

NICRO Non-Custodial Sentencing Colloquium

25th March 2011

Melrose Arch,
Johannesburg

Colloquium Documents



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Agenda

Date: Friday 25th March 2011

Time: 09:00 – 15:00

**Venue: Protea Hotel Fire and Ice: Melrose Arch. Whitely St. Melrose Arch,
Johannesburg.**

Item	Time	Person	Topic
Tea on arrival	08h30 - 09h00		
Welcome	09h00 - 09h15	Soraya Solomon: CEO of NICRO	Welcome. Housekeeping.
Guest Speaker	09h15 - 09h35	Deputy Minister of Justice and Constitutional Development Mr. Andries Nel	
Video	09h35 - 09h55	None	NCS Video
NCS: Evidence Based Practice with Q&A	09h55 - 10h35	Arina Smit: NICRO Programme Design and Development Manager	NCS and Behaviour Change: What Works and Why?
Tea and Coffee	10h35 - 10h50	NA	Break
Panel Discussion	10h50 - 12h10	1. Basil King (Justice College) 2. Pieter du Plessis (Magistrate) 3. Venessa Padayachee (NICRO) 4. Dr Tertius Geldenhuys	Offender rehabilitation: The court's responsibility or not?

Item	Time	Person	Topic
		(SAPS) 5. John Clark (Private social worker)	
Lunch	12h10 - 13h10	NA	Break
NCS Presentation	13h10 - 14h30	Regan Jules-Macquet :NICRO NCS Project Manager	NCS Service Progress and Challenges
General Q&A	14h30 - 14h55	NICRO	
Thanks and close	14h55	NICRO	

Attendees

Name	Employ
Mr. Morne Bond	DCS CommCor: SOCIAL REINTEGRATION: JHB
Alida Boschhoff	NICRO
John Clark	Social Worker
Anton Crouse	LASA
Victor Dikotla	LASA
Mr. Pieter Johannes du Plessis	Senior Magistrate Protea Magistrate's Court, Soweto
Major General (Dr) Tertius Geldenhuys	Former Law Professor and current SAPS legal trainer
Thea Geldenhuys	NICRO Shoshanguve worker
Noni Jadezwi (Alida)	Judiciary - Soweto

Name	Employ
Regan Jules-Macquet	NICRO
Basil King	Justice College
Professor S Lötter	Criminal Law: Unisa
Ms. Mpho Mamosebo	Senior Magistrate Criminal Courts
Adv Patricia Mashabane	NPA
J.V Mbamali, ADV.	Directorate: Child Justice and Family Law, National Department of Justice
Hlengiwe Buhle Mkhize (Deputy Minister Corrections)	Deputy Minister Corrections
Remembrance Mokwena	NICRO
Mrs D Mothiba	FAMSA
Upkaar Mungar	Legal Aid
Adv Mabedle Lawrence Mushwana	SAHRC
Mr, Megan Naidoo	Magistrate Pretoria North
Vanessa Naidoo	RJC
Sonia Naudé	Senior Prosecutor
Andries Nel	Deputy Minister of Justice
Ms Pritima Osman	Snr. Legal Admin Officer: Child Justice and Children's Courts National Office Dept. of Justice and Constitutional Development
Betzi Pierce	Regional Manager
Bev du Plooy	NICRO staff
Mr. Sydney Ramasodi	DoJCD
Tizina Ramagaga	ISS
Daphney Rangaka	Chief Prosecutor: National Office NPA
Mrs Eva Senyakoe	DCS CommCor: SOCIAL REINTEGRATION:

Name	Employ
	JHB
Arina Smit	NICRO
Soraya Solomon	NICRO
Francois Steyn	Lecturer: Department of Social Work & Criminology University of Pretoria
Shanaaz Stoffberg	NICRO staff
Ms Julia Maralack-Scholtz	DSD, NW, Director Probation
Nicola Whittacker	LAWYERS FOR HUMAN RIGHTS: Refugee & Migrant Rights Programme
Moliwe Mmamekgwa	DSD
Lwazi Ngodwana	NPA
Patricia Mako	NPA

Please note that the discussions were recorded by Transcription Africa. All reasonable attempts to ensure accuracy of transcriptions have been taken. Some editing and correcting has taken place. NICRO does not assume any liability for inaccurate transcriptions.

Deputy Minister's Speech

Ms Soraya Solomon, other members of the NICRO board, members of the judiciary, senior government officials, representatives and NGO's, ladies and gentlemen, thank you very much for affording me the opportunity to be here to talk about how, together we can ensure the objective that all in South Africa are safe and that they feel safe.

That is a massive undertaking that is going to require a concerted effort on the part of all relevant Government parties, but also working very, very closely with civil society. But, before that, maybe also to add my voice of congratulations to NICRO. I have the very good fortune of being there, when the birthday candles were lit and the cake was cut in Cape Town.

And it was a really wonderful occasion. To be with so many people over so many decades. It made a contribution to work with NICRO in transforming our criminal justice system. I was also very happy because I have the privilege of playing a small part with NICRO, not as a chairperson, I was a member of the advisory board in Pretoria years and years ago, when I still worked at Lawyers for Human Rights.

And during the time that I worked at Lawyers for Human Rights, I worked specifically on the death penalty and the penal reform. So I am glad to have the opportunity to work together quite closely with NICRO on prison matters and, in certain instances, even on the death penalty process. So it is always a pleasure to be with NICRO and to participate in its activities.

As I have said, I am going to be talking from not just from a justice and constitutional development perspective. I would like to talk from a justice, crime prevention and security cluster perspective. Now a cluster comprises of the Departments of Justice and Constitutional Development, police, National Prosecuting Authority, Correctional Services, state security, Home Affairs, Defence and Military, Veterans, as well as Social Development.

That cluster has been tasked with taking care of one of our national priorities. Those priorities being education, health, rural development and land reform, job creation, and last but not least, fighting crime and corruption. We are responsible for implementing that priority and the objective that has been set is that all in South Africa must be safe and also feel safe.

Now I think it is important to look at the formulation of that objective. That people should objectively speaking be safe, that the levels of crime should come down. There should be less crime in our society, but also that people should have a sense of being safe. I think we have seen often that, despite a slow but steady decline in many categories of crime, often people's sense of safety is less, despite the fact that objectively speaking according to numbers, they should be feeling safer.

And I think that is where organisations, such as NICRO, the civil society generally, can play a tremendous role. Many studies have shown that the incarceration of convicted offenders does not always guarantee a change away from a criminal lifestyle. And indeed, it is a truism by now that very often prisons, instead of being centres of reformation and the turning away from crime, can easily act as being universities of

crime or taking criminality to higher levels.

And therefore we, as government, have taken a number of initiatives, a number of interventions that recognise non-custodial sanctions as possible alternative options to combat crime. We recognise that we cannot succeed in our fight against crime unless we form strong partnerships, refined by clear and collective goals.

The justice and crime prevention security cluster represents government's unified and elaborate response against crime. These partners signed a service delivery agreement with the President, which contains the objective to be safe and to feel safe. It also has very definite areas of output by which the performance of the cluster will be measured.

One of those objectives, in that service delivery agreement that we entered into with the President, is increasing finalisation of cases now forged through diversion and alternative dispute resolution, as well as the finalisation of the restorative justice policy framework. In that regard, I am pleased to say that we have made a lot of progress as the justice cluster finalises that national restorative justice police framework.

This policy framework promotes the use of non-custodial sanctions. In terms of that policy framework, we define restorative justice as an approach to justice that aims to involve the parties to the dispute and others affected by the harm, for instance victims, the offenders concerned and community members in collectively identifying harms, needs and obligations, in accepting responsibilities, making restitutions and taking measures to prevent recurrence of the incident.

For us then, restorative justice is our ultimate view as an alternative to the current criminal justice system. Instead it must be seen as a paradigm shift who seeks, demands and supplements current practices in the criminal justice system, to function effectively to ensure increased access to justice by all citizens.

The nature of the decision making process in restorative justice encourages involvement

and dialogue to the greatest extent possible by the parties to determine the responses to the disputes and building up an understanding with the parties. In this way the department and the cluster recognise it is the paramount meeting [*importance?*], it involves offenders in crime prevention as we collectively work towards obtaining our goal in that all people in South Africa are safe.

This national policy framework has been discussed at the level of the Directors General of the JCPS cluster, and discussed on the 1st of February, and unanimously adopted. I think what is very important to stress here is that many elements of that policy framework already exist in our system.

With the adoption of the policy framework, it is not as if we are coming with something brand new, as if we are starting afresh. Many of those elements are already there, they are already being implemented and what this policy framework seeks to do is to provide better coordination and more effective implementation of those elements as well as expanding them further.

We believe that by implementing this we will be giving deserving offenders a second chance of being good and productive citizens of our country. I have also been informed that during April or May of this year, a national consultants' symposium will be held to explore the best practices in restorative justice. It is also at this symposium that civil society will be invited to give inputs on the recently developed restorative justice, our policy framework.

And in particular, the implementation plan that is part of that framework. I would therefore like to urge NICRO, its partners, and all other non-government organisations that are here today to join hands with government in making this policy framework fully responsive to crime prevention and the reintegration of offenders into our communities. I believe that the wealth of experience that NICRO has accumulated over the past decades in restorative justice will add a lot of value to us in that regard.

Non-custodial sanctions will not be viewed as a light form of punishment, like any other sentence that ensures the accountability of the crime committed. Our law provides a wide range of non-custodial sentences which include the imposition of fines, suspended sentences, community service, as well as court orders against the offender. The therapeutic programme is aimed at achieving behavioural change in life skills and occupational [inaudible].

The progressive endeavours and efforts taken by NICRO and their partners in this regard have not gone unnoticed. We want to commend NICRO for the productive part they have maintained with our department and with the cluster as a whole over the years. I have been informed that the "Chance to Change" project by NICRO is now operational in a number of courts nationwide, and has taken great strides in making it easy for the courts to give deserving offenders a second chance improving their position in non-custodial sentences.

I think one of the major success stories that we have achieved recently has been the implementation of the Child Justice Act, in making in real the sentencing options obtained in that Act. The commitment of government, promotion and protection of the constitutional rights of children is being demonstrated by the implementation of the Child Justice Act. This legislation discourages the implementation or the imposition of custodial sentences against child offenders.

It provides for the diversion of child offenders in the normal criminal justice system to a more restorative justice orientated criminal justice system that responds to the special needs of children. However, this Act is by no means intended to disregard the harm caused by crime. It allows the consideration to the harm to the victim and the family, and diversion is considered as a possible option, so that an equitable balance is secured between the rights and responsibilities of the child offender and that of the victim.

This legislation now makes the imposition of non-custodial sanctions as a first option of consideration upon the conviction of the child. It expressly specifies a number of

sentencing options to hold the child accountable for his criminal behaviour whilst observing the importance of protecting his constitutional right, to be treated in a manner and to take into account his age.

With the help of civil society organisations, like NICRO, our courts together with the existing one [inaudible] child sentencing could be done to impose non custodial sentences, like community based sentences that will prove diversion as a solution of the above, as well as correctional supervision. Restorative justice sentences include family group conference, victim offender mediation, fines or alternatives to a fine which may include symbolic restitution, payment compensation, service obligation, or any other option which the child justice court would consider appropriate in the circumstances.

Sentences involving correctional supervision or sentences of compulsory residence of a child in a youth care centre are run by the national Department of Social Development. The postponement and/or suspension of the passing of a sentence, unconditionally or on condition that a restorative programmes is involved upon for the benefit of the child. However, imprisonment should only be considered as a last option.

This new trend in child punishment ought to be appreciated as yet another endeavour to free the prisons of children who is still the future of our country. Not only for children in conflict with the law, but for all vulnerable first time offenders, as part of the implementation of the broader restorative justice programme going forward.

To affect rehabilitation programmes, we need to ensure that adult offenders take responsibility for their crime against society. Your support and [inaudible] has been successful and great in the South African crime and violence environment and added value to our society. Together we can build a truly responsible society.

Maybe I would also like to say that I have had a number of interactions on the issue of restorative justice, participating in seminars at UNISA last year, and flowing out of that a number of interactions in public forums and in the media, and I must say I have been

very, very encouraged by the feedback that I got by participating in things like talk shows and other forum.

I think restorative justice is an idea that the time has come that people are very receptive to the idea. There are many people who do have certain misconceptions and still who consider it to possibly be a soft option. But I think there are many, many others, and, I would venture to say the majority, will be very receptive to ideas of restorative justice and non-custodial sentences, provided those concepts are conveyed in a positive way and people are engaged in positive way on those concepts.

Many times I have participated in talk shows, on radio, on restorative justice and I was expecting to get a torrent of very hostile calls, but instead people who phoned in had agreed very, very much with the restorative justice concept. Many a victim of crime said, "My house was burgled, my family member was murdered, I really felt excluded from that process. Almost [inaudible] was victimised for a second time by the [inaudible] power being a passive observer of the process. And I would really have wanted to be more actively engaged with the person who did this harm to me." And I think that response really became something that we should now take account of.

Maybe, just to conclude, by emphasising the point made by Ms Soraya Solomon in the beginning, in her introduction remarks, in that the issue of fighting crime, ensuring success in our criminal justice system, is something that requires a collective effort. It requires a collective effort of all in government, but more importantly it requires a collective effort of all in our society.

That applies even more so to issues of restorative justice and non-custodial sentences, because by the very nature, what we are saying of those things is that we want to deal with society, we want to make the members of society to be an essential part of that process. And that requires a collective effort from all of us. We appreciate the very good work and relationship that we have developed with NICRO and many other organisations over the years. We would like to strengthen and continue in strength with

the relationship and we wish you very, very well with the seminar.

Unfortunately it will not be possible for me to stay. I hate leaving right after speaking, I generally try to avoid that, but unfortunately today is one of those days where I cannot avoid it. There is a crisis somewhere else in the country that needs attention. But I have been assured that all of the proceedings will be captured, and we look forward to engage with you further. There are senior officials that will be in attendance through the proceedings. Thank you very, very much. And I wish you the best.

Arina Smit's Presentation

TRANSCRIPT

Personally I am not a very formal person that likes formal presentations. It gives me creeps! It makes me feel as if I am in court, standing in the box! So I think in my presentation that I am going to do today is just to be really looking at, just being interactive, providing the chance to answer questions. To answer any questions that people might have, relating to what is it that we are doing in the non-custodial sentencing theme?

I know we have got people here that may do things very different from me, who is a social worker. I think we have got analytical people. We have got lawyers. We have got magistrates, and I think with the interaction during this period that I have been working at NICRO, for the past how many years, it is always like, you know, you have to convince people that what you are doing as a social worker, is actually worth something.

Because somehow, sometimes it is a little bit difficult to understand what we do, other than just talking to people and listening to their sad stories. So I think it is extremely important for me that when you walk away today, people have a clear understanding of

what it is that we are really undertaking. Any questions, any concerns, anything, I am the target today. And you have got the rifles, and I am ready!

I really do not want to deliberate and talk about what works, what does not work. I am sure a lot of you have read a lot around what works when working with offenders and what does not work. There is this cliché that we keep on talking about, saying that prison does not work. Prison does not rehabilitate offenders. We talk about that all the time. But what really does? What makes the difference in a person?

The question I want ask is, what keeps you from doing something that an offender is doing? What is the difference? What is the difference between yourself and the person going to court for committing a murder, hitting somebody, stealing something? And I think that is a question that people really need to think about, because that is where the answer lies.

I am just putting this up. There is quite a nice case going on at the moment, relating to a media article that says "**Rehabilitation did not help paedophile.**" And when we read through the article, there are a couple of things that comes out that is quite concerning. One of the important aspects is the assessment, and how do we get the right people, the most suited people into the right things?

When one is ill and you are diagnosed with an illness, going to a doctor. If he gives you the wrong medication you might not react to that medication. Your symptoms might not go away. Very similar to what we are doing with offenders. If we do not get the right people. If we are not looking at the things that need to happen and are known, and are able to look at it and plan, we actually might miss it, and we might be sitting with a person on our side that could do things again.

We all know that there is a lot of research relating to offender rehabilitation, and that we know that, for instance, imprisonment and putting people in confines, we do that because we want to separate them from society because they are a danger. That is

why we want to have offenders in places with high walls and bars, because they are dangerous.

Rehabilitation specifically, when we look at where we were from NICRO point, specifically we have very, very specific foundations from which we work. We believe makes offenders different, is the mind work differently. They think differently. For an example, a while back there was this announcement in the media where the police person said: "We are going to shoot, and shoot to kill."

My thought was, I would not like to be suspected of stealing something, because I might be dead! What must the offender think? "Well cool, if you are going to shoot to kill, we will have bigger guns, and then we will see who is going to die!" A difference in the thinking, where you and me are scared of going to prison, we can think about it.

People that have had engagements with certain behaviours over a period of time, do not think like that. **"Well, I can go to prison but I will be able to do X, Y and Z. I will get into this gang, this gang will protect me, that guy will do this for me."** The thinking is totally different. So we focus very much on it. Our programmes focus on working on those type of thinking, changing that, looking at a different way of thinking about things, which a lot of our offenders that were in the video actually mentioned.

When we look at the major risk factors, particularly in working with offender behaviour, we have criminal risk factors which are the big risk factors. I know people are saying psychoanalysis does not work. We cannot talk an offender to death to change their behaviour. We need to actively teach people to do things.

There is a lot of research that is set on certain programmes that are not working. For example, there is a lot of written work on wilderness excursions, which is a very debatable aspect, because NICRO has a programme which is based on out in the wilderness.

It comes back to what is it that we do on those programmes? Do we just go and camp and run around in the mountain and come back thinking somebody has changed? Or do we actively engage with the cognitions and the thinking behind what drives the behaviour? The underlying values? The beliefs that we have towards people, towards rules in general?

One of the major things is when we work towards changing the offending behaviour, is that we really have to believe in the potential of human beings. If we do not believe in the potential of people to change, we have a lost battle. So the principles of the profession that we are in features very, very strongly for us. Where our concerns come in, and where I think a bit of challenge is being experienced is specifically at the assessment period.

Once a person is at the sentencing stage in the court, the magistrate or the court would require us to do an assessment to look at whether this person is suitable, whether we have programmes that we can offer this person to assist them to change their behaviour. This is sometimes where most of our challenges are being experienced, and this is now one of those things of working in a system that wants to work fast, swift justice.

During the assessment, one of major constraints, is time. When you look at restorative justice, one of our most important things is getting the buy-in from the victims, and being able to listen to the victim's opinion.

When we are victims of crime, what is our natural response? "Yes, I want that person locked up, because I am angry!" That is a natural human response. If you did not respond like that, I would be wondering because that is a bit odd!

Yes, we want to have that person locked up. I do not want to hear about him not having or having ten children to feed. That is his problem, not my problem. That is what the victims are sitting with. When we start looking at victims and ask their opinion, what opinion are we going to get?

"Lock him up! Throw away the key! And if you lock him up for one year, you are going to hear it from me. Ja! Of course! Look what they do! Look what this person did to me! They end up being locked up for how long? One year. And in the end they are probably only going to sit for three months." That is the victim.

When we do the assessment that is one of the things that we have to work with. We have to acknowledge the victims. This is what victims feel. This is what victims want. I would also want it. If somebody murdered my parents, I am sorry but I think I would also not want to hear about sitting with and offender and listening to what excuses he has to do this. And I think that is one of things also where the crucial part of our work is and our social workers are coming in. It is not necessarily to get the victim to forgive, but to acknowledge where they are at and understand what it is about.

It is only later that I realised when I walked down the street and here rocks up the "mister" that I caught breaking into my car, and I am like: "What are you doing on the street? You are supposed to be in prison?" Then I am realise **"Okay, maybe people do come out of prison at one point. I thought they are going to rot there. It actually does not happen."**

These are issues that need to be addressed with victims during the assessment period. That is why also time is so important, because sometimes victims cannot change those things within a week or two days or three days - it is a process. With the offenders as well, in terms of assessments, time is very important.

When we talk to offenders, when you get the information from them. But you cannot just listen to an offender. They are really good at telling us what we want to hear. They are extremely good at that. Extremely resourceful. A whole lot of potential. You cannot believe it! They are really, really good! Therefore we also have to go to other sources. We need to talk to family members. We need to go to schools. We need to go into communities and see what is this person about?

He says this, but is this what is coming through? All of that gets sent back into the assessment and that is what we would look at. We would look at whether this person will be suitable or not suitable. Obviously with the focus on the risk factors, we look at the factors, we study these factors, the dynamic factors that we are looking at. Whether it is possible to be able to change.

Based on those risk assessments and utilising tools to give us a more statistical view on the probability of behaviour emerging over a time of time again, with the offender, we would make a decision, to make our professional judgments in relation to that. This is basically how our assessments work.

In programmes, it is really very difficult to tell you what it is that we are doing in programmes. How do we change people ... really change them. if you not in it, it is difficult to get the idea, because it sounds like you are just talking. It sounds like you are just doing things. But, once again, I think what is important to mention is the basic foundations on which our interventions are based.

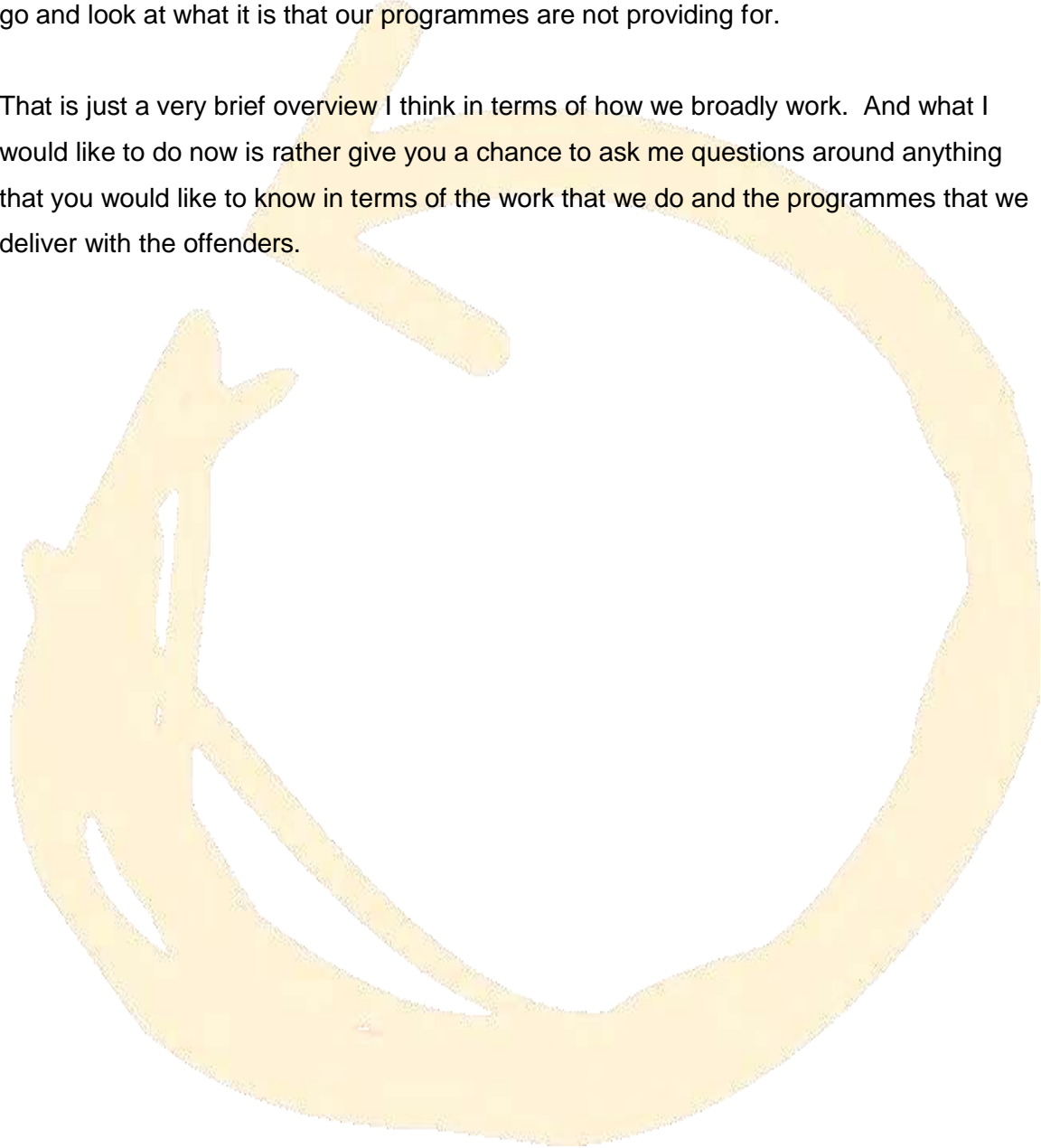
NICRO's interventions are strictly designed and developed around evidence based context. We have to continuously look at reevaluation of our programmes. We do that within and while the person is in programmes in different ways. We utilise standardised pre and post tests which are scales and inventories that measure different things, in terms of people's attitudes, in terms of their cognitions. We look obviously also at what people tell us.

We know that self reporting is not always the most objective thing for people: "I have changed my behaviour and I am very well now. Thank you very much."

But we do try and combine a lot of different research methodologies and specifically techniques in terms of gathering data that we can look at how people really has changed in terms of, like what we have said, cognisance and behaviour. We really put a lot of effort into doing regular reviews on our programmes. When we think that people's

attitudes do not necessarily change, when they are in certain programmes and one of the aims of the programmes is to change anti-social attitudes towards authoritative figures or towards rules. If we pick up that these things do not happen, then we need to go and look at what it is that our programmes are not providing for.

That is just a very brief overview I think in terms of how we broadly work. And what I would like to do now is rather give you a chance to ask me questions around anything that you would like to know in terms of the work that we do and the programmes that we deliver with the offenders.



ARTICLE USED IN ARINA SMIT'S PRESENTATION

'Rehab did not help paedophile'

March 24 2011 at 10:32am

Former teacher Ian Appleton leaves the Paarl Regional Court. Photo:Neil Baynes



Luvuyo Mjekula

A paedophile convicted of regularly raping a seven-year-old boy over two years should face substantial jail time despite his ill health – and not be sent to a sex offenders' programme that had twice failed to

rehabilitate him.

This was the call of State prosecutor Rialda Jacobs in the Paarl Regional Court yesterday.

The court heard that former teacher and scout master Ian Appleton, 72, had twice been admitted to the Child Abuse Therapeutic and Training Services (Catts), a Cape Town-based sex offenders' programme, but had not lost his urges and raped the boy regularly between 2007 and 2009.

In his guilty plea statement, Appleton had said a game called "aeroplanes" had led to the rape. It involved Appleton lying on the ground and picking the boy up by his waist. He would then land the boy in various ways, either on top of him or next to him.

They had played the game several times.

Yesterday, Jacobs told the court that sending Appleton to the rehabilitation programme again would be of no use and the court would be taking a gamble.

Jacobs said it was time to stop “this whole vicious cycle”.

Earlier, Appleton’s attorney, John Riley, had urged the court to heed the recommendation of Catts director Dr Marcell Londt to sentence Appleton to correctional supervision and the rehabilitation programme as he would not survive in prison.

Londt had said he stood a good chance of rehabilitation in her improved programme.

Riley said that the programme would drastically minimise Appleton’s risk of re-offending.

The statement was met with jeers from a packed court gallery and Jacobs took a swipe at the effectiveness of the programme.

Reading a document describing Appleton’s activities while in Catts, Jacobs said he was allowed to, among other things, visit friends and relatives, go out to sporting activities and society meetings and could have contact with children.

“He was allowed to walk around in Newlands with open access to children. It’s quite alarming what a lovely social life Appleton had while in the Catts programme,” she said.

She said Londt had never clearly explained to the court what had gone wrong with her programme and how it had improved.

Londt had told the court that the current programme was better as it was now research- and evidence-based.

Jacobs said Appleton had committed a “heinous” crime and should be given direct imprisonment despite his health concerns.

The court had earlier heard that Appleton had a history of chronic illnesses, including heart disease, and Riley asked for mercy.

He said the court should consider Appleton’s old age and ill health.

“On top of Dr Londt’s programme, the court can impose a suspended prison sentence,” he said.

Responding to Riley’s statement about Appleton’s back and knee pains, Jacobs said: “His back and knee problems did not stop him from playing aeroplanes with the boy but he is using it in mitigation.”

Riley explained that Appleton had shown remorse for his actions when he pleaded guilty and asked for forgiveness.

He said Appleton had had a difficult childhood and had been sexually abused at a young age.

He said the rape did not fall into the most serious category as there were no physical injuries on the boy.

Magistrate Nomawethu Smile postponed the case to tomorrow for the State to conclude closing arguments and for Appleton to address the court.

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The Panel Discussion

TRANSCRIPT OF THE PANEL DISCUSSION

BASIL KING: JUSTICE COLLEGE

Good morning everybody. Thank you very much NICRO for the invite to this panel discussion. I put together a few slides, just to raise the questions which I know most of the people here, most of my colleagues from the judiciary, we have probably got all the people who are already converted.

There are whole lot of others that need to be here. But, anyway, that aside, perhaps before we get underway, the question for this discussion is who is of the view that it is the court's responsibility for rehabilitating offenders? Show of hands? What I am saying is, is it the court's responsibility or some other entity's responsibility? So let us go back to the court's responsibility? One, two And other entity? Much the same group? I am just worried about what are the others thinking?

My function is to train regional court magistrates, prosecutors as well when the occasion arises, probation officers as well. Vanessa here from RJC has often invited me to speak to her probation officers, that they work with. That is where I fit into, I guess, in this panel discussion and why I was invited here.

On sentencing, generally, there are not many text books available. Some there are, and you will see they are slightly dated. The most recent and popular work is down at the bottom of the list. The 2009 edition has just hit the street, my good friend, Stefan Terblanche from UNISA, is the author and deals with a variety of aspects in that book. The criminal courts that are involved in sentencing, as courts in the first instance are

from magistrates' courts, regional courts and libraries.

On appeal, various high courts, supreme court of appeal and even the constitutional court has recently imposed sentences, having set aside what was possibly originally imposed. The judgements of the courts regularly provided suggestions and guidelines. The cases are endless, so I will not even start with the list of cases. One thing the high courts have said is that seeking precedents for sentence have limited value, save to ascertain broad parameters of the sentencing in practice, of course, because no two cases are alike.

I would say basically no two offenders are alike even though they commit a similar crime. And sentencing is a question of discretion. We attempt to adjust and moderate it to the necessary punishment of crime in a particular case. Some courts have but one option. I know the majority of magistrates have passed through the college and have covered various sentencing as [inaudible] to them, but some just go with "There is only one option. Go to jail, do not pass go, do not collect R200!" That is, as you are aware, a totally different game.

But as at the sentencing stage it is of course no game. Why do some courts consider prison as a first and sometimes only option? Are offenders rehabilitated in prison? A colleague here from Correctional Services will probably know that the act of balance is that procedures have undergone major changes. A prisoner became a sentenced offender, and it is also referred to as an inmate.

What this had done in real terms? In regard to rehabilitation, what does the Correctional Services Act (CSA) cover? The heading to that one indicates that rehabilitation appears twice in the CSA. The first mention is 137, dealing with using NGO's in the process for rehabilitation. The second is in regard to reading material. Other than that, no other mention is made of rehabilitation in the prison as a directive in terms of the Act. Rehabilitating appears only once, and that is in the definition.

And the definition of corrections, it means rendering of services and programmes aimed at correcting offending behaviour and sentencing of offenders in order to rehabilitate them. Of course then, in imposing sentences of imprisonment in the hope that they will be rehabilitated, I should say a wish more than anything else.

The CSA contains various other objectives. Particularly regarding incarceration, what the objective thereof is. Section 50 deals with community corrections. It covers not only correctional supervision as a sentence option, it also covers parolees. Coming back to the court's duties and so on. And English writer once said the following: "A worker is entitled the machinery [inaudible]."

Various of our supreme court and high court judges have commented along similar lines recently. I have had much the same to say. As the Deputy Minister has left, going to listen to the recordings, he will probably hear what I have to say, my main complaint has been there are not enough magistrates in courts to deal with the sentencing process properly. The rest of the Criminal Procedure Act (CPA) set down time lines and procedures religiously and strictly.

First appearance, certain rights have to be explained. At all proceedings, all sections have to be covered as to how to go about it. Trial proceedings, rules relating to [inaudible]. How to follow rules relating to the trial. Coming round to the sentencing chapter, here are your sentencing options. Go with it. Choose it yourself. No strict guidelines.

When you refer back to the Children's Act later, the new Child Justice Act. The new child justice act has some wonderful sentencing options and procedures. Some of them I would really like to see being taken up into the CPA, because it will ensure that courts take an active role in the sentencing process. Again, the problem that immediately is going to be confronted is the already overloaded court roles, that are going to increase as soon as magistrates' time is taken up in the longer stage there.

A friend of mine, Professor Grazer, and I do not know how many of you are familiar with this dear old gentleman? He is retired now happily down in Cape Town. When I last met him he was at UCT, head of the social sciences division and probably handling and training a large number of our probation officers around the country.

He wrote the following in an article in a journal at the time, Crime and Punishment in South Africa. Normally training for magistrates generally does not cover psychology, criminology or applied sociology sufficiently. Judicial officers need the assistance of experts from those fields in order to gain a deeper understanding of the relevant social and psychological forces underlying the offender's behaviour in order to formulate a proper sentence. That is a sentence which will hold maximum benefit for the accused, the victim and society in general.

The magistrate's reliance is the only evaluation of the accused, on his own intuition and on the arguments in mitigation and aggravation by the defence counsel and prosecutor respectively. The sentence is so formulated without having adequate information on the character and personality of the offender, relationships with members of his family and other people as well as the environment from which he comes, and it is an intuitive rather than a scientific process.

By answering questions such as who is the man? What kind of person he is? What factors are contributing towards him acting out? And what is the best possible option which can be made in the case, to ensure that you [inaudible] for the protection of the community and rehabilitation of the offender, are fulfilled. Pre-sentence investigation, which is a factual and diagnostic study of the accused, enable the initial officer to formulate an objection, rational and effective sentence.

By his words, if all judicial officers could be trained, then maybe our correctional officers would not be so over [inaudible]. He also demands as follows. Pre-sentencing investigations should not only be requested by a judicial officer, only when a suspended sentence or probation is being considered, but also when it is likely that a prison

sentence will be imposed.

I mentioned this in another forum recently, particularly a [inaudible] panel which was part of Correctional Services last year, that and again with insufficient number of social workers to assist the courts in this regard, but more so that probation officer's report should be called upon or called for when incarcerating an offender, rather than only when looking at: "Okay, should we keep him out of prison?"

He added that for an effective sentence to prison, a copy of the comprehensive report should be sent to the department of prisons so that they know who they are dealing with. These words were uttered in 1973, more than 30 years ago. Had the courts done enough? What can the courts do? Section 276 of the CPA provides various sentence options that a court may utilise.

Section 297, in addition to that, allows a court certain other options and alternatives to the options. That is postponing the passing of sentence under various conditions or passing sentence, but suspending all or part thereof on certain conditions. There are a variety of options that a criminal court can utilise and [inaudible] around it. I will skip case law that I was going to deal with.

The college has 12 notes on the various sentence options. These are dealt with at all courses for newly appointed district and regional magistrates. The unfortunate situation which I am often told by the attendees, is that whilst I tell them what is possibly best practice, what is available, how it can be utilised, then they get out there and back to their offices, they are going to be told by certain others: "Oh, we do not work that way here!"

There are not sufficient resources, there is not always the help. So, unfortunately, not everything that is sounding good can be utilised in practice. As was mentioned earlier, there are various options, mainly to follow procedures that are a lot like in the Child Justice Act, and it is the accused can be ordered to report back to the court to show his

sentence option is working.

And that is one of those that I prefer seeing in the criminal procedure act as well, because for the main if the court imposes a suspended sentence or correctional supervision, it is left to whoever else to monitor and see that there is compliance. There should be this report back that the court would keep a closer watch, and I am sure that will be a good thing as well. Thank you very much.

PIETER DU PLESSIS: PROTEA COURT, SOWETO

First of all I need to say this is Pieter Du Plessis speaking, not the magistrate, not my colleagues who have been here, this is my opinion that I will be expressing at the end. So just take that into account. I heard the deputy minister of justice say that we should [inaudible] decidedly.

The thing that struck me with that comment is that I feel to start when a person has already been arrested and is in trouble, is a very bad start indeed. Because that person has the threat of incarceration and like it was said by Arina that those people will tell anything, because they have that real threat hanging over their heads, to try and influence people to give them a good report.

But the issue I want to get to is that when somebody has completed a punishment, what needs to follow, as Basil has indicated, and there is punishment that is prescribed but it is not [inaudible] as the rest of the CPA is. Now a punishment is an infringement on the basic human rights of a person. But luckily we, as courts, are afforded that right to interfere with the basic rights of the person, because he has committed an offence.

Now there is seen in our law there are theories that are recognised. The three main

theories, that is our [inaudible] theory, which is a retributive one. Now when I say retribution here, it is not in the sense as was indicated this morning, that is when you speak to the victims of crime and say: "Hey that is not the idea!" The idea is not one of vengeance. It is more a restoration of the balance that has been disturbed. That is the idea behind that theory, specifically.

We have a [inaudible] theory. This one deals with prevention, the deterrence of the individual and/or the society. And then specifically reform as well. Our third theory that is in existence is our combination theory. Now this entails a bit of both.

And this one is the one that is mostly supported by our courts, our appeal court cases in that the magistrates like to quote so much when we are dealing with these cases in court, is that you look at the crime. Especially the seriousness thereof. You look at the criminal. We speak to circumstances. And you look at the interest of society. In other words, how or who in society was affected and how this can be remedied.

Now I did a lot of my research from the book of Professor Snyman. And that is maybe another angle for NICRO to take into consideration. Professor Snyman is of the opinion, and he specifically says on page 24, his fourth edition, that the USA and Britain went the way that we are going at this stage, and that is to reform, and to rehabilitate. They have, however, in the meantime had a swing backwards because they felt that that was not the way to go. They did not see the desired effects, and more and more the case law tends to be in line with retribution, instead of rehabilitation and reform.

Luckily we are the rainbow nation! And I think we can make anything work! The best thing is just to get everybody to be involved in what we are trying to achieve. What it is however of concern to me, and I am not criticising the Minister or the parliamentarians, but I am getting the feeling that sometimes as the Indians say, we speak with forked tongue! The American Indians say that.

We say that the judiciary has a judicial discretion. In other words, when I am deciding on

an appropriate sentence and I look at the crime, I look at the defender, and I look at the influence on society, it is my discretion as to what sentence I am going to impose. But now it gets imposed on magistrate and the judges certain acts and certain legislation. For instance the minimum sentences. Where does your discretion go in cases like that?

It is something that disturbs me to an extent. And I am now going to also go to what Basil said. He spoke about the CSA. The rehabilitation is mentioned twice in that Act. Let us be honest with each other. Rehabilitation costs money and it costs a lot of money. And unfortunately I do not think that the necessary amounts of money is always spent on really achieving the goals that can be achieved with rehabilitation of the offenders.

Now, in my opinion the combination theory is the one I want to go with. It is very important that one strike a balance between those mentioned factors. In other words the crime, the seriousness thereof, the offender's personal circumstances and then of course, the interest of the society therein. The thing that I want to say is there is an Afrikaans saying, it says: "Buig die boompie terwyl hy nog jonk is."

And when we started out I thought that would be the theme of what I am saying here today, although I see the question is, is it the court's responsibility or not? My submission is that we have a social responsibility of prevention that we need to take. And that starts with the parents. That starts with people deciding to have children. In an ideal world I think, if we can get that to work and we can get moral fibre to be there, discipline to be instilled in children from early childhood stage, it will help definitely to a big extent.

Unfortunately we are sitting with cases like it is mentioned where parents are not involved. You sit with cases where there are single parents having more than one child. Having to maintain a family. Having to work so hard that hardly any attention can be given to children. I see more and more in my area there in Soweto, with especially the evictions taking place of families.

The parents die. There is child of 16 or 17 years looking after sibling in a house that was under a bond. The bond cannot be paid anymore. They get evicted from the premises. That is the reality of our situation currently. And to say it starts with parents, what do you do in circumstances like that? It really is a big problem. I am very glad to hear from Soraya that you are going to seriously look at schools.

I am on the governing body, I am the president of my children's school and I must tell you some of the things I see in school is just criminal! And I specifically had to deal with an instance where a matter had been reported to the police, because of the seriousness thereof. And the sexual nature thereof. And the unfortunate thing is, up and until today despite my and the principal's best effort, I have not seen the parent of that child. That is the reality of what is going on.

I am talking about a very decent, not that the others are not decent, but a very decent model C Afrikaans speaking school, with supposedly very good discipline. It is really, really worrying. And I will be very glad if NICRO can make the effort to get into schools. I think it can make a big difference, especially with the preventions.

Community seems to be involved. In Soweto we specifically are involving the CPF's now with our getting involved with the type of sentences that we arrive at there. I hear that NICRO is doing well in Soweto. Another social responsibility is the press. You know you always hear about bad things first. The bad things get all the publicity. You never hear about good things.

Now I am one of those people that will take your arm, when you tell me the criminal justice system is not working, because I do believe that it is. It has got its problems, like any other system. I will concede that. But that is about as far as my concession will go. It works in many ways. The thousands of good things are never reported on, but the one bad thing you will read about it in the press.

And I sometimes wonder if we can take some of these bad things out of the press, if you

will not be able to stop other people in copy catting that type of thing? Or that type of behaviour of going down the same road as that case that was reported? In summary, I want to say that it is not just the government's duty to heal society. I think it is the duty of all of us, communities, government, civil society, everybody is involved to establish strong ethics and laws in our children.

We have structures in our court to refer people to organisations like NICRO, so that we can see that there is sufficient and competent people who can help these people to be reformed and to become good members of society again. Rehabilitation is the way to go, but I think prevention is the most important thing, and, as I have said, I think this is definitely something that is a collective responsibility. Thank you very much.

MORNE BOND: DCS

Good morning everybody. Thank you for inviting me here today. In fact today is the first time that I have had the opportunity to come to such a forum, and the first time that I have had the opportunity in the past to present something! But, anyway, as I have been introduced I do work for the Department of Correctional Services.

I have 17 years experience in that department. Those 17 years consist of 13 years working with [inaudible] court as in the Gauteng office, and [inaudible] as a secretary, and then ten months ago I was transferred to our community correctional centre. And there I deal with those offenders who are on parole, and those who are under non-custodial sentences or community or under correctional supervision.

I have got two jobs at this stage. I am the chairperson of the supervisory community, and as a chairperson. I do assessments and monitor and every now and then be responsible for discipline and looking at ensuring that court orders in terms of programmes and so on are adhered to.

At the courts, I am also the manager of the court assessment officials. Those are the officials who assess the people who have been convicted already and their present sentence given by court. I am the supervisor of that person under Correctional Supervision. What I want to talk about is not really based on any research but my observations and experiences over the years.

I still remember my time at the parole court. I have 15 years at the parole court and at the parole court my main task was to assess how well offenders are once released on their offender rehabilitation programme. We took into consideration crime, sentences, and contributions by victims. We weighed up additional future [inaudible] and this has been decided on suitability for parole.

A few months ago I was transferred to community corrections, and all of a sudden I had to [inaudible]. Because of the difference between working at prison and working at community corrections, is that you deal with different realities.

And it is at this juncture a person can really see what effect rehabilitation of a person has. So what I am saying is that while the community corrections are on at this stage, it becomes one of support and assisting the offender to adapt to life in the community while an offender is serving a sentence.

When one looks at the issue of rehabilitation, I believe that one should do it realistically. Offenders come from families and communities. For this reason, it is not only the department's responsibility, but the responsibility of societies as a whole to become part of this rehabilitation process. After all, at the end of the day, we need to accept those offenders that we send back to prison back into communities.

When an offender starts his sentence in a correctional centre, he will be subject to participate in a rehabilitation programme. We will go to the sentence given, looking at support systems, education and training, intervention in terms of addressing the offence, helping the offender to take responsibility for such behaviour. The underlying thing is to

correct the culture or attitude for taking responsibility for one's actions.

In this process the Department provides a structure for rehabilitation to take place. But the department relies on families, churches, or on organisations and NGOs to assist the partnership. Families play an important role in the process of the rehabilitation, as they can motivate especially the young offenders. In my observation I generally see that offenders are supported by families. And they are generally more likely to participate and they react well to the rehabilitating activities.

Overcrowding and a shortage of personnel in general is a reality that we face in the Department. This is mainly the reason why it is essential that we rely on the help and partnerships of NGO's and other organisations to maximise our opportunities for rehabilitation inside the prisons. Offenders at some point in their sentences are placed on parole, while others are given community based sentences.

They are admitted into our community based division. A sentence plan is started at the operations centre and continues while on parole. Those who are serving in community based centres that came directly from the court, sentence plans are then drawn up for them. As I have stated before, with offenders on parole, one sees the effect of rehabilitation efforts. This is where an offender, through his actions, shows where the lies the internal aspects of the rehabilitation part.

It is unfortunate that while offenders perform well in the structured environment of the correctional centre, many struggle to adapt after being released and to take responsibility for their lives. Some difficulties that I have observed are substance abuse, conflict, conflict in families, conflict arises due to unrealistic expectations by both offenders and their families.

And the change of role the offender has when he is released. And also the incapability of taking responsibility for his or her actions. One of the other important aspects is that offenders perceive that they are not accepted back by the community. This is why they

struggle to get along with the neighbours. They say that they struggle to get jobs and cannot get along with their lives.

As in a community correctional centre, they also have a shortage of staff. For one example, we have only got two social workers for active cases of 4 500 parolees. This is disconcerting to know that this is the [inaudible] of the centres, where the communities are at risk. You know an offender that is behind bars he is safely behind bars. Nobody is going to get hurt while that person is behind bars.

I am of the opinion that some are even intentionally [inaudible] to shift from a busy environment to come to a community correction site, so that we can also [inaudible] monitoring, motivate, and that type of [inaudible]. Because of this risk and the shortage of correctional staff, we are really are in need of the help of the community and organisations to help us in the process of these corrections efforts.

At the end of the day offenders who turn to communities that they come from, and it would be ideal if communities are able to accept offenders on condition. Rehabilitation is a collective effort of both government and civil society. We should work together, cooperate and be part of same objective. This is only way that rehabilitation is constant. Thank you very much.

DR. TERTIUS GELDENHUYS

Thank you. I am not going to sit down. I was just wondering, I noticed that there are a number of whistles lying [inaudible]. Now Arina, I suggest that you keep your whistle with you! Because when I go over my time, you can blow the whistle! But everybody has got a whistle, so you are more than welcome, blow your whistle if you feel that I was overstepping the line. Okay?

I want to tell you a story. I am a police officer. And if you think about the police and what they are supposed to be doing, and please today is not for the discussion on whether the police is effective and whether we are actually able to catch every criminal in South Africa. It is simply not happening. And it will not happen. And there is no country in the world where this is happening.

So please do not put all your faith in the police and expect them to keep everyone safe. It is not happening. It is impossible. So as a society we have responsibilities to look after ourselves. And I think that the whole idea of non-custodial sentencing options is one way of society to actually look after themselves. Okay? I did not believe that until about 2001, 2002 when the following case was brought to my attention.

Earlier, late in the 1990's a young boy, who was ten years old, he was staying with his parents somewhere in Mpumalanga and that in house domestic violence was rife. So his father would come home after work, drink and then start beating his wife and his children. So when this young boy became 11 years old he decided: **"Enough was enough!"** He was going to leave the house.

Now please understand that before that the police were called to the house as a result of the domestic violence, and I personally went there, on occasions when I was called to a house where domestic violence arose. And eventually the mother did not want to proceed or to do anything about it. She just wanted the police to tell her husband: **"Stop! Do not do that again!"** So eventually the police did not do anything, because the person, the victim, the wife did not want to take the matter any further.

Eventually that boy, at the age of ten, decided that enough is enough, he left his house. He came to Johannesburg and he became a street child. Now being a street child in Johannesburg is quite difficult, I can tell you that. It may look very easy, but it is not. They have a difficulty in finding food. They had difficulty in getting a place to sleep or to stay, and then they were talking as street kids amongst themselves.

They snatched handbags of women on the street, ran away, open the handbag, and took out the money. But you know how women are? They are not stupid. So they were not carrying large amounts of money with them anymore. Which is a good thing. But it is not a good thing to the street kids. I am sure you understand what I am getting at?

So this little boy, he was quite resourceful. And he told his buddies: **"Fellow street kids, we must do something better, because this is not working. You snatch a handbag, ran for 200 metres, and then when you shake out everything, you get R10 or R5. It is not worth the trouble that you have to go to."** So eventually the one street child said: **"But you know perhaps we should rob somebody?"** And he said: **"But how?"**

They discussed it and this young boy, one of the street kids said: **"But you know I have seen a gun, perhaps we can go and take the gun?"** Eventually, to cut a long story short, this 11 year old boy got hold of the gun. And then he was walking the streets of Hillbrow, looking around, looking at people, saying: **"Are you rich? Are you the one that I should be robbing?"** What do you think was going to happen if that child was inside this room today? Who will he pick? Just look at yourselves.

Eventually he landed up in the parking lot of the Johannesburg General Hospital and he saw this huge German car standing there. And he said: **"That is it"** . But the owner of the car, the driver, the occupant was not there. So he sat down on the pavement, waiting for the driver to come back. And eventually, as he was sitting there, he heard "Tjoei, tjoei." And then he looked and he saw this guy pushing a remote.

He then realised that this is the person whose car this is. But when he got up and he looked at this guy, he was a huge person and he felt afraid. So he took out his gun, pointed it at this person and said: **"Hand me the keys and your money!"** And this guy said: **"Okay, okay, okay, I will do it!"** And he then pressed his hand into his pocket to take out the keys, and as he was removing the keys this child thought: "No this man is going to kill me. He has got a gun!" And then he fired one shot. And the person was

struck in the chest and he died on the spot.

Now the person who died is a vascular surgeon, one of only four in South Africa, who are able to perform certain very delicate operations on the veins of a person. Then eventually he grabbed the keys, walked to the car and fortunately it was [inaudible]. So he got into the car, started the car, reversed and after a lot of trouble succeeded in getting the car to the entrance of the parking lot. But then he realised: "I am too small. I am not going to be able to control this car."

So he drove out of the parking lot, and he stopped. And then the first guy he could find he sold the car to him. For how much? Fifty Bucks! And you know what he did with the fifty bucks, he bought glue in order to sniff glue! So eventually the child was arrested and convicted. The question that I think we must ask ourselves, as a society, is how did this happen? How is it possible for an eleven year old boy to get involved in something of this nature? And the question is, how many of those boys are in this country, walking around?

I then realised that the research that was undertaken by some NGO in the Western Cape, who came out with figures, the NGO, the finding of the research was that more than 80, eight zero, percent of serious and violent crimes in South Africa is your domestic violence related crime. Now what is domestic violence related crime? If you look what is happening or what happened to this eleven year old boy, I think you will understand what I mean when I say domestic violence related crime.

So the question of preventing crime? Yes, where do we have to start? Unfortunately it is not good enough to start at the sentencing stage. We need to get our society organised. Our NGO's capacitated so that they get involved and actually make the difference in young people's lives out there. Because if we do not, we run the risk of actually bringing up criminals, people who will eventually commit murders and robberies, armed robberies. And people will be giving up.

So what I am saying is that, yes, from my side I fully support non-custodial sentencing,

but I also believe that, as a society, we need to do something even before we get to court, so that we have a situation where we can actually prevent those crimes from being committed. Okay? So from the police's side, and I am so glad [inaudible] that you said: **"I speak on my own behalf."**

Because this is not an official police position, but I think it is important that we take note of it. And it is important that we also realise that the responsibility placed on the police in terms of the constitution, namely to prevent crime, is not something that the police can do on their own. So, therefore, from the police's side we fully support the initiatives of NICRO in order to prevent crime.

And, as they have said, perhaps we should actually expand this and not only keep it to non-custodial sentences but actually take it further and take it down to grass root level so that we can actually assist people and prevent them from becoming criminals so that eventually the police have to arrest them. So that eventually they go to court. So that eventually people like Pieter have to sit there and consider what to do with this person. Thank you very much.

JOHN CLARKE

Thank you very much. I am going to ask, in fact, the audience to come and help me because by the way that quote that I have been referring to is the Dunning-Kruger effect, where people who are unskilled assume themselves more skilled, etcetera. And although that is ironic [inaudible]. [Inaudible sentence], because I am not particularly skilled and experienced in those particular areas.

I am actually celebrating the fact that I am here and just how life does have as much as a tragic outcome, when my colleague talked about this kid, and sometimes also in extraordinary good ways. And I am very happy to hear that, but I do feel particularly unable to speak with great authority, because in my 30 or so year career as a social

worker, I have actually worked in communities in human rights issues and child and public health.

For the last five years I have been working as a social worker with a community on the Wild Coast, to help them claim their constitutional rights in challenging the government in the awarding of mining licences to an Australian mining company to mine their ancestral lands. And in the course of those five years, it is quite funny how life treats, you know, [inaudible] these [inaudible], these cars because I have been campaigning against the criminal justice system, [inaudible].

[Inaudible] been saying: "for goodness sake go up there and catch these buggers and lock them up!" Because there are [inaudible] bullies carrying on outside there, just doing, you know, just creating havoc in this rural community who have been basically put out there by this mining company who wants to mine there. I am just giving you that so that you can see where I am coming from, with loads of different culture [inaudible].

I was just listening to the [inaudible], the minister is due to announce her decision after an appeal was heard, now I am speaking with equal joy because a friend phoned and he told me that the minister has taken my advice, she invoked the mining rights and she is restoring justice into that situation.

So I am here as the wild card, and also I am not well suited up against the rest here, basically I think [inaudible] and everybody said they are here in their personal capacity, I actually am not. I actually am representing somebody who would be far better suited to be on this panel than me. And that person is my client who is sitting in Goodwood Correctional Centre.

Goodwood Centre of Excellence is their correct name [inaudible]. And he is serving a six year sentence for culpable homicide and defeating the ends of justice. And that for an offence that he committed six years ago, and the criminal justice system has taken six years. He appealed against his sentence and he ended up going to the high court,

and they had a split decision, so it went to forward.

It eventually went to the constitution high court during last August and to his utter astonishment it was dismissed, and he has commenced his custodial sentence. Six years. Having brought up his eight year old twin sons from birth, as a single parent. But the awkward thing is, why is he a single parent? He killed their mother.

Now immediately when I got this case I send it down to my friend in Cape Town. She called me here and asked if I realised that this is an impossible case. I said: "But this is ridiculous, I mean this guy killed their mother. It is domestic violence and all the rest. I am not clear [inaudible]." She said: "John just come and see what you did there."

So I then found myself in Cape Town, interviewing him who, quite honestly, should be here today because he is rehabilitated. He, from the moment he committed the crime, or very shortly thereafter, knew what he had done was wrong. He was ready to be found guilty of culpable homicide.

The whole matter went to trial three years after the offence, and he was restricted to obviously as is customary not interfere with the witness. He obviously initially could not contact the grandparents. He insisted that his sons, however, continue to have a relationship with their maternal grandparents.

And so the grandparents on both sides were participating in his children's development. He, himself, pulls himself out by his bootstraps with [inaudible] dignity and self esteem. He eventually found himself a job and was actually [inaudible] having spent a fortune on advocate and lawyers' fees as you can well imagine.

When was it in 2002, a judgment came up where a woman's custodial sentence was converted to non-custodial correctional supervision, because of the best interests of her children. And this advocate said: "Well you know, notwithstanding the fact that you committed a violent crime, [inaudible] domestic violence, given the quality of [inaudible]"

you should have a good chance, because the evidence is there [inaudible]."

The constitutional court jacked it up and now again when lawyers and the constitution [inaudible] us poor social workers should come and try and make the most of it.

And it has been an extraordinary story. I mean it is now going on to six months that he has been imprisoned. Initially it was to say: "Well look, it is six years let us see if you can come to terms with the fact that, notwithstanding the fact that the constitution court had thrown it out" And the argument that the advocate made, which was that the best interests of the child is paramount, can be something which he can restore, take to correctional services, and that correctional services then not only serves to help to get this guy out of the system, back to his family as quickly as possible, but maybe just correct the injustice which I believe is done through the way in which the court handled this matter.

The policeman, a magistrate and the correctional services offices, they said: "I hope he feels safe, because I do feel very angry actually." And mainly because I can see why my client feels very angry. So I went to [inaudible] that they also want to assume here that [inaudible] professional social workers that whatever I show here is with careful discretion not because I want my client to be in trouble, but I am getting into more trouble than what I think I am.

Correctional services [inaudible] for making their lives difficult, by telling them [inaudible] that if you are not going to allow this man to have his sentence converted so that he can get back and look after his twin sons, well then for goodness sake make [inaudible] for accommodating so that his twin sons can have a positive and continually positive parental experience that they have with their father.

And I put a report through on those terms, and finally I received it, four months later. He can now have a contact visit with his twin sons at Goodwood Correctional Centre. They did not tell me about that, they did not invite me to come and help support and work with

them, so I am forced to say: "I heard what you are saying by offers of support, social workers aside."

At the same time I do think that I have tried my utmost to be as accommodating as possible, and I do recognise that correctional services have an enormous task. It was an extraordinary ridiculous case, they are trying to make a difference. So I just wanted to give you this story.

I just want to just put to you that the topic is offender rehabilitation the court's responsibility, the question is imagine if the presumption of innocence was the other way around and there was a presumption of guilt. Just think how our criminal justice system would look so differently? If people were guilty until proven innocent, prisons would even be places you would go to for protected custody, to prevent vigilante mob violence, mob attacks and just mob justice.

It is very easy just to do that exercise with [inaudible] because you need to come back and ask the question: "Well what is the role of the courts?" Given the fact that we probably would assume that, yes there may be cases of people being convicted who were innocent, given the fact that it is presumption [inaudible]. But there are far less cases, far fewer cases if it were in the reverse of guilty people being convicted to be innocent.

So the point is with those exceptions, the court's role is there from my point of view to ensure that they come to a good sentence, and I love that [inaudible] saying that he left before sentencing as well, you know?

The consequences of sentencing and what particularly happened in this case, is that the magistrate did adjourn, allowing for the pre sentence report, correctional services produced one. He regarded the quality being dismal and he just ignored it and decided that, as far as the quality is concerned, he just needed to actually [inaudible]. At that stage, the maternal grandmother was still involved, still alive. She suffered an illness

and died.

I also want to bring the issue of restorative justice *versus* retributive justice. As I now have the privilege of not having been part of the reading[?] of the social workers reports, especially the social worker's report is [inaudible] my client [inaudible] in the story that I think is going to be quite [inaudible]. Certainly initially I was going to go to town on the lawyers for failing to [inaudible]. [Inaudible sentence]. The first thing I discovered is that they have declined and stated they have never heard of NICRO? Of the [inaudible] they have never heard of NICRO?

So there is still a [inaudible] of lawyers, because I believe NICRO will get involved when, at the appropriate moment, regarding that [inaudible] when his two children are sitting there. I believe showing very clear symptoms of survivor guilt syndrome and therefore [inaudible] when they get older and what happens with survivors at adolescence [inaudible], do they start committing crimes as a way [inaudible] and that sort of thing. [Inaudible sentence]. They have never done anything wrong. They feel that they are being punished. So [inaudible], well do you actually commit a crime to feel that there is actually something [inaudible]. And it is not a rational process in society [inaudible].

I am now busy dealing with this [inaudible], they did acknowledge this communiqué. So what concerns me in this whole particular instance is that I think the role of the court is not, it is to ensure that when you have a rehabilitated person already, who has gone through self initiated restorative justice process, as I believe had been in this case, well, for goodness sake, do not interfere with it and throw the person in prison!

You are talking about going into the schools. This [inaudible] could be your best exposure of preventive work. But I want to finish. Because I really did not have to represent [inaudible] himself. And when I became involved I was very cautious, because social workers are [inaudible]. I managed to seek the best interests of the children.

When a person is in a desperate situation in prison, where do they go to grasp at any available straw, and we know the social workers and that is why they are there, to make sure that we exercise in our professional judgment as to what is in their best interests and they do not become simply a tool in the interests of others.

But do you know I was surprised to discover that he had kept a prison diary for the one week that he was [inaudible] in the prison. And I would just like to read it to you so you can judge for yourself of whether you think that this guy is actually a hardened criminal. And or whether in fact he is threat to society. After he got sentenced he was, before his appeal, he said this in his diary, which I discovered by accident by the way. So I was not lobbied with it. I was not sort of entrusted with it. It just found me as it were.

"My heart dropped. I heard that people would go numb with dread and shock in similar situations but never thought that your body could react like this. A ten year sentence with four years suspended for five years, and the one [inaudible]. My mind would not work properly. All I can think about was being away from everything I have loved for six years. I was in for my first case of prison life immediately.

I was aiming to enjoy a whole week [inaudible] of court, and then to communal [inaudible] from where they would transfer us to Pollsmoor. Pollsmoor, the prison that causes a strong man to go weak. The name of that conjures up unspeakable horrors. Prison rapes and beatings by merciless gangs. How was I, a normal, ever going to survive this place? "

Fortunately he did after [inaudible], and this diary makes riveting read, I promise you. And he has given me permission to make it available. And I have got to return this [inaudible] and try and see what can be done. But what was interesting is another thing he said, and if I may just finish with what he says. He then sits in a cell for six days, seven days amongst hardened criminals. [Inaudible sentence], which is a kind of a Christian gang.

Now I want to share with you what has passed the [inaudible]. This Christian gang has quite an interesting story to it. Certainly there were a couple of sad stories in prison, and why we have a few people there that do not deserve to be there, the rest of the inmates I felt overwhelmingly annoyed that everyone you spoke to who have been found guilty of a crime, but no, not one of them felt they deserved the sentence they had.

They always had an answer as to why this was done and why they were locked up. Not one of them would say: "I did it. I am guilty. I deserve whatever I got. Let me try and better myself." They blamed families, society, poverty, drugs and everything else. Anyone rather than accept the blame themselves. The gangsters were particularly violent, and they tried to convince me that they were really just good guys under a bit of strain. No [inaudible] so therefore they felt it was justified in doing whatever they wanted to.

I said: "How did the rest of the inmates responded to your story?" Just listen to what he said, this took me by surprise, he said: "Well I would say sarcastically, wow criminal justice is so unjust! So I am the only person that really deserves to be here." That shut them up.

Now can you imagine all these hardened criminals with tattoos, and you know, the pictures that you see at NICRO. Wonderful! Andrew report when he got that series of pictures there. Here is a sweet kind of guy, he does not smoke, he does not drink, he is a [inaudible]. He is now engaged and his fiancé is a manager in the hotel industry. He is [inaudible].

And that then gave me the only idea to say: "This guy is rehabilitated." And I know that he is deserving of non-custodial sentencing. He is prepared to do it, and my gosh would I use him as a social worker in my world. Again, he is sitting in prison with 27 other guys in a cell which was built for 20 people. They [inaudible] generally for the 26, he has now taken them into his confidence, so I must say that is something positive.

At the very last, because I know [inaudible] can I add something, because I do think it is justified, that I always told [inaudible]. But I believe that with restorative justice process must be initiated right at the beginning properly, we would accept that court play that role, with more [inaudible] things would work out very differently. And I do believe that maybe his mother-in-law might still have been alive today, because she died in the amidst this whole process, a very bitter and unhappy person as well.

I have interviewed the maternal father-in-law and have a story around that too, which you can read about. But on that question I believe that unfortunately the retributive justice held sway here, at the expense of the restorative justice. And I do think there is a place for retribution but, and I will read this because I think the person who read this is Mr Gray[?].

He says: "One of the most meaningful [inaudible]. [Inaudible sentence], as far as retributive justice can have any beneficial effect, it shelf life is limited. And if the prosecutor or legal system [inaudible] dilly dally in this [inaudible] in bringing an offender to trial, as was happening in this case, four years before that sentence was handed down, by the way. The retributive agenda becomes toxic contaminant that could well be the core [inaudible] and the [inaudible] which negatively affects the social pattern."

The hopeful thing is by contrast maybe the [inaudible] list. The shelf life of restorative justice, like good red wine, becomes more [inaudible] with age so long as there is still life insisted, and when you see the full story as told, [inaudible]. Thank you.

BASIL KING'S PRESENTATIONS

- Offender Rehabilitation
- Case Law

Should you wish to request a copy of the presentations, please email Regan at regan@nicro.co.za.

NCS Presentation

TRANSCRIPT

We have a transcription service there in the back and all of the presentations that are being used will be emailed out to everybody and you can also send those out to your colleagues who were not present today. I'm focusing on the NCS project, so we will have final questions and answers and we should be finished for today.

Okay, just to recap so that everybody is on the same page, what is non custodial sentencing or NCS? It is basically an alternative to conventional imprisonment. The basis for NCS is contained in the compulsory behavioural change intervention, either in the form of programmes or services to individuals. Our goal, why we are doing this, is we want to reduce the likelihood of offenders reoffending, we want to change their behaviour from problematic behaviour to pro-social behaviour. We wish to reduce exposure of lower risk offenders to prison.

The components of the NCS service is made up of the following: They offer a direct service which consists of the social worker guiding the offender, either individually, one on one, or putting them through a group programme. In addition to that, we have activities at both the local level and at a national level. We have a lobbying and advisory manager who sits at the level of parliament and attends the portfolio committee meetings and is our advisory at national level. At the local level our staff also engage with local NGOs and members of society. So it happens in parallel processes.

It is also very important that we do public education. We cannot promote the wider use

of NCS if we feel the public does not support it because then it will create hostility. We need the public to buy into and support what we are doing. So public education forms a very important part of what we do.

We have various national initiatives which we run from our Head Office in Cape Town and then also at the local level. The local NICRO site staff engage in community workshops with the local community where the service is being delivered.

We need to make sure that the community understands why they see this offender walking the streets tomorrow. So it's very important that there's communication between NICRO and the community where we are delivering a service.

Then the NCS project is also being researched. At the moment we are doing quite a lot of internal research. We hope to make the research available in the near future. We are relaunching our website, the NICRO website. So all of our research will be posted there for the general public to have a look at.

Some of the research has already been disseminated to our stakeholders and we've had an interim review from an independent impact evaluator in September last year that has been made available to stakeholders to read it and there's various other research that we're doing. We're looking at the reasons for offender non compliance. We're looking at the influence of social worker attitudes and values on the work that they do with offenders and so forth.

We offer community service orders which are more than just the placement of the offenders to do community service schools or work at the local SPCA, because we have a change component attached to the service we want the offender to have complete as well. It's not just about performing unpaid work. There must be a favourable behaviour change outcome. So there is a learning component that we integrate into community service and we are also currently redeveloping and updating our community service programme.

There is also a domestic violence programme. The focus is on the offender, the victim and the family as a direct service. We offer both adult and youth life skills. We offer external referrals as well if the offender needs a special intervention. For example, if they're suffering from depression they must go to a doctor or a psychiatrist to be prescribed medication. We cannot provide that service. So our social workers form networks and connect with different service providers who can add value to what they are doing. So it's an important part of social work that the social worker can make sure her client accesses the services they need, whether we provide that service or not.

There is a restorative group conferencing and victim-offender mediation which is where the offender and victim restore the relationship that was damaged, and try to repair the harm that was done. That is only applicable and suitable for certain kinds of offences. There are also substance abuse and substance addiction programmes and those programmes are separate since the methodology is different for abuse experimentation versus addiction. We also do family group conferencing and very importantly, after-care and support. All of the work that NICRO does is supported by restorative justice principles that we try to integrate into everything that we do. Restorative justice is not a distinct service or programme. It's a series of principles and values and they can be brought into the criminal justice system at any point.

This is basically the NCS process. We take referrals specifically from the magistrates. A social worker will do the assessment. It can take up to two to four weeks for the social worker to do the risk assessment, as Arina was talking about earlier. It is very important to talk to neighbours, teachers, members of the community, the victim as well, to get a complete picture of what's actually going on there. Our turnaround time for a court report is four weeks.

The court report goes to the magistrate. On the basis of that court report, he or she will take that recommendation into consideration in passing sentence but ultimately it is the magistrate's choice as to what sentence they will pass.

In the event the offender is sentenced to NICRO, the social worker will meet with the offender and do an intervention plan which is where the individual treatment plan for that offender is developed and it is a discussion between the social worker and the offender so that the offender understand what the requirements are, what will happen if there's no compliance, what they are expected to do and what to do if they experience problems and challenges along the way.

Then the services are delivered to the client either in the form of programmes or individual one-on-one services, but the service can last for several months depending on what the offender needs. When the offender has finished all of the services that form a part of his or her sentence, then we go into the after-care and tracking phase and this lasts for an additional 12 months from the date that the service was completed. We then track them at three months, six month and 12 month intervals.

As Arina was talking about earlier, I want to recap, when we assess an offender's suitability for a non custodial sentence as delivered by NICRO, we look at the static risk factors, those risk factors that cannot change and yet necessarily affect the offender today. Dynamic risk patterns are those risk patterns that can be changed and that is where the bulk of the intervention will be focused on. The protective factors, this is something everybody has. We all have risk factors and protective factors. The protective factors are those that make the offender more resilient and less susceptible to negative influences. The social worker will need to focus on enhancing those protective factors as well as addressing the dynamic risk factors.

The responsivity factors are things like illiteracy, language problems, things that may affect their ability to participate in the NCS service. The social worker would use different approaches with an offender who is partially deaf or doesn't read very well on a programme as this affects their ability to engage. The social worker must work all of this information into the assessment and her recommendations. We obviously cannot exclude offenders if they are illiterate or have disabilities, but the social worker must know what challenges she's facing so she can deliver a service that is actually going to

work.

We have been delivering NCS since 2006. We were then chosen by the Department of Justice to pilot a NCS service as part of the broader built up to the Child Justice Act, and then as that pilot was coming to an end we received large scale international funding from the British Government over a five year funding period from 2008 through to 2013. That dedicated funding comes to an end in March 2013. This is a funding issue as after 2013 NICRO will obviously continue delivering the NCS service, but from a financial support point of view, the bulk of almost all of NICRO's work at the moment is being funded by the British Government.

Currently we are in 35 magistrate's courts around the country and next month we increase to another 9 new sites. By the year 2013 we will be in 52 sites.

On service stats, looking at year by year growth from 2008/ 2009 to present, we were at 18 sites and we reached a target of 26 people. That was mainly because the funding came to us late in the financial year and we only had about three operational months out of the whole 12 month period. It was nobody's fault, it was just the way it turned out.

So our first full operating year was actually year two and you see the difference in the stats. We went from to 26 clients to over 1,300. Now we are in 35 sites and so every year it inches up a little bit. In total over the two year period we have 2,199 sentenced offenders that we are working with.

These figures show that the service has been increasing, but it is still substantially below target. We thought that by this phase in the NCS project we would have 4,500 offenders and you can see we are just under half of that. So that challenge (low referrals) continues to affect the NCS service but there's also a limit as to what NICRO can do about that, because as you know, magistrates are independent judicial officers, so it is their choice whether they're going to make use of the service or not.

On sources of referrals, magistrates are our biggest source of referrals. The prosecutor obviously is only going to refer if the magistrates support the concept of NCS. We also get referrals from DCS Community Corrections. We have a working partnership with them and help to deliver the service.

Looking at non-compliance and recidivism. Recidivism tracks the re-offending rate, but it requires a conviction. So given the challenges in our criminal justice system, there are lots of opportunities for a person to have committed an offence that does not result in another conviction.

So recidivism as a reflection of whether the NCS service has been successful or not will always understate the problem because people could have committed another offence but the victim doesn't want to press charges, or the cases are withdrawn and so.

As an organisation of social workers, we are interested in human behaviour and less so in the criminal justice process. We track non-compliance on a monthly basis. We are looking at the offenders' behaviour, not in legal terms but in terms of behaviour, what are they actually doing?

I do not have recidivism statistics for NCS for you because if you look back at my earlier slide, we need to have enough people in the aftercare and tracking pool in order to carry out recidivism research. It's too early, there are not enough people for the tracking phase or aftercare phase to warrant an independent impact evaluation at this point. We're going to do it next year.

We've secured the funding for an independent impact evaluation. It's very important that if you're going to do this kind of independent impact evaluation, it's very costly, so you need to make sure that the timing is going to give you good enough results that you can actually use it afterwards.

Regarding non-compliance, we track clients internally every month. Someone, I think one of the panellists, was talking about what England and America are doing with non custodial sentencing, because of the results that have come forward to date. Their requirement is a reconviction within an 18 month time frame. Anything outside of that doesn't get counted for that report. That's quite a short time frame.

NCS, as we know it, has a 34% recidivism rate versus the 49% of people coming out of custody. So there are slightly better results for NCS than for imprisonment.

I also want to mention that England and Wales and America determine suitability for NCS based on the nature of the offence committed. What we do is look at the individual offender's risk profile. This is critical because you can have a petty offender who is high risk. They go on to NCS and they recidivate because their risk profile doesn't match the range of services that have been made available to them. You can have someone who commits a serious offence, whose risk profile is actually low and can make him suitable for NCS. So we at NICRO do not judge suitability for NCS on the nature of the offence. It is on a person's individual risk profile, and in the States and elsewhere, they don't do that. They look at the offence.

Non-compliance has three legs to it: (i) the offender does not come; (ii) the offender comes but they don't engage. From a legal perspective, they comply with all of their sentence requirements because they've gone to a place or agency - they're physically present. But from a behaviour point of view, they're actually non-compliant. The third leg is actually a component of the first one, they don't come to NICRO because they are sitting in jail because they've committed another offence. So that is what we are looking at when they do not comply on a month to month basis.

Last year we did an audit of our entire NCS service and what is our compliance rate, what are the reasons? We divided the reasons into two batches: environmental or external and individual or personal.

Basically the offender would say I couldn't come to you because I didn't have taxi money. Fair enough, because a lot of our offenders come from quite impoverished backgrounds. However, the counterargument with the NICRO, this is actually an alternative to incarceration. So it's a question of how seriously are you taking this. If you've got money to buy airtime, cigarettes or to go drinking over the weekend, then you've actually got money for taxi fare. It's a question of what do you prioritise. So there is the valid point that many of our offenders are unemployed versus people saying they didn't have money but they actually do.

Clashes with employment and study, we don't want to affect a business employment. We don't want their boss to say you know, you're supposed to be at your desk but for the past two weeks you've been doing community service. We don't want to endanger people's pro-social engagements, but that is a reason why some people are non-compliant.

There's not a whole lot we can do about that if the offender moves somewhere else. If we have a NICRO office and they can undergo an internal case transfer, but if they move to an area where we don't have a site, then there is not a lot we can do in those circumstances.

Another real issue in non-compliance is the fact that some court stakeholders are not keeping to our processes in terms of how they are referring people to us. We must just keep on saying that this is our form, this is how you need to send a referral to us, this is the paper trail that needs to exist. We cannot track some people down because other stakeholders are saying I don't have time to fill in a NICRO form,

As my colleague, Arina, said earlier on, if you go to a doctor and he refers you to another doctor, you have to go to the other doctor and fill out another form. Your patient details are needed by the other service provider as well.

So from a NICRO perspective we really need people to understand that. We are a

separate service provider. We have our own systems that require people to buy in and support that, so without filling in a referral form there's a very real possibility this offender can AWOL and we can't track him down. This requires more education from our side.

Individual factors affecting non-compliance: the offender's commitment to the NCS service. This comes back to the values, attitudes and beliefs that we mentioned in our discussion earlier today. We can only influence that to a degree through a technique such as motivational interviewing. Individuals must take responsibility for their decisions and choices. So while we will work with an offender and explain to them why NCS is beneficial for them, at the end of the day they choose to make a decision and the consequences may be negative.

Other causes of non-compliance are people who are addicted and relapse a lot, as well as an offender has committed another offence and has been arrested or convicted. So these are all of the reasons why offenders are currently non-compliant in our system.

In terms of ranking the most common causes, these were extracted from all the sites that have 10% or more offenders non compliant. These were 14 sites in total.

Lack of offender interest or commitment is the biggest cause, followed by issues of employment, exams, illness and the offender having moved to another area. Followed by stakeholders not following the process, followed by financial constraints, the offender committed another offence and substance abuse.

So there's quite a range of these causes of why people are non compliant, but fortunately some of these things can be addressed and improved upon, and that is what we did after the audit.

Our national target for non compliance is 10% because we do accept that there will be

some non-compliance in working with offenders. They have criminal thinking errors. There will be some non-compliance. So we accept a target of 10%. At the time of the audit and I've just taken you through the results, the national non-compliance rate for NICRO was 21%. At this current point in time, it is 13%.

That means we have essentially brought non-compliance down from a much higher level. Because of the reasons that I discussed in the previous slide, you could see that there were gaps that we could actually address. We have addressed the quality of the assessments and quality of interventions provided to offenders.

We also started using Memorandums of Understanding with stakeholders that sets out what processes needs to be followed and the signatures on the document shows that people have bought into those processes. So this helps us manage the relationships with stakeholders, and they are generally willing to sign.

In view of non compliance as detailed in the monthly reports which come to me every month: when I see something problematic I will take it up directly with that site immediately. We have also looked at re-orientating staff towards the significance of non-compliance. It needed to be re-emphasised why non-compliance is important and why it is an important indication of service quality. So 13% is a little bit higher than we would like it to be but it is a substantial improvement on where we were.

In terms of public education and awareness, to date we have held 67 community engagement workshops around the country. They are always in communities around the site where we are delivering the NCS service.

We did a very small-scale survey based public attitude survey with 253 people in the provinces. I know it is small but we had no money to do it on a larger scale, so we just did it internally. So we asked 253 random members of the public out there how supportive they were of non dangerous offenders being given NCS and the results were 54% of them were very supportive.

I know it's not scientific data in that it is representative of the South African population, but I was expecting that support to be much lower. I was expecting people to be more hostile and that hostility didn't come through. We are supporting that research with second phase research with 373 people at the community engagement workshops. I asked the same question: not as positive, but still not hostile: 45% of the people are supportive of low risk offenders being given NCS.

I am currently working on the third phase of the public attitude research. I know that the figures are small, but it does show that people are not nearly as hostile that we think that they are and it shows that there is a solid base upon which to build more support for NCS. This research will be posted on a new website in the future.

We also have a public education awareness success stories booklet, which you can all have a copy and take one for your colleagues. It appeals to the human interest aspect of NCS. It is something that people can relate to because there's a lot of anger and fear because we've basically all been victims of crime, some of us more than once, and the stories explain why people do what they do. It puts a more humane context around NCS and it seeks to make people more supportive of our offender rehabilitation and their work. We also have a Facebook group which I encourage you all to support. We have 262 members. We have received R7.6 million worth of media coverage to date.

This is part of promoting the profile of NICRO and the work that we are doing with NCS. We have the NCS videos. You saw the one today. There's going to be another one for the general public which just focuses on the offenders telling their story about why they did what they did, and what has changed for them.

We have the NCS toolkit which is basically for stakeholders and there's five outside the table so you're welcome to take. I think who first manage to grab them can take them, but if you would like to order more for your court you just drop me an email and so long

as you cover the postage. We've got about 1,000 left in the store and they are for the use of court. We have not yet decided to make them available for commercial purposes, but for right now they're being sponsored by DFID.

We also have an online knowledge forum I'm going to send all of you invitation to join. It is a research library for people to read more about what works and what doesn't work for offender rehabilitation. You can network with magistrates and prosecutors in other parts of the country. Once you click on the link and you register online you are a member, you can invite your colleagues. It's free to join. I strongly recommend that you all participate as much as possible.

We are also working on a start up guide for how to establish a NCS site. It is very much in the early stages of development. This is looking now beyond year five which is March 2013. How are we going to expand the delivery of non custodial sentencing, where is the ceiling for NICRO to be involved? We can't do everything and be everything for everyone. So we are working on developing a guide that we will be able to use with other organisations and share our expertise on what we have learnt from non custodial sentencing.

In terms of the profile of our NCS offenders, the majority are Black / African, followed by Coloured, then White and Indian. The column on the far right-hand side are the prison demographics as of the past three months. So they're more or less in keeping with prison demographics.

In terms of gender, we are picking up substantially more women in NCS than are reflected in prison. In terms of employment, the majority, 43% are unemployed. 20% are formally employed. 12% are scholars and 9% are casual employment. There is obviously a link between unemployment and crime.

16% of the offenders are children, the majority are adults. We thought when we did the

Justice pilot that we would get lots and lots of children and we also thought that because of the Child Justice Act, we would get many children referred to us. But this is not the case. The majority are still adults.

In terms of education, the majority are school drop-outs. There is definitely a link between not accessing education and engaging in high risk activities. 14%, which is quite high, completed school. 13% are still in school. 4% actually have degrees and 3% stated they have never received any form of schooling and those are normally your much, much older adults: the 65 year old adults who under the previous regime never got any kind of education.

So you can see that there is probably a very strong link between the quality of education people received, exclusion from school for whatever reason and the likelihood that they're going to end up in the criminal justice system.

In terms of the nature of offences, we've taken the most common offences: Theft or attempted theft is the most common. Assault GBH which is assault with intent to commit grievous bodily harm which is assault with a weapon, generally speaking. Housebreaking or attempted housebreaking, common assault, driving under the influence, shoplifting for possession of narcotics or alcohol, malicious damage to property and robbery and/or armed robbery and I have to say now that the robbery/armed robbery is normally handbag snatching, rather than people breaking into your house.

So you can see quite a range of offences. There are the more serious offences and also the less serious offences that we're getting. Remember what I said earlier about the Americans classifying suitability for NCS based on the nature of the offence. I showed this slide to a group of Americans whom NICRO was hosting. They were horrified at this slide and the reason why they were horrified, they said they've never, ever be allowed to offer NCS for some of the people who have. Anyone who committed a violent offence or used a weapon, because they look at the offence, not

the individual and his or her risk profile.

We have had three rapes and I think there were two murders in NCS, but they're so small they aren't reflecting as a percentage. Some of those perpetrators are children and NCS is being used as the last resort before incarceration, and the rest were adults. So this is potentially controversial but we stick to our guns. We consider any offence and will look at a person's risk profile regardless of how serious the offence is. There is always a possibility they can actually work in NCS.

The majority of the sentences are a suspended or correctional supervision, conditional or postponed sentences. Imprisonment is 1% of those 13% of non compliant offenders I showed you earlier, 1% are sent to prison for non-compliance. They were originally given an NCS. They've breached their sentence conditions and the magistrate did not accept their excuse and then it's off to jail.

Sentence lengths are normally six to 12 months, three to six months, five years. Those are for your more serious offences. One to two years, two to three years and two to four years. So they're either very short sentences and then the longer five years which is much more serious offences. We're getting quite a spectrum of people coming through the different courts: the magistrate's courts, the regional courts and the high courts are all using NCS. Not at the rate we would like to see but it shows that NCS is being used by the criminal justice system.

In terms of our challenges, we can continue with stakeholder engagement, work, we will always do this. We rely a lot on other magistrates and judges who are behind this service and promote it. Those are quite judicial heavyweights, so if they're speaking in favour of NCS, this will help motivate the other judges and magistrates to use NCS a bit more.

Social workers, NICRO had a 38% turnover of social workers last year. We are losing them and we get new ones and then we lose them again. It's a frustration but there's a

limit to what we can do about it. We can't offer salaries of very large amounts and we can't always compete with government which can offer better salaries plus the benefits. So it is a challenge that we're facing. We look at the salary grades and the retention strategy to actually building people internally, but this is the reality. In South Africa there's a national shortage of social workers and everybody is fighting for social workers, and that's just the way it is.

There are also challenges with independent service providers being active in the criminal justice system. This is not from any particular government department or stakeholder. It seems to be specific personalities but it's still there. There is a feeling that – and it's not widely held, but it's held by some people - that because government has a mandate to deliver services, government is responsible for service delivery. Therefore NGOs have no place in the criminal justice system, or if they are, then the service has been bought from them and they are seconded staff to the government department. It is something that as an NGO with such a long civil society history as NICRO has, we really struggle with this because it's not how we see ourselves.

We are an independent member of civil society, we are adding value to the criminal justice system but we have our own internal systems, quality control measures and so forth. So it is a struggle that we have when you're working with various entities, retaining your independence while still wanting to be a presence in the criminal justice system.

It is an ideological issue, that the government has the mandate in terms of the constitution to deliver basic services. If anybody else gets involved, they must answer to or be seconded to government. That has implications for NGOs and also for democracy - you need a strong, independent civil society. This is a challenge that we are facing.

In terms of the criminal justice system, there aren't enough people. There aren't enough skilled and experienced people and it's everywhere. This affects NCS

because there is a lack of knowledge of evidence based practice, knowing what works and what doesn't work with offenders and this affects our services in relation to their understanding.

Having the time to invest in the NCS concept - you see all the empty seats sitting around this table. I invited 132 people to fill this room and you can see all the empty seats. It's not because they're not interested: it's because they've got 20 other places that they need to be and so it's a question of what's really important right now. So if they don't come then they don't hear our message, they don't support NCS more. It's like a vicious cycle. We can't get them into the room, then we can't change their attitudes and make them more supportive. There's a capacity challenge everywhere because there aren't enough people to get to an offender's house and say where is Bob, the offender, is he here today? If not, where is he?

So these are South African challenges but they present real implications for the sustainability of the NCS service beyond NICRO.

We have secured money for the five years, so that's secure money coming to an end in March 2013. By then the corporate sector or government must come on board. Even if we do that, there are 366 magistrate's courts in the country. We will only be in 52 by the end of the five year period. There are 282 periodical courts, 80 branch courts, nine regional courts and 13 high courts. NICRO will never be everywhere. We will never be able to do it. So we need to work with other NGOs.

It's going to need to happen if we're going to ensure that every court in South Africa can access a quality credible NCS service, which is also a basic human rights issue. So it is about the capacity of the other organisations and it is about formalising relationships at the local as well as at the national level.

It's a challenge when those people keep changing, you form a relationship with one person and then a new person comes into that position.

Right now the bulk of NCS offenders are adults, and adults are not receiving much dedicated funds at the moment. It is children in terms of the Child Justice Act that are getting the dedicated funds and resources and time and energy, but adults have kind of – not being forgotten, but they're not being focused on right now and it's a problem as you see the majority of the offenders are adults.

So what is happening to them right now? They're going to jail and it's also a human rights issue for adults in terms of the long term turning the current crime situation around in South Africa. So these are all challenges that we are facing.

NICRO does not have an answer to these challenges. It's basically a case of having meetings like this one. We hope people will take away key messages and start raising these issues in their own government departments, in their university faculties, in wherever they work and then hopefully other people will also start asking the same questions because it's not a NICRO issue, it's a South African issue.

It's just that NICRO have managed to accumulate quite a lot of expertise but they are going to have to be handing that out to other organisations as well. .

PRESENTATION

The presentation has been distributed in PDF format with this colloquium document. Should you wish to request a copy of the presentation, please email Regan at regan@nicro.co.za.

Closure and Thanks