and the transformation of child justice in SA. After extensive deliberations a general consensus was reached amongst all role-players that social workers who want render probation services need to acquire specialised knowledge and skills over and above their four-year generic Bachelor of Social Work (BSW) Degree.

Similar challenges regarding specialisation of probation services have been experienced in other developing African countries such as Botswana and Namibia (Lucas & Jongman 2017), while boththe United Kingdom and the United States of Americahave implemented specialised training forPOs (Duka2017). Duka (2017) believes, and we concur,that probation services should beperformed by highly qualified specialists who participate in continued professional development in relation to the latest best methods and models in probation practice

re-trial assessments as mandated by Chapter 5, Sections 34-40 of the CJA. Section 34 states every child who is alleged to have committed an offence must be assessed by a probation officer. However, it has been identified that there are not enough POs to conduct pre-trial assessments (Sibisi & Warria 2020; Dlamalala

2018). Adifficulty regarding the completion of pre-trial assessments within the prescribed 48 hours after arrests of as required by the CJA. These challenges have also been attributed to high caseloads of POs which often delays the processing of C&YOs (Sibisi & Warria 2020; Sauls 2018; Dlamalala 2018). This, unfortunately, infringes on the rights of C&YOs (Sauls 2018; Badenhorst 2011). Therefore, if pre-trial assessments are not conducted as required by the CJA, the objectives of the Act, and the 'best interest of the child' may not be realised.

ACCREDITATION OF DIVERSION PROGRAMMES

Diversion is a central feature of the CJA. The Beijing Rules state that in matters relating to child offenders, the central focus of child justice is to prioritise diversion of child offenders out of the criminal justice system as early as possible, either to the welfare system, or to suitable diversion programmes run by competent staff. In ensuring that high standards are maintained in the diversion practice, as well as holding diversion service providers accountable, Chapter 8, Section 56 of the CJA requires the accreditation of both diversion programmes and service providers. Section 56 No 2 (ii) states that the cabinet minister responsible for social development must develop and maintain a system for accreditation, as prescribed, of programmes for diversion and diversion service providers. This implies that a prosecutor, an inquiry magistrate or a child justice court may only refer a matter for diversion to a diversion programme and diversion service provider that has been accredited in terms of Section 56 and has a valid certificate of accreditation. To enforce this, the national DSD formulated a policy framework for the accreditation of diversion services which is implemented by all provinces in SA (Department of Social Development 2010).This policy frameworkoutlines a total quality management structure for the accreditation, quality monitoring and improvement of diversion service providers and programmes. While this policy framework has good intentions,

significant challenges arise in practice.

According to the Inter-Department Annual Reports on the Implementation of the CJA (2018/19) there are insufficient youth diversion programmes on offer in SA (Department of Justice and Constitutional Development Department [DOJCDD] 2019). In the literature related to the application of the DSD framework for the accreditation of diversion services, several challenges have been identified. Firstly, the system of accreditation and the linked processes have been reported to be complex, time consuming, costly, and labour intensive, especially for already under-resourced NGOs (Badenhorst 2012; Berg 2012). Secondly, varied

approaches across different provinces resulted in different outcomes due to the nature in which each provincial site's verification and quality assurance committees operated (Badenhorst 2012). This often resulted in discrepancies whereby the same youth diversion programme received accreditation in one province but denied accreditation in another province in SA (Badernhost 2012).

The third challenge relates to the accreditation processes varying between youth diversion programmes offered by NGOs compared to those offered by the government through the national DSD (Berg 2012). The final challenge relates to a strong urban bias in resource allocation that led to diversion accreditation requirements that are too firm thereby limiting the availability and accessibility of services which could inadvertently discriminate against C&YOs from rural or under resourced communities (Doncabe2013; Berg 2012). Consequently, whilst some significant progress has been achieved in the accreditation of youth diversion programmes and service providers in the urban areas, not much progress has been made in the rural areas of SA (Doncabe 2013; Berg 2012). Similar challenges have been noted in Namibia, with the majority of diversion programmes only accessible in urban areas (Martin 2017).

The above noted challenges have a direct impact and influence on the number of programmes available and thus, the number of C&YOs who are able to access diversion programmes.It is important that C&YOs should not be inadvertently discriminated against, in terms of access to intervention programmes, as non-discrimination is one of the core principles of the UNCRC. Furthermore, diversion is aimed at promoting RJ, encouraging accountability, the promotion of reconciliation, and reducing the risk of reoffending by increasing young people's understanding of the impact of their actions and crimes (Berg 2012). Such positive

outcomes may not be achieved if access to diversion services in not equal across the country.

One of the authors of this article once served as a member of the youth diversion programmes accreditation committee for four years in one of the provinces in SA. In his experience as a committee member he observed that whilst the accreditation of diversion programmes is a noble idea and a useful policy, it would seem the drafters of this policy did not consider a number of possible implications which would make it difficult for the expansion of youth diversion programmes in SA. Most applications failed or took too long to acquire full accreditation for their diversion programmes and/or as diversion service providers since these were accredited separately. The authors concur with the DOJCDD 's (2019) Inter-Department Annual Reports on the Implementation of the CJA (2018/19) which links most of the challenges to high expectations as outlined in the accreditation criteria of the policy. Hence a plan has been put in place to review thispolicy with the hope to increase the number of youth diversion programmes across SA and especially in the rural areas (DOJCDD 2019).

PRE-SENTENCE REPORTS

In order to bring into effect Section 28(2) of the Constitution which states thata child's best interest is of paramount importance in every matter concerning the child including those who have been convicted by the court of law. Section 71 (1) *(a)* of the CJA puts forth that a child justice court imposing a sentence must request a pre-sentence report prepared by a PO. To ensure that pre-sentence reports are considered by the sentencing court, the Act specifies that should the court decide to impose a sentence different from the one recommended in the pre-sentence report, the presiding officer must put in record the reasons for doing so. In this case, the court can dispense with a pre-sentence report if the child is convicted of a minor offence, and the delay in

obtaining one would cause prejudice or undue hardship to the child. Undue hardship may be experienced when C&YOs remain in custody for longer than necessary, thus, having their rights infringed upon. This could expose C&YOs to conditions and environments which may be harmful, including inadequate infrastructure, and an increased risk of exposure to violence due to overcrowding or abuse by others (Baughman 2017, Doncabe 2013). On the other hand, if the child is to be sentenced to a child and youth care centre (CYCC) or prison, the case cannot be finalised without a pre-sentence report. Therefore, the PO must complete the report as soon as possible but not later than six weeks following the date on which the report was requested, in accordance to Section 71(2) of the CJA.

It was found, however, that POs often postpone submitting their pre-sentence reports to the courts due to incomplete pre-sentence investigations, often linked to their high caseloads(Dlamalala 2018; Sauls 2018). Additionally, when the reports are completed and submitted many courts were generally not satisfied by the standard and quality of the reports (Sibisi & Warria 2020; Terblanche 2013). Poor pre-sentence reports have been attributed to a lack of specialised training and skills in probation services amongst POs (Sibisi & Warria 2020; Sauls 2018). This highlights a significant failure in promoting the 'best interest of the child' which is the very objective of the CJA (Sibisi & Warria 2020; Badenhorst 2011).

RESTORATIVE JUSTICE SENTENCES

RJ sentences seek to promote the involvement of the families of both the offenders and the victims, as well as the community, where appropriate, in the child justice system in SA. Section 73 of the CJA makes provision for three RJ sentences, namely: family group conference (FGC) [Section 1 (a)], victim-offender mediation [Section 1 (b)], or any other RJ process [Section 1 (c)]. In probation practice, we often prefer the FGC since it involves families, thus maintaining the potential to strengthen family bonds

(Kim 2020; Roy 2020). While RJ sentences are a great step towards the realisation of a RJ approach in dealing with C&YOs, challenges anticipated in the application of RJ sentences within a retributive justice context remain. The challenges that are explored in this article regarding the application of FGCs include: understanding of RJ, skills necessary for effective facilitation of FGCs, too young and/or unwilling victim, coercion, community involvement, and timing of the family group conference.

Understanding of restorative justice

The values and principles of the CJA,as reflected in the Preamble, state that the Act creates a separate criminal justice and procedural system for children, entrenching the principles of RJ in the criminal justice system. The way an individual conceptualises RJ is important, because it has implications for practice. For instance, Gxubane (2014) who explored perceptions among youth justice service providers in SA, found that magistrates and prosecutors conceptualised RJ as a process in its purest form which involves direct mediation between the victim and the offender. Such a limited understanding of RJ is a cause for concern. More concerning is that the CJA seeks to entrench the principles of RJ in the management of young offenders in SA in general. In their attempt to give effect to aRJ approach in the management of C&YOs, those with poor understanding of the concept may cause more harm than good. Gxubane (2014) further uncovered that prosecutors were assisting in the facilitation of some RJ processes due to a lack of social work manpower. He argues that even though prosecutors had good intentions, their facilitation of mediation processes, however, could do more harm than good (Gxubane 2014).

The application of RJ needs a specific set of skills and preparation of both parties before the encounter. Considering this, when RJ processes are facilitated by prosecutors the victim's and/or the

offender's process rights could be compromised (Kilekamajenga 2018; Louw & Van Wyk 2016). They might perceive the mediation as a court order and feel duly obliged to participate in it, even if they do not agree with it, because prosecutors are generally presumed to have authority due to their position in court. It is therefore left for one to wonder how a mediation process that may be imposed is likely meet the needs of both victim and offender. The authors, hence, have serious reservations about prosecutors referring matters to RJ processes and mediating the encounters with no training on the philosophy, principles and facilitation of RJ processes.

Skills necessary for effective facilitation of family group conferences

Section 53(7) of the CJA makes provision for a RJ sentence option and Section 61(3) makes provision for facilitation of anFGC by a PO or diversion service provider. Facilitation skills have been identified in the literature as one of the core requirements for effective facilitation of RJ process, particularly in cases where there are power imbalances due to the great harm, rather than healing, that can result if the facilitator is not skilled (Gxubane 2016; Van Wyk 2015). Consequently, facilitators of RJ processes who assume that victims and offenders can simply be brought together and reconciled without careful preparation of both parties first, are cautioned (Gxubane 2016; Van Wyk 2015). Mediation processes such as FGCs require trained and competent facilitators to maximise their chances of effectiveness (Roy 2020; Gxubane 2016). Additionally, Section 73(4) of the CJA requires POs to monitor and report on the outcomes and compliance with the plans agreed upon at the FGCs. This is further supported by Slater, Lambie and McDowell (2014) who also identified the need for trained individuals in delivering services to C&YOs.

Too young and/or unwilling victim

A victim of crime is placed at the centre of justice in the application of FGCs,in line with the fundamental principles and philosophy of RJ theory. It therefore presents a huge challenge if the victim is unwilling or unable to participate in the FGC processes. This challenge needs to be highly anticipated in the child justice system, considering that most of C&YOs' victims are likely to be children younger than them. The victims and/or sometimes their families may be reluctant to participate in FGCs for various reasons including the avoidance of secondary traumatisation. In some instances, the victims may be sceptical to meet their offenders due to huge power imbalances between them and their offenders, especially in cases of a sexual nature. It is argued that it is especially in cases relating to sexual assault that skilful and well-trained facilitators are needed, given the effect of such crimes and the amount of grief and pain they may cause (Gxubane 2016; Mercer & Madsen 2015). For example, Gxubane (2016) found that the magistrates and prosecutors who participated in his study insisted that they would proceed with authorising a diversion order without approval from the victim, as required by the CJA, if the victim's unwillingness is unfounded. The inference that can be made from such findings is that this approach is likely to be applied when RJ sentences are considered appropriate by the court, without the consideration of the victim's views.

Coercion

Participation of all parties in an RJ process should be voluntary in accordance to the principles of RJ theory. RJ sentences, therefore, seem to be contradictory to the philosophy underlying this approach to justice since they compel both the offender and the victim to participate in an encounter which they may not be interested in being part of. Van Ness and Strong (2015) pose a very important and appropriate question when they ask: “When such

involvement is not forthcoming, however, what should happen?"

As a way of illustrating this controversial yet genuinely critical issue in the application of RJ, Van Ness and Strong (2015) compare how the retributive and RJ approaches operate to ensure the participation of offenders and victims. They note that, in terms of current criminal justice procedures, both victims and offenders are strongly coerced to participate in the criminal investigations. Such coercion assumes that not all offenders will participate willingly in the trial process or in serving their sentences in full. They also point out that not all victims will cooperate in the prosecution of their offenders as they often must be subpoenaed to testify at trial. Van Ness and Strong (2015) continue to argue that "the government should have the authority (as it does today) to subpoena the victim as a witness". This should be handled in as protective and supportive a manner as possible, "so that the victim's participation, though coerced, will still contribute to a measure of restoration". Nonetheless, they do emphasise that even though subtle coercion may be necessary, it should be avoided whenever possible. To ensure offenders' participation in RJ processes, Zehr (1990: 197) also remarked that "(o)ffenders often need strong encouragement or even coercion to accept their obligations". Although subtle coercion may be necessary, according to Van Ness and Strong (2015), it should be avoided whenever possible.Bercroft (2017) noted that in New Zealand, victims attendance of FGCs remains low, however in a survey conducted, the majority of those who engaged in FGCs felt that their needs were met. For this reason it is important for victims to be encouraged, without coercion, to participate as engagement of this nature is of importance for restoration for both the victim and the offender (Bercroft 2017).

Community involvement

The objects of CJA as set out in Section 2 makes provision for the

use of diversion and two objectives of diversion include the promotion of reintegration of the child into his or her family and community, and promotion of reconciliation between the child and the person or community harmed in accordance to Sections 51 (d) and (g) respectively.The principle of community involvement assumes that in a society there are groups of people who share a common vision and take care of each other as members of these communities. Whilst it may have been like that in the traditional pre-colonial and pre-industrial era, community ties have been eroded with the emergence of powerful social forces such as industrialisation, capitalism and urbanisation (Gxubane 2014). Due to the fact that the CJA is embedded in the principles of RJ, it desires to involve the communities, as far as possible, in matters relating to C&YOs. Therefore, similar to the role of the victim, the community needs to play a pivotal role in the application of FGCs according to Section 73 of the CJA.

RJ recognises that we are all part of a human family and therefore responsible for each other. If any member of the community has offended another, we all need to be involved in dealing with the aftermath of the crime since both the victim and the offenders are members of the same community (Gxubane 2018; Abrams & Snyder 2010). Therefore, the process of dealing with the crime needs to support the reintegration of both the victim and the offender back into the community (Gxubane 2018; Abrams & Snyder 2010). This process requires not only the victims and offenders, but their communities need to be actively involved in the criminal justice process at the earliest point and to the maximum extent possible (Abrams & Snyder 2010; Van Ness 2015). However, community involvement in the application of FGCs can be very challenging in practice. Gxubane (2014) cautions FGC practitioners that families, in many instances, do not want other members of the community or even the extended family to be aware of and/or to interfere in their private matters

particularly regarding sensitive issues such as sexual offences

Timing of the family group conference

The CJA Sections 61(2) (a) and (b) CJA makes provision for a child to appear at a FGC convened by a PO within 21 days, and for the PO to take steps to ensure that all persons who may attend the conference are timeously notified of the date, time and place of the conference. Gxubane (2016) asserts that one of the major factors that could influence the success or failure of RJ encounters is their timing. The preparation of both parties is one of the most critical elements that needs to be considered to ensure the successful implementation of the FGC (Steyn & Sadiki 2018; Gxubane 2016). It is proposed by some scholars that victims of serious offences need time, with perhaps up to a year passing before mediation is attempted (Zebel, Schreurs & Ufkes 2017; Pemberton 2012). On the other hand, Umbreit and Bradshaw (1997) argue for the contrary and found strong victim support for holding mediation sessions sooner rather than later. Clearly the above-mentioned provision which requires the PO to convene a FGC within 21 days is problematic as in some cases the victim and/or offender may not be ready to engage in the RJ process. If individuals are pushed into this process too soon harmful effects such as re-traumatisation may occur, thus hindering the achievement of the goals of the RJ process and the CJA.

SUMMARIES & RECOMMENDATIONS

This section first provides summaries of the challenges that have been discussed above and thereafter proposes recommendations on how these challenges could be overcome to achieve the aims and objectives of the CJA,and in promoting the best interest of the C&YOs.

Specialised youth justice authorities

It was revealed in this article that not much consideration has been made in SA to ensure that all professional role-players who work in the administration of child justice become specialists in accordance to the Article 40 (3) of the UNCRC as discussed above. While some progress has been made to recognise probation services as a specialised field of social work, not much has been achieved to consolidate this through training and education to provide a sufficient number of social workers who would be able to register as probation services specialists with the SACSSP. It was emphasised that the specialisation of probation officers needs to be addressed soon because it has a direct bearing on the quality of services that are rendered to C&YOs, their victims and their families. More important is the requirement that only social workers who are registered with the SACSSP as probation service specialists can be allowed to work in the child justice system in SA.

Pre-trial assessments

and that they need to be conducted properly within 48 hours following the arrest of C&YOs; however, the application of this provision has been impossible due to the shortage of POs and this infringes on the rights of C&YOs.

Pre-sentence reports

It was argued that there are not enough POs available in SA for conducting pre-sentencing investigations andproviding pre-sentence reports to the courts. Additional concerns were identified regarding the poor quality of pre-sentence reports which has been attributed to a lack of specialised training and skills in probation services as well as a failure by POs to submit the pre-sentence reports within the specified time frame.

Accreditation of diversion programmes

There seems to be a consensus that the accreditation of diversion programmes and service providers is a necessary policy to ensure that standards are maintained in the rehabilitation of C&YOs in SA. However, if the policy makes it difficult to increase the number of diversion programmes then it needs to be reviewed.

Restorative justice sentences

The discussions have shown that whilst RJ sentences are a great step towards the realisation of an RJ approach in dealing with C&YOs in SA, their implementation raises several philosophical and practical concerns. The application of a RJ process based on a poor or limited understanding of it may cause more harm than good. Facilitation skills have been identified in the literature as one of the essential requirements for effective mediation of RJ process, particularly in cases where there are power imbalances posed.

Unwilling victim and coercion

The discussions on the application of RJ, where the victim is too young and/or unwilling, along with the coercion ofparties to participate in FGCs raises serious philosophical and practical concerns and challenges. Seeing that the courts impose RJ sentences without the approval or perspective of the victims,the recommendations which are proposed in this article are in line with Zehr's (2002) continuum of RJ frameworkfor experimenting, evaluating, reflecting and learning how far practitioners can be innovative in the practice of RJ without compromising its integrity.

Community involvement

The discussions have shown that there are many benefits of community involvement in FGCs in line with the objectives of the CJA, which seek to involve the communities in as far as possible in the child justice system. However, the application of this provision is often challenging for various reasons as discussed above.

Timing of the family group conference

It was established in the discussions that one of the major factors that could influence the success or failure of RJ encounters is their timing, with the CJA requiring that FGCs take place within 21 days of the court order being issued. It is preferable, as elaborated on earlier, that both parties need to be prepared for the successful implementation of the FGC. There seem to be mixed views regarding the most appropriate time for convening an FGC with some scholars believing that FGCs need to be convened soon after the offence, and others advocating forup to a year after.

In light of the above conclusions the following **recommendations** are proposed:

For education and training

- More institutes of higher learning need to design a degree curriculum and offer a four-year degree in Bachelor of Probation Practice (BPP). This would be a relatively shorter and meaningful route to specialisation in probation services, which could be attractive to prospective social work graduates and this would ultimately help to increase the total number of POs in SA.
- Institutes of higher learning that previously offered postgraduate qualifications in probation services such as the University of Fort Hare and University of Johannesburg need to consider re-activation of these degree offerings. During the time of writing this article, the

University of Cape Town was the only university offering postgraduate qualifications in probation practice in SA.

- The national DSD should collaborate and engage in strategic planning with institutes of higher learning to offer more postgraduate programmes in PO practice; thus, allowing graduates to register with the SACSSP as specialists in PO practice, which would increase the number of POs in SA, as well as the quality and competency of the work.

Training in restorative justice

- All role players and those considering becoming facilitators of RJ processes need to undergo in-depth training on RJ theory and practice. The national DSD could approach social work academics who specialise in RJ to design and conduct the training.
- Universities could provide the above-mentioned training programme as a short course or a module which is open to any university undergraduate students who may be interested in it.

For the Department of Social Development

- Needs to prioritise the employment of social workers who hold postgraduate qualifications in probation practice, provide bursaries for social workers to further studies in probation practice at a Master's degree level, and provide salary incentives for these advanced skill levels.
- Needs to negotiate with the national treasury for more funding to specifically provide salary incentives which would attract POs to work in rural areas.
- Needs to employ more POs to ensure that their workload is manageable, thereby providing the courts with pre-

sentence reports within the timeframe prescribed by the CJA.

- Needs to embark on a strategic drive to strengthen the supervision of POs by recruiting social workers who hold at least a Master's degree in probation services, and who have a minimum of two years direct practice experience in the field of probation services in SA.
- All POs' pre-sentence reports must be vetted by their supervisors or line managers and/or presented to a plenary made up of other POs and supervisors in probation services before they are presented at court. This will hopefully help to identify problematic areas and gaps in the reports, and address these before the reports are submitted and presented at courts.

For Practice

- Practitioners who intend to convene a FGC need to do so with caution and careful consideration of its *timing,* and the *readiness of both parties* to engage in such an encounter. Thus, turnaround time for convening of FGCs according to the CJA, currently 21 days, needs to be amended to a year before the FGC is convened. Such an amendment would make FGCs more appropriate as a condition, which could be attached to suspended or postponed sentences rather than as a stand-alone sentence.
- FGC practitioners should be mindful about family dynamics as the family reserves the right to privacy and this needs to be respected.
- POs need to identify specific members of the extended family or community who have a special relationship with the C&YO where it has been identified that the C&YOs do not have a good relationship with their family. Additionally,

the PO needs to advocate on behalf of the C&YO when requesting the identified person to participate and provide social support to the C&YO in the FGC. This is very important considering that most C&YOs often have poor and dysfunctional relationships with their parents or families because of their antisocial behaviour and criminal tendencies.

- The FGC coordinator should be flexible and ascertain from the unwilling victims whether they would prefer to get involved in alternative ways, without having direct contact with their offender.
- In addition to their right to refuse getting involved at all, the victim may consider delegating a representative to speak on their behalf at the FGC, attend some part of the FGC, send information through a letter that could be read, ora video/audio message to be played during the FGC.
- A victim may choose to participate by phone, or observe the FGC through a closed-circuit video link and be supported in another room by their social worker or any person they trust. During this process the victim may take down notes that could be read to the offender and the FGC. Alternatively, secondary victims such as family and friends may fruitfully participate in FGCs without the primary victim's presence, in what Gxubane (2016) notes as a 'semi-FGC'.
- The offenders who are reluctant to participate in FGCs should be persuaded by POs and be made to understand the potential benefits of participation not only for themselves, but their families as well, and they should also be made aware about the possibility of the court considering a different sentence which may be harsher than an RJ sentence.

For Community education

- Considering RJ is often perceived as too lenient,POs need to create awareness, eradicate fear, misunderstanding and ignorance about RJ through workshops and awareness campaigns in the community.

For Policy and Research

There is a need for research to be carried out under the auspices of the national DSD to explore and identify factors which contribute to both successful and unsuccessful outcomes in the applications for accreditation. This research should include perspectives from both the diversion service providers, and diversion accreditation committee members across SA. The findings & recommendations of this study can be used to:

- Formulate a framework in which the diversion accreditation policy could be reviewed in line with the plans of the DOJCDD (2019) as stipulated in their Inter-Department Annual Reports on the Implementation of the CJA (2018/19).
- Inform a standardised and consistent way the applications by diversion programmes and service providers are assessed across all provinces,from government departments to NGOs that operate in this field in SA.
- Inform a training programme designed and conducted by the national DSD for diversion accreditation committee members across all provinces ensuring a standardised approach to assess all applications in a fair and consistent manner.
- Inform the revised diversion accreditation policy to cater for specific challenges unique to rural areas ensuring enough diversion programmes are available.

Consequently, C&YOs from rural areas will benefit from the provisions of the CJA like their counterparts in the urban areas.

CONCLUSION

This article has explored some of the challenges regarding the implementation of selected provisions of the CJA, and proposed recommendations on how the identified challenges could be overcome to achieve the overall aims and objectives of the CJA. The provisions of the CJA this article focused on included probation officers as part of specialised authorities in the administration of child justice, pre-trial assessments, accreditation of youth diversion programmes, pre-sentence reports, and RJ sentences.The article has shed light on implementation challenges and possible solutions to overcoming them with the intention of offering some insights firstly, to the employers of probation officers regarding the nature of support and infrastructure that will be required to deliver efficient probation services in SA. Secondly, as the main lessons from which other countries could learn from in relation to potential challenges such as establishing specialised youth justice authorities which are properly funded, trained and resourced, formulation of effective diversion accreditation policy; and applying an effective RJ justice approach in the management of C&YOs.

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