

Juvenile Justice in Namibia:
Creating Synergies and Overcoming Obstacles in the Transformation of Conflicts and
Justice

Ndumba J. Kamwanyah

Master's Project

The University of Massachusetts

Advisor: Darren Kew Ph.D.

Spring, 2003

Evaluator: Stefan Schulz, Polytechnic of Namibia (May 12, .2003)

I dedicate this piece of work to three people whom I love and hold so dear: My sister, Ndine (affectionately known as Katia) and her son, Nghilokwa (Kaboy), and our beloved mekulu, Katumbunkulu. I hope they have been reunited again.

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Abstract

The formal treatment of children in conflict with the law in post-colonial Namibia is mainly regulated through the mainstream criminal justice system, inherited from South Africa, Namibia's colonial master. The criminal justice system stresses the importance of a retributive justice approach towards conflict and justice, consequently most provisions pertaining to children in conflict with the law are inadequate and violate the spirit of the Namibian Constitution as well as those principles prescribed by the international instruments of juvenile justice.

In 1994 Namibia undertook a juvenile justice reform in order to bring its child justice system in line with democratic, humane and fair process of conflict resolution, instead of the deterrence approach characterizing the old child justice system. This reform has introduced a new framework to handle children in conflict with the law, creating synergies and obstacles for conflict and justice transformation.

The envisaged juvenile justice system blends multiple principles of juvenile justice, and incorporates features that call for interagency strategies and cross-cutting philosophies, such as welfare principles, justice and community participation. Namibia not only has to integrate its new child justice system with multiple philosophies and principles, including informal and traditional channels of conflict and justice, but also the country must mobilize and organize a network of resources and strategies to respond to such convergence.

This review provides a general overview of the philosophies and principles underpinning the new juvenile justice system by exploring their (philosophies) general meanings, values and implications for children and the country.

Acknowledgment

I would like to thank my advisor, Professor Darren Kew whom without his knowledge, expertise, guidance and support, this Master Project would not have been realized. His feedback and comments had motivated me to treat my topic with deeper care, understanding and appreciation.

To my lovely and wonderful wife, Heather Ross, for her love, support, encouragement and for being ready to talk to me when I needed to express my frustrations, worries and concerns. Her great sense of justice and passion for social justices, greatly influenced me undertake this project. Now I am able to say, '*woza my mufoloza*' again.

Words are not enough to express my sincere gratitude to my in-laws, especially Neil and Nancy Ross. Thanks for everything that you have done and still continue to do for me. Your support and advices enabled me complete my studies.

I also would like to thank our (Heather and I) friends (too many to name) both in Namibia and here in the USA for their support and kindness. A word of thanks goes to Gherta Hernandez my classmate and a fellow Research Assistant in the Dispute resolution Program. It was a great experience to work with her.

I am also grateful to my evaluator, Stefan Schulz for his patience and readily availability to read and evaluate this piece of work. His comments and feedback provided me an opportunity to rethink and revisit my previous assumptions.

I would also like to thank Jon Henson for his feedback and comments on the final draft. His knowledge of language and grammar were crucial and valuable in facilitating the final product of this project.

I'd like to thank members of the Inter-Ministerial Committee on juvenile justice and the Juvenile Justice Forum who shared their thoughts, concerns, hopes and wishes about the juvenile justice program in Namibia.

Last, but not least, to my family (with tears in my eyes) back in Namibia. Thank you for the seed of humility that you have planted in me. Sometimes my departures from you had caused you great pains, but you always accorded me that freedom to pursue what I wanted. To you all, I say, '*tuka kouya ketji utuke oku koukutunda.*'"

In Namibia, during the colonial period the formal channel for dealing with children in conflict with the law was predominantly organized around the criminal justice system, which encouraged a *retributive justice approach* towards conflict and justice. The retributive justice approach stresses the importance of deterrence effects as well as a compulsory re-education of transgressors based on community moral codes or rules, by means of various actions such as deprivation of personal liberty, restitution and rehabilitation (Deutsch, 2000a).

The use of the retributive approach not only had adverse effects on children, but was also implemented at the exclusion of other alternative channels of conflict resolution such as the *restorative justice* and the traditional ways--those practiced by the majority of the indigenous Namibian population. With few exceptions and limited statutory provisions, children in conflict with the law were treated in the same manner as their adult counterparts, with little regard to their social, cultural, economic and developmental circumstances (Super, 1999a; Schulz, 2002). The conditions observed by the consultant in most of the police stations and prisons throughout the country in 1999 illustrate a perfect example of the effects and experiences of children under the Namibian criminal justice system (see Annexure A).

With the advent of independence in 1990, Namibia undertook a juvenile justice reform that emphasized the integration of restorative justice (including traditional ways) and informal conflict resolution measures into the formal justice system in order to promote humane treatment of children, tolerance and a caring society, instead of the deterrence approach characterizing Namibia's old child justice system. The restorative justice is often referred to connote a system of justice that is based on mutual healing

between or among the contending parties, implying the restoration of social harmony, peace and co-existence. The restorative justice is believed to share the same characteristics as those traditional ways of conflict and justice practiced by most of the indigenous communities in sub-Saharan Africa, and therefore is widely accepted as the authentic and best approach to juvenile justice in those settings (Hinz, 1998; Penal Reform International, 2000; Schulz, 2002).

In undertaking this ongoing reform, Namibia not only has to integrate its formal justice system with alternative conflict resolution and philosophies that emphasize humane, informality and harmony in order to respond appropriately to the needs of all children in Namibia, but also the nation must mobilize and build interagency strategies--synergies of resources and efforts--to implement the new system, providing both opportunities and obstacles for juvenile justice practice in Namibia.

This paper reviews the philosophies and principles behind the Namibian juvenile justice system as outlined in the Juvenile Justice Program Description of the Inter Ministerial Committee (IMC) on juvenile justice. What meanings, values and implications does the proposed system hold for children and the country? How can Namibia maximize the gains as well as minimize the losses presented by the new child justice system?

In recent years, concerted efforts from non-governmental and government ministries in Namibia have been focused on efforts and innovations to develop a comprehensive child-care system that works for children and the Namibian society. Yet, there has not been much informed and sustained discussion about the implications of the philosophies and principles underpinning the proposed new child justice system as an

institution of conflict and justice. This review aims to stimulate debate about the philosophies and principles of the future child justice system in Namibia. The outcomes serve as a resource to inform and guide implementers, practitioners and policymakers about the effects and implications of the new child justice system. By reviewing the philosophies and principles influencing the future Namibian juvenile justice system, the review attempts to discern the responsiveness of the proposed system towards the needs of children in conflict with the law as well as how it will promote non-violence and a caring Namibian society. The review also explores the notion that the new system provides a viable alternative to move beyond the limitations of the old approach towards children, conflict and justice in Namibia.

This review is not only significant for Namibia, but also relevant for other countries, especially in Southern Africa, which is in the process of reforming and experimenting with juvenile justice systems in order to respond constructively to the pressing issues of juvenile justice. Therefore, a review of the envisaged Namibian juvenile justice system will contribute and shape the debate about best practices in the juvenile justice arena inside and outside the country.

However, by no means is this review an appraisal or evaluation of the juvenile justice program in Namibia, but rather intends to provide a general overview of the philosophies and principles underpinning the envisaged juvenile justice system; First, by drawing and gleaning information, examples and lessons from existing records, documentations, reports, minutes and manuals related to juvenile justice in Namibia. The main secondary data sources reviewed are as follow:

- *Discussion Document: Juvenile Justice in Namibia--the Juvenile Justice Program Description.*
- *Pre-Workshop Report on the Implementation of the Juvenile Justice Project D and the Juvenile Justice Program Description.*
- *Restorative Justice Approach to Juvenile Justice in Namibia: A Guide for Juvenile Justice Workers*

Other relevant documents relating to the juvenile justice program, such as project reports, draft Bills, minutes and workshop reports were also consulted.

Second, by reviewing the semi-structured interviews and discussions conducted with ten members of the IMC and JJF (structures behind the juvenile justice program in Namibia). The semi-structured interviews were meant to serve as supplementary sources (see Annexure B: List of interviewees).

Section one begins with a brief history and background of the juvenile justice program in Namibia, and introduces the process and avenues for the reform.

Section two provides an analytical framework for developing and reforming a juvenile justice system to respond to youth violence. The section identifies critical issues inherent in the reform process, including attributes of how to judge and measure the new juvenile justice system as a conflict resolution and transformation tool.

Section three reviews and discusses general conceptual models of juvenile justice; identify the philosophies, principles and factors influencing the Namibian juvenile justice system with a particular reference to Africa, the developing world and international frameworks. The review then moves to give a brief analytical view of the juvenile justice models as conflict and justice transformation tools.

Section four presents a description of the proposed Namibian Juvenile Justice System by giving examples of how juvenile justice is being conceptualized, transformed and implemented in the country.

Section five analyzes the philosophies and principles of the new system. The analysis shows the compatibilities of the philosophical juvenile justice models behind the Namibian juvenile justice system, revealing that the new system provides opportunities for democratic transformation of conflict resolution and instills constructive values and norms in dealing with children, conflict and justice. The new system blends multiple philosophies and principles of juvenile justice and incorporates features that call for interagency strategies and cross-cutting philosophies, such as fair treatment, community participation, and providing opportunities for building a strong network in dealing with juvenile justice issues. Interagency implies the cross-systems and cross-philosophies emanating from the multiple actors, agencies, institutions and issues involved in the juvenile justice process.

Despite this optimism, the review also suggests that a clear and coherent strategy is required to manage and implement the new system. Namibia has to make a conscious decision about the level of the relationship governing the interagency or the cross-systems approach. Will the interagency approach be based on a mere network and coordination of these various institutions and actors or will it be a full integration of these institutions and actors into a new single system?

Section six draws conclusions about the philosophies and principles behind the Namibian juvenile justice system, identifying opportunities and shortcomings as well as making recommendations to improve the current situation.

1. The History of the Namibian Juvenile Justice Program

Post-colonial Namibia has no separate formal child justice system. The treatment of children in conflict with the law is regulated through the mainstream criminal justice system, inherited from South Africa, Namibia's colonial master. Most of the criminal justice provisions regarding the treatment of children in trouble with the law are inadequate and violate the spirit of the Namibian Constitution as well as those principles prescribed by the international instruments of juvenile justice. The criminal justice procedures such as arrest, pre-trial detention and prison sentencing options are still applied as the main channels for handling children who infringe the criminal justice system while other possible alternative conflict resolution and informal process of conflict and justice are not clearly defined in the formal justice system or neglected at all.

The Namibian constitution outlaws unfair, inhumane and degrading treatment of all people in Namibia, including those accused of having committed a crime. Namibia also signed and ratified the United Nations Convention on the Rights of the Child (CRC) in September 1990, subjecting the country to international frameworks of values and principles required to underpin formal juvenile justice systems (Super, 1999a). The Convention on the Rights of the Child requires countries to reconsider seriously the use of retributive justice and punitive measures when minors are involved, and instead the international body encourages countries to use constructive alternative measures that promote the child's well-being and self worth, including the need to separate child justice systems from the mainstream adult criminal justice systems. Article (3) of the CRC stresses the importance of safeguarding the best interests of the child, "all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the

child shall be a primary consideration”(Minnesota Advocates for Human Rights & The Human Rights Resource, 2000).

Despite the constitutional obligation and the commitment to the prescribed international standard of juvenile justice, a national prison survey on young offenders revealed that many of these youngsters reported being abused (mentally and physically) during arrest and detention periods; appeared in courts without parents or legal representation; and most of them were convicted for minor crimes or offences related to their economic situation at home (Prison Service et al. 1994). The UN committee on juvenile justice's feedback on Namibia's first country report on the state of children submitted in 1994 also identified serious deficiencies within the Namibian juvenile justice system (Super, 1999b; International Network on Juvenile Justice, 1993-2000).

As a result, in 1994, after a national workshop deliberation on child rights, organized by the Ministry of Health and Social Services, the Windhoek Juvenile Justice Forum (JJF) was established to spearhead debates about juvenile justice issues in the country (Namibian Police, et al., 1997). The Windhoek Juvenile Justice Forum (see Annexure C: An overview of the agencies and stakeholders in the Juvenile Justice Program) comprised various child rights oriented organizations and government line ministries, subjecting Namibia to an interagency strategy and cross-philosophical approach toward children's issues. In terms of the Juvenile Justice Program Description, the JJF hopes to serve as a structure of all those institutions that are implementing various juvenile justice services in the country. However, this structure has been more visible only in Windhoek and to a certain extent in few urban towns of Namibia, placing the

effectiveness, functionality and suitability of this structure throughout the country in doubt (Muntingh & Super, 1999).

In 1995, the Windhoek Juvenile Justice Forum mandated the Legal Assistance Center, a public human rights center, to pilot pre-trial diversions at the Windhoek Magistrate Court as well as extend the process to all corners of Namibia, including establishing other juvenile justice forums in other regions (Namibian Police, et al., 1997). This mandate, for the most part, has seen non-governmental organizations play a dominant and leading role in the early juvenile justice initiatives in the country.

The success of the pilot pre-trial diversion at the Windhoek Magistrate Court in 1995, and the concerted efforts of the Windhoek Juvenile Justice Forum and the Legal Assistance Center culminated into the creation of an Inter-Ministerial Committee (IMC) on juvenile justice in late 1998 (see Annexure C: An overview of the agencies and stakeholders in the Juvenile Justice Program). The launching of the IMC hailed the initial overt role of the Government to lead the juvenile justice program in the country (Muntingh & Super, 1999).

The IMC consists primarily of the same agencies as those represented on the JJF, but the IMC members are people in senior decision-making positions than the JJF representatives. However, some of the representatives serve as members of both the JJF and the IMC. In terms of the Juvenile Justice Program Description, the IMC seeks to serve as a policy and decision making structure for juvenile justice in the country. The special advisor to the Ministry of Justice chairs the IMC, creating the general impression among juvenile justice practitioners that the Ministry of Justice should be the leading ministry of juvenile justice in the country.

Through the technical assistance of international funding agencies, UNICEF and the Austrian Development Cooperation, in 1999 the IMC commissioned a national study that culminated in a *Discussion Document on Juvenile Justice in Namibia* and subsequently led to the development of the *Juvenile Justice Program Description*. The Juvenile Justice Program Description proposes the creation of a unified, comprehensive, sustainable and legislated juvenile justice system. The Juvenile Justice Program Description aims to utilize pilot methodological strategies to implement the new juvenile justice system, emphasizing the importance of holistic approach, networking and capacity building as well as policy measures. The program places great emphasis on the importance of balancing the needs of young offenders with that of their victims (complainants) as well as promote societal harmony, linking the future Namibian juvenile justice system to a mainstream notion of the restorative justice model.

Early in 2001, the IMC launched its first strategy, 'Juvenile Justice Project D', to implement some of the components of the Juvenile Justice Program Description. Project D mainly concentrates on building a structure for program implementation and a program information system by carrying out process mapping and feasibility studies of the Juvenile Justice Program Description. The Austrian Development Cooperation funds project D while UNICEF provided the funding that started a law reform project to draft the Child Justice Bill, set to result in the Juvenile Justice Act.

2. Alternative Responses to Youth Violence: An Analytical Framework.

In their press release in 1994, the Windhoek Juvenile Justice Forum, the first forum of its kind in the country to deal with issues of juvenile justice, described the treatment of children in conflict with the law in the country as deplorable and in violation

of the constitutional norms and standards prescribed by the UN international instruments of juvenile justice (Windhoek Juvenile Justice Forum, 1994). The forum went further to demand special treatments and measures to safeguard and protect the rights of the children in conflict with the law. They called for de-institutionalization, separate detention facilities, legal representation, parental supports and custody, including the need to use detention of children only as a measure of last resort. These concerns have become dominant themes for expressing the need of the juvenile justice reform in country.

The Windhoek Juvenile Justice Forum's radical statement marked a remarkable shift in how issues pertaining to children in conflict with the law were viewed in the country, committing Namibia towards a paradigm shift of ideology and philosophy of conflict and justice. Does the future Namibian juvenile justice system really present a new paradigm or rather a redefinition and reshaping of the old paradigms to bring them in line with the new context? Due to theoretical and practical considerations, it is rather difficult to conclude whether this paradigm shift represents an improvement in how the Namibian society responds to youth violence and justice. Laster (1993) warns of the danger of old-fashioned philosophies in new guises because it is easy to turn a good idea with good intentions into an old one.

Crime is one of the most feared conflicts in every society. Although the rate of youth crime is relatively low and varies from country to country the world over, national studies and official statistics indicate that tens of millions of children are reported to have infringed criminal justice systems daily (Cecchetti, 2001). Violence of any kind is an emotional issue, hard pressing many countries' efforts to come up with program

strategies and interventions to respond to such perceived youth crime and violence (Moore, 2002). Wide arrays of approaches, philosophies, principles and services are brought forth in an attempt to halt such youth violent behaviors. Ideally every society has ideas about the best philosophies to respond and how to treat its young people, but which ideas work? One such institutional response to construct a positive world outlook of the child, navigating him or her into a responsible adult, comes in the form of a juvenile justice system (Moore, 2002). Throughout the world philosophical models of juvenile justice are used to define the purpose and meaning of juvenile justice systems, reflecting the assumptions about how to respond, care, treat and instill tolerant behaviors in children--in a nutshell to promote a caring society.

Even with these best intentions, the juvenile justice process is plagued with a degree of uncertainties about how best to respond to youth crime and violence because of the complexities involved in the justice process. These include the tension between the need to punish young offenders alleged of having committed crimes in order to prevent them from harming society or to safeguard these youngsters' rights and welfare in order to protect them from being harmed by the channels of conflict and justice.

A juvenile justice reform is a complex process to undertake because it cuts across broad, but interdependent issues that cannot be implemented in isolation. As an institution, it embodies multiple systems and philosophies, replacing the long held view of single agency juvenile justice system. The diverse and multiplicity nature of juvenile justice makes a juvenile justice system fragile and prone to failures because other social factors can easily intrude and slow its operation (Roberson, 1996; Moore, 2002).

Therefore, attempts to develop or reform any juvenile justice system should take into account that juvenile justice is not a single system, but rather a conglomeration of diverse systems stemming from multiple actors, philosophies and ideologies involved in the process (International Network on Juvenile Justice, 1993-2000; Vito et al., 1998; Katzmann, 2002). These include the police, the judicial, prison service, social services, educational services and the community at large, all with diverse, but supplemental philosophical interests in terms of children, conflict and justice.

Both internal and external factors are influencing the juvenile justice reform process, providing an interesting convergence of multiple philosophies and principles for the new Namibian child justice system. Although the philosophies and principles pertaining to formal treatment of children in conflict with the law before and after independence have been influenced by the general juvenile justice developments in the west, post-independence Namibia has lost out on much of the debates and dynamics as they played out in most of the developed world in search of a meaningful and responsive child justice system.

For Namibia, a country that has barely transitioned from colonialism, juvenile justice reform is not just an institutional response to juvenile delinquency, but rather a means for social change and social justice to address direct and structural violence. Direct violence is easy to measure because it is concrete and visible, while structural violence is invisible and is embedded in the societal institutions that determine who deserve certain resources, services and social status and treatment (Opatow, 2001). Increasing social, economic and cultural challenges greatly affect the quality of the child justice transformation process. Studies on youth violence suggest an intimate

relationship between youth delinquency and social problems such as poverty and unemployment. Although, by international comparison, crime rates among Namibian youth is relatively low, the 90's have seen a steady increase in youth crime (Schulz, 2002). Schulz (2002) also notes that the "rate of violent crimes as well as property crimes parallels rates found in industrial countries" (p.370).

As such, child justice reform efforts should address the social conditions that make children live a life of crime and violence. For developing countries, and Namibia in particular, juvenile justice reform also means responding to social inequalities and social problems such as rapid urbanization, poverty and globalization (Mufune, 2002; Penal Reform International, 2000; Schulz, 2002).

In this case, the juvenile justice reform process provides an opportunity for Namibia to project the kind of society Namibia would like to become. This implies a search for program philosophies and strategies that focus on non-violence, conflict resolution, democratization and participation in the transformation of conflict and justice in order to reduce violence among the youth, and therefore giving the future Namibian juvenile justice system a civic function of promoting social responsibility and a culture of tolerance. Juvenile justice systems by their very nature are transformation tools for creating peaceful and caring societies, making a juvenile justice system a conflict addressing institution. Non-violence refers to non-coercive measures, implying philosophies and principles that maximize cooperation, interdependence, problem solving and collaboration (Deutsch, 2000b).

It is in this context that the purpose and meaning of the proposed Namibian juvenile justice system should be measured against how it will be responsive to the

children as well as prevent the Namibian society from becoming a violent society. In other words, if the juvenile justice system is to be a meaningful institution of conflict resolution, what kind of values, norms, principles and philosophies must it purport for the children and for Namibia?

Literature on conflict resolution postulates that society normally responds to conflict through inaction, reactive or proactive (Ruben & Levinger, 1995; Otite & Albert, 1999). Inaction and reactive suggest short-term responses while proactive suggests a long-term view on dealing with conflict. Central to the juvenile justice reform is the question of whether the Namibian juvenile justice system embodies short- or long-term principles and philosophies of conflict resolution. Therefore, this review proposes the analytical framework to judge the future Namibian child-care system by drawing from Stedman's (1991) arenas of conflict---namely identity, legitimacy, distribution and participation--- the philosophies and principles of the Namibian juvenile justice system's purpose and responsiveness as an institution of conflict and justice can be explained and measured accordingly.

Identity implies the frame of reference, means of justification, boundary creating and allegiance to certain values or principles. This arena relates to how the system provides the social context under which the handling and treatment of the conflict between young offenders, victims and the society at large are addressed. What kind of values does the system claim and how does it justify them? The reform of the child justice system demands a clear and comprehensive understanding of the purpose and meanings of the envisaged system-- implying that the principles, philosophies and values

underpinning the system should encompass concepts of what factors promote peace or decrease violence, such as cooperative or non-cooperative behaviors.

Legitimacy concerns the societal acceptance and approval of the principles and philosophies underpinning the juvenile justice system, both in terms of advancing peace and a caring society, what Stedman (1991) refers to as a judgment of the process, outcomes and the participants in the conflict resolution system. By implication, juvenile justice system as an institution of conflict and justice should encompass principles and values that view all people as deserving respect and fair treatment--implying a neutral channel of conflict and justice

Distribution is about how the system rewards or sanctions certain individuals, sometimes referred to as structural justice or injustice. By their very nature systems are tools for distributing the wealth of the country to the population or members (Deutsch, 2000a). How does the juvenile justice system include and exclude people who come in contact with the system? Does it give credence to imbalances and other obstacles that impair certain people from benefiting and participating in the justice process and the society as a whole?

Participation concerns accessibility, empowerment, influence and inclusion, implying an open and democratic process of conflict resolution. The juvenile justice system should embody philosophies and principles that empower people to make decision on issues that affect their lives as well as promote mutual reciprocity of respect among the population.

At the same time, the reform also has exposed a new way of dealing with children, conflict and justice, including the challenge for building institutional capacity

and a coherent implementation strategy and mechanisms, and the convergence between the western and the traditional ways of conflict and justice. This new reality has brought together a network of diverse services, each with its own philosophical stake in terms of roles, ideologies and assumptions about how to respond best to youth crime and violence, introducing a broader and cross boundary response to youth violence. This interagency framework implies a degree of integration in terms of communication, cooperation, coordination and moderation (Horowitz, 1991; Moore, 2002). In implementing the new child justice system characterized by multiple actors and philosophies a balance needs to be found to address the issue from cross-system and philosophy perspective. In other words, how will the new system harmonize the varying principles and philosophies of various actors involved in the system? Does this multilateral approach and interagency necessarily make the future Namibian child-care system more effective? This review proposes to measure the management of multilateral and interagency overlap in the envisaged Namibian child-care system, as a public oriented institution, in terms of the “strategic triangle” approach coined at the Kennedy School of Government (Moore, 2002, p.373). This approach emphasizes the importance of a triangle relationship of influence (see Annexure D: Figure 1) in implementing a public institution.

The first leg of that relationship relates to the values, principles and philosophies it is seeking to promote. What kind of strategies and programs and activities are employed by the system to promote the values it is seeking?

The second leg refers to legitimacy and support in terms of human and organizational resources, infrastructures, institutions and people. This implies a need to define as well as integrate these philosophies and principles purported by the system,

including allocation, definition and clarification of roles of stakeholders and partners involved in the interagency approach.

The third leg of the triangle is about the “operational capacity” of the system--implying coherent strategies, develop joint strategies--to implement the system (Moore, 2002, p.374)

Therefore, it is important to discern what kind of principles and philosophies the Namibian juvenile justice system holds because principles and philosophical models of juvenile justice provide intellectual frameworks for understanding the values, attitudes and doctrines that explain and describe the purpose, meaning and implementation of any juvenile justice system--in a nutshell they portray a response to youth violence, conflict and justice. Juvenile justice models by themselves suggest resources and efforts to be made available in order to address the perceived problem or need, in this case children, violence and justice.

It is against this background that the present review concerns itself with the philosophical responsiveness of the new Namibian juvenile justice system in promoting the needs of children, non-violence strategies and civic responsibility. It also explores the notion that the interagency strategy and the cross-philosophical ideology characterizing the proposed system present a better response toward children, conflict and justice. In reviewing the principles and philosophies influencing the Namibian juvenile justice system, the review identifies how Namibia can maximize the success and minimize the losses presented by the new system. The review first provides a general overview of juvenile justice models before analyzing how these models are influencing the future youth justice system.

3. Models of Juvenile Justice

The purpose and objectives of a juvenile justice system are often expressed through conceptual models, commonly referred to as juvenile justice models (Naffine, 1993). Countries use philosophical models to give meaning to their juvenile justice systems, serving as conceptual boundaries for explaining and describing the purposes and objectives of juvenile justice systems. Models are very much tools to judge and evaluate the effectiveness and functionality of a juvenile justice system in terms of efforts, resources and services. Roach (1999) views them as hypothetical answers to a real or perceived concern, serving as lodestars for implementing the hopes and aspirations of participants in the justice decision-making process.

Most juvenile justice authors are in agreement that juvenile justice models are theoretical assumptions about how nations view and interpret the phenomena of justice, delinquency and their causes as well as possible solutions (Naffine, 1993; Winterdyk, 2002). This notion gives juvenile justice systems intervening and problem-solving characters, suggesting that juvenile justice systems have larger functions and purpose in the society. As such, juvenile justice models do not function in isolation, but rather reflect and are shaped by the cultural, historical, political and social realities (Winterdyk, 2002).

Consequently, juvenile justice systems serve as tools through which societies express acceptable standards, norms and values, giving juvenile justice systems both socializing and controlling functions. This view implies that juvenile justice systems are agenda driven because they serve to articulate the hopes, expectations and commitments of their inventors/creators--indeed they are highly context driven. Roach (1999) cautions that the susceptibility of justice systems to contextual factors makes them victims of self-

fulfilling prophecies. This is because the possibility exists that internal biases might prevent their creators or implementers from recognizing the contradictions inherent in the philosophies and principles behind their systems. Does the susceptibility of juvenile justice systems to context suggest that models of juvenile justice have different meanings for different contexts or are they universal across situations?

The general trend of juvenile justice globally seems to indicate that juvenile justice systems have universal functions--protecting children from being harmed as well as protecting the society from the violent conducts of children. Most writers in this field concur that the evolution and development of juvenile justice through out the world seem to follow a similar pattern, dismissing the notion that juvenile justice derives its meaning from its context. The implication for the new system is that integrating traditional ways into the formal child justice system might not be the answer. Paradigm shifts from one model to another characterize the historic trend of the development of juvenile justice systems (O'Connor, 1997; Bala & Bromwich, 2002). This characterization implies that the debates about best practices for children are dominated by specific discourses and philosophical assumptions about how to view and treat children at a certain time, portraying juvenile justice systems as being in perpetual transition.

Paradigm shifts in juvenile justice have been a subject of heated discussions, resulting in some writers doubting the relevance of juvenile justice systems as a viable institutional response to youth violence. There is a growing concern that paradigm shifts indicate the failure of the juvenile justice system to achieve its purpose (Morris & Giller, 1987; Roberson, 1996; Welgrave & Mehlbye, 2002; Winterdyk, 2002). At the heart of this growing concern is the realization that each paradigm shift serves as a reminder of

what the juvenile justice system can or cannot achieve. However, this fear undermines the importance of improvement, adjustment and innovation in dealing with children's issues. Society is not static, and as a result, any social mechanism evolves with time as the society progresses. Paradigm shifts in a way demonstrate the forward movement of juvenile justice, indicating the quality and ability to learn from past mistakes and to adjust accordingly.

Nonetheless, it appears that the historical trend of juvenile justice paradigm shifts has not produced a satisfactory solution about the best ways to approach juvenile justice issues. The uncertainty about the effectiveness of the juvenile justice system raises the question of whether to view juvenile justice system as an end or a means to an end. It also seems to stem from the tendency to treat models of juvenile justice exclusively and independently from each other (Winterdyk, 2002). Treating models of juvenile justice exclusively fixes their philosophical meanings, interpretation and application in the juvenile justice systems. Instead of viewing them as incompatible continuums, the focus should rather be on appreciating and identifying alternative, but supplementary values and meanings each model brings to the system (Roach, 1999).

The existence of varying models and the changing lens of juvenile justice portray that there is no single solution towards juvenile justice. Juvenile justice systems are not conclusive and do not represent final truths about children, delinquency and justice. Therefore, paradigm shifts represent progress and the extent the society has gone to acknowledge and recognize children's issues and possible constructive measures to address youth crime and violence.

There seems a consensus in the literature about juvenile justice systems leaning towards two basic thrusts: to protect and promote the welfare of the child' and to punish the young offender who has broken the law (Furbish, 1999). The notion that children are vulnerable, less developed and susceptible to social influence are commonly identified as the main sources influencing juvenile justice models (Roberson, 1996; O'Connor, 1997; Bala & Bromwich, 2002; Katzmann, 2002). For example, Roberson (1996) pointed out that juvenile justice systems evolved out of the need to deal effectively and constructively with delinquency and the marginalization of children.

However, it remains a subject of debate as to what should be the priority of a juvenile justice agenda, whether it is to secure child protection or to promote a caring society? These debates are captured in the themes, values, philosophies and principles describing juvenile justice systems. Most referred models in the literature are the welfare, justice, crime control, restorative justice and the corporatism model. These models are not exclusive from each other, suggesting a transfer of ideas from one model to another. New models develop from old models.

The philosophies and principles of the new Namibian child justice system can be based on the discussion of the general trends of these models as they play out throughout the world.

The Welfare Model

The welfare model of justice finds its roots in the ideology that an individual is inseparable from his/her community (Naffine, 1993). The intellectual philosophy of this approach stresses social good and common benefits. The model emphasizes the importance of informality, rehabilitation and institutionalization of children in conflict

with the law (Roberson, 1996; Penal Reform International, 2000; Bala & Bromwich, 2002). Therefore, the purpose of the state or the juvenile justice system should be to strive to promote and maintain the general welfare of the community or society. An individual whose conducts destabilizes the well-being of the community is deemed to be pathologically sick, and therefore is the duty of the community or society to help him or her heal through authoritative intervention such as courts or rehabilitative social services.

However, the introduction of the welfare approach to juvenile justice in the late nineteenth-century in the west marked the initial movement of viewing children as having different needs than their adult counterparts. Its presence introduced special social services (social work and psychological services) and measures in the criminal justice system at the disposal of children in conflict with the law. History reveals that in almost every culture the social and legal recognition of children was based on the standard of adults, treating children as mini-versions of adults (Roberson, 1996; Bala & Bromwich, 2002). Consequently there were no special provisions for children in terms of social services and criminal justice.

The meaning and interpretation of the welfare model in the literature does not come without confusions (Bala & Bromwich, 2002). There is a school of thought that sees the welfare model as more society or community oriented. Its focus on common and collective good transcends the needs of an individual (Naffine, 1993). The model is believed to measure the behavior of the young offender against his/her conformity with social norms. This approach requires a child to fit in within a system rather than the system to suits his/her needs. This notion of a society-driven welfare model portrays juvenile justice systems as means for social conformity.

On the other hand, there is another train of thought that seems to portray the welfare model as needs- driven, geared towards protecting the child rather than the society. This notion suggests that the juvenile justice system, as a state institution, should strive to promote the welfare of the children. The common tenet upon which this thought is based is the principles of *parens patriae*- placing the state into the father figure (Roberson, 1996; Vito et al, 1998). The *parens patriae* gives the state a dual role of both controlling and protecting children- hence the institutionalization of the services and support to children. The state has the discretion and the power to determine the type of treatment or social service to be provided to a child in the juvenile justice system (Bala & Bromwich, 2002).

Nevertheless, there seems a consensus among critics in this field that the welfare model, both from a child-need or community-need perspective, portrays children as recipients of charity or humanitarian services, placing children into a clientele position (Naffine, 1993). The welfare approach bases the provision of social services to children on the continuum of us (the experienced adults) versus them (helpless, dependent and inexperienced children)

Despite its paternalistic approach to children, the welfare model's trademarks on the juvenile justice today are self-evident. The UN Convention on the rights of the child (CRC), signed and ratified by many countries in the developed and developing world, embraces some of the characteristics of the welfare approach (Winterdyk, 2002). By virtue of Article 144 of the Namibian constitution, the CRC provisions are applicable in Namibia. Article 144 provides that all international treaties and covenants signed by Namibia become part of Namibian law (Legal Assistance Center, 1998).

Post independence Namibia's social services and policies for dealing with children to a certain degree reflect the colonial experiences--the state and governance of Namibia in itself is a product of the European colonial heritage (nation-state system). As a result Namibia inherited a skewed formal system of managing children in conflict with the law, spread out in a number of separate statutes namely, the Criminal Procedure Act 51 of 1977, the Children's Act 33 of 1960 and the new Prison's Act 17 of 1998(Super, 1999; Schulz, 2002). Most of these laws, policies and social service institutions to a certain extent were based on a mixture of welfare and justice approach. Consequently, these acts and the welfare influence are very much the main sources of the current thinking about juvenile justice reform in the country. Their influences are still embedded into the psyche of the people who are rendering services to children such as prosecutors, magistrates, social workers and policymakers as well as the broader community.

This welfare heritage suggests that juvenile justice in the context of Namibia, like many other countries in the developing world, is a transition of ideas from the colonial period to the post independent era. Although very much at a late stage, the debate about best practices in the developing countries during the colonial period have followed the same trend of juvenile justice debate in the developed world (Penal Reform International, 2000). The colonial policies and the introduction of formalized systems of governance based on European models as well as the negligence of indigenous channels of conflict and justice are some of the contributing factors for the dominance of welfare models during the colonial era.

The welfare model's emphasis on the common good blends well with the communal frame of mind prevalent in most of the indigenous communities in sub-

Saharan Africa, as expressed by the Zulu catchphrase ‘*umuntu ngumuntu nagabantu*’: “A person is a person because of other people” (Diescho, 1994; Schulz, 2002). Is the welfare model a communitarian model in a new guise?

The striking similarities between the welfare model and the communitarian model in terms of linking the needs of an individual to that of the larger society suggests that the welfare model in Namibia is not necessarily a European import. Both the welfare approach and the community approach seem to appeal for authority (state and adult figures) and take advantages of social relationship among the population. By implication, a call to integrate traditional ways of conflict resolutions into the formal justice is rather a renewal of the traditions than seeing it as a new approach.

The Justice Model

The justice oriented model (sometimes referred to as rights based) approach to juvenile justice in the west emerged in response to perceived lack of accountability and transparency of the welfare model towards children in the juvenile justice system. The justice model takes its principles and values in the liberal ideology of political philosophy that places individuality at the center of the world (Naffine, 1993; Roach, 1999). The purpose of the juvenile justice system intervention is not the maximum happiness of the greater societal number, but rather the protection of personal liberty and happiness-- individual self-determination. The justice model emphasizes the importance of due process rights, proportionality of punishment, diversion, and de-institutionalization (Walgrave & Mehlbye, 1998; Bala & Bromwich, 2002; Winterdyk, 2002). The ideological landmark ruling in *Re Gault (387U.S 1 AT 27 (1927))* in the United States of America set an international framework for the justice model movement to take root

through out the world (O'Connor, 1997; Walgrave & Mehlbye, 1998; Bala & Bromwich, 2002).

The model suggests that young offenders are not mere subjects of state intervention, but rather bearers of inalienable rights, immune from any human creation authority. The justice model focuses its attention on the system's ability or inability to safeguard an individual who comes in contact with it. It attempts to address structural injustices by prescribing duties and responsibilities for the state. In actual fact, this model imposes dual functions on the state; to refrain from interfering with the rights of children in conflict with the law as well obligating the state to provide protection for them. In a way, the model makes a juvenile justice system a social mechanism to control service providers, implying managing and improving the juvenile justice system so that it can guarantee protection of children.

Critics of the justice model point out that the model ignores the social circumstance by paying lip service to legal procedures (O'Connor, 1997). In other words, the justice model does not address factors that push children into the juvenile justice system. As such the shift to the justice model has neglected to improve on the weakness of the welfare model.

The justice approach values the importance of established and pre-determined procedures towards conflict, implying predictability, precision and accuracy of the justice decision-making process. The juvenile justice as an institution of conflict and justice should satisfy questions about whether it treated the issue and parties in a fair, dignity and respect manners (Deutsch, 2000a). The justice model seems to stress human values and the importance of equal treatment of all people by giving consideration to their needs

(Deutsch 2000). However, the justice model seems to take away the conflict from the parties involved, therefore limiting their participation in the justice decision-making process.

In Namibia, independence has provided a democratic and constitutional framework within which to discuss children's issues and juvenile justice reform. The rights-based approach to juvenile justice in Namibia is part of the larger context within which the struggle for independence was fought and therefore the juvenile justice reform is a continuation of the liberation ideals of human rights and democracy (Gomelski, 1998). The promotion of fundamental freedoms, human rights and solidarity were the core principles for opposing colonialism and oppression in Namibia.

Democracy and independence also opened doors for Namibia to network and share experience and expertise with the broader international community. Juvenile justice advocacy work in neighboring South Africa and Namibia's signature to the UN Convention on the Rights of the Child strongly influenced the introduction of a child rights focused juvenile justice reform in Namibia (Muntingh, 1997).

The Crime Control Model

The 1990's saw an increasingly negative public opinion towards youth crimes and juvenile justice systems abilities to curb juvenile delinquency in many countries in the developed world (Vito et al., 1998; Penal Reform International, 2000; Bala & Bromwich, 2002). Roberson (1996) cites government overspending, globalization, the end of the Cold War, and ineffective social programs as the motives for the increasing public outrage against juvenile offenders.

The crime control model of juvenile justice is skeptical about the goodness of human nature, therefore, social control measures must be found to regulate deviant behaviors (Roberson, 1996). The model emphasizes the importance of public order to protect the society from the harm of crime. This indicates that crime control appeals to public opinions, making the model a utilitarian approach--happiness for the greatest number. The model is rooted in the criminology philosophy of deterrence, implying that all cases that go to criminal trial end up in conviction (Roach, 1999). By implication, juvenile justice should strive to deter young offenders from harming the society. Deterrence is based on the notion that adversarial treatment of young offenders will deter them from committing crimes in the future. From a conflict resolution perspective, this approach does not provide favorable conditions for cooperation, but rather creates hostile relationships among people instead.

There seems to be a tendency in the judicial system to treat crime control and crime prevention interchangeably, resulting in a misleading conclusion about the effectiveness of the crime control model. Crime control implies suppression of delinquency by any means necessary such as retributive and deterrence measures. Crime control model is based on intervention strategies because it merely reacts to conduct that have already occurred, rather than offering possible prevention options. It is immediate, reactive and aimed at developing tough legislation against young offenders (Roach, 1999). On the other hand, crime prevention strategies appeal to education rather than suppression, including the development of measures to address factors (such as poverty that push children to live a life of crime.

There seems to be an agreement among juvenile justice writers that in most of the developing countries, the regression towards tough measures against juvenile offenders hasn't taken root yet (Penal Reform International, 2000). However, this assumption ignores the fact that most child justice systems in the developing world, including Namibia, are a combination of the welfare, justice and crime control models. Consequently, juvenile justice reform in developing countries is prone to be encroached upon with the crime control influences, especially where the socio-economic conditions in many of these countries count against relaxed measures on crime. In addition, with the advent of technological communications, contact with the developed countries may speed up the exposure to resort to tough measures to respond to juvenile delinquency (Penal Reform International, 2000).

The Restorative Justice Model

This conception of a justice model is a recent phenomenon, prompted by the adversarial nature of the retributive justice, upon which most criminal justice systems throughout the world are based. The restorative justice model emphasizes the importance of restoring harmony in the society through participation and reconciliation (Naffine, 1993; Penal Reform International, 2000; Winterdyk, 2002). When a crime is committed it is the societal relationship that is affected, and therefore the purpose of any justice system is to repair that disturbed relationship between the offender, victim and the society at large. This approach portrays the juvenile justice system as a neutral third party, present only to assist the parties in resolving their conflict in a calm way possible. The restorative model focuses the juvenile justice debate on maintaining equilibrium in the society (Penal Reform International, 2000). It calls for a system of justice that is based

on community intervention strategies such as community service, family group conference and victim offender mediation that all stress the importance of responsibility and accountability.

This model is believed to resemble some sort of an amalgamation of modern and traditional ideas of conflict resolution (Vito et al., 1998; Penal Reform International, 2000). The very nature of its resemblance to some ancient or traditional ideas of conflict and justice has led many writers in this field to believe that it is the best practice for juvenile justice, especially in developing countries where such traditional ways were suppressed and undermined by colonial governments. But, more important is its appeal for broader participation-through the empowerment of parties in the dispute to take part in the settlement of their conflict, is what makes it favorable. The advantage of using the population to find solution suggests that conflict is a form of growth from which the society can be empowered (Bush & Folger, 1994). This characteristic of participation is also in line with the CRC's emphasis on greater participation of children in issues that affect their lives, including conflict resolution.

However, implementing the restorative justice model remains more of a moral instrument that lacks teeth to transform it into reality, especially in developing countries where lack of resources and skills might hamper the process. The fact that a greater number of people are part of the justice decision-making process does not really suggest that fair justice is taking its course. The communal or ancient notion of collective responsibility and common good is no longer the same or so strong as it used to be, and norms and values governing the community keep changing. Therefore the challenge to implement restorative justice will have to take those factors into account.

Another area neglected in the literature is whether the restorative justice model has different meanings for different cultural settings, and how it can be implemented in cross-cultural situations. Its suitability and workability in developing countries where there are so many diverse cultures as well as huge imbalances between urban versus rural setting is a matter of further research. Avruch (1998) cautions against the tendency that cultural approach is panacea for indigenous issues. This is because the concept of culture in itself is broad and may not be specific enough to explain the local setting in question.

In Namibia, the main theme of the juvenile justice reform centers on the restorative justice approach instead of the retributive justice encouraged by the colonial regime of South Africa.

However, the reform of juvenile justice systems in Namibia can also be seen as part of the transformation that has been sweeping across the African continent after achieving independence, as captured by the spirit of 'African Renaissance' (Schulz, 2002). The African Renaissance implies authenticity, genuineness, self-identity and self-rediscovery. In juvenile justice, this notion is expressed by the adoption of the African Charter on the Rights and Welfare of the Child by many African governments. The charter places the resolution of conflict rights within the context of family and community (Penal Reform International, 2000).

Critics point out that the OAU African Charter on the Rights and Welfare of the Child is not really genuine because it is expressed through the Western discursive medium. Its drafters are mostly African academicians who themselves are products of the Western education. Accordingly, nearly, all African countries after independence remain subjected to western discourse through the use of the Western languages as

medium of instruction (Modo, 2002). This criticism however does not explain whether using the Western medium hampers or enhances the workability and effectiveness of the juvenile justice systems in Africa.

The Corporatism Model

There is an increased acknowledgement of the importance and competencies of the interagency and cross-system response to youth violence, making use of the opportunities and advantages provided by such diverse institutions, actors and philosophies. This new framework emphasizes a holistic approach to juvenile justice (Penal Reform International, 2000; Katzmann, 2002). The term holistic implies integration, comprehensiveness, collaboration, interconnectedness and coordination. However, there is a tendency for many countries to implement this model on an ad hoc basis, and as result it cannot really be said that a holistic and integrated process of juvenile justice is being realized (Gelsthorpe & Kemp, 2002). The dilemma faced in implementing this approach is the challenge to unify and harmonize these diverse elements into a coherent strategy (Moore, 2002).

The corporatism model advocates for administrative decision-making, policies, system intervention, diversion and interagency structure (Winterdyk, 2002). In addition, the model places greater emphasis on trained specialized juvenile justice workers to provide services to children who come in contact with the juvenile justice system.

The corporatism model represents how countries have managed to modify their various juvenile justice systems to respond to the demands of juvenile justice issues on the ground. By implication, it suggests that juvenile justice models should derive their meanings from the practical reality on the ground. The daily situations as presented by

issues and problems should inform and guide the conception and implementation of a juvenile justice system.

In Namibia, the advent of independence had also provided a platform for the civil society and the government to cooperate and establish joint committees in certain areas such as women and children's issues. Before independence, juvenile justice services were fragmented among various public institutions that mostly operated independently of each other and were rendered along color and ethnicity line. There was little collaboration or networking amongst juvenile justice service providers and institutions related to children's issues. Where there were some degrees of interagency collaboration and networking, it was mostly done on an ad hoc basis.

In the absence of a formalized juvenile justice system, the IMC has been spearheading a coalition of willing role-players and stakeholders in juvenile justice issues. Although most visible only in few towns, the Juvenile Justice Forum and other sub-committees such as the Trial and Arrest Working Group, and the Youth Crime Prevention Committee have been established nationally and regionally. This multi-sectoral approach has brought together institutions and stakeholders that traditionally viewed their roles towards children in isolation.

However, in the absence of clearly defined structures, policies and uniform procedures, the integrated implementation of the juvenile justice largely remains unrealized. The partners still remain embedded into their traditional roles and institutional identities, resulting in a regression towards old ways of handling children. This implies that barriers to interagency and integration are not only of physical, but also

psychological in terms of perceptions, beliefs and values. In short, the stagnant identities of institutional apparatuses can hamper the cross-system approach.

Juvenile Justice Models Analysis.

Both local and international factors are critical in shaping the juvenile justice agenda. What is obvious from the literature review is that the evolution of juvenile justice seems to show a consistent pattern of across the globe, suggesting that similar social factors influence juvenile justice throughout the world. This indicates that Namibia's child-care system will face the same social problems as those faced by other systems across the globe.

At best this predictability of similarity provides an opportunity for Namibia to learn from other countries' experiences. The universal trend also suggests that juvenile justice systems have similar meanings everywhere that can be addressed through a universal approach-hence the universal subscription to the United Nations Convention on the Rights of the Child (CRC).

For developing countries, on one hand, this universal trend indicates the extent that the developed world influences the juvenile justice discourse. The question becomes should the developing world blindly follow the western process of juvenile justice models or rather should they venture out and start their own path of juvenile justice? On the other hand, the above-mentioned trend provides an opportunity to take advantage of both experiences in crafting their child justice system instead of seeing the two realities as oppositional paradigms.

Nonetheless, from a conflict resolution perspective, the juvenile justice models resonate specific discourse towards addressing conflict caused by the delinquency of children.

The welfare model seems to value authoritative intervention, making it more concerned with the outcomes than the process. From a conflict resolution perspective, the welfare model is a top down approach because it centralizes the conflict resolution process of dealing with children, crime and justice by placing the fate of children in conflict with the law in the hands of the state. It also fails to question the means (such as deprivation of liberty) used to promote the welfare of the children, which led to unquestioning acceptance of encroachment of children's personal liberty in the name of rehabilitating them.

However, the criticism against the welfare approach does not suggest that the welfare model is necessarily irrelevant, rather, it points to the failure of its implementation process. By implication, the effectiveness of a juvenile justice model or a system should be measured on how it is being implemented, including its implementing agencies. The people are the media through which the system is implemented.

The justice model sees the process as a prerequisite for fair outcomes of conflict and justice, suggesting that fair and legitimate processes are pre-conditions for a just and peaceful society. In other words, the child justice system must be geared towards creating acceptable standards to handle conflict and justice, what Deutsch (2000a) refers to as the importance of valuing the adherence to constructive conflict resolution even in times of destructive conflict situation. These entail tolerance, participation and democracy, cooperation, implying that juvenile justice systems as an institutions of

conflict and justice should encompass principles and philosophies that create conditions for transmitting acceptable and humane values such as equality and fair treatment. Conflict resolution implies finding a solution by means of non-violence (Deng & Zartman, 1991). Inhumane and cruel procedures shouldn't be used when administering justice. Research has proven that people respond positively to social policies or institutional authority when they are legitimated or feel that the system offers fair procedures (Deutsch, 2000a).

From a conflict resolution perspective, the child rights oriented process raises some ethical concerns that whether a system of conflict resolution should advocate for the rights of a party in conflict. Nonetheless, this ethical dilemma is justifiable because juvenile justice issues call for special treatment due to the reasons that young or children are less developed to mete against the difficulties and complexities of adult oriented channels of conflict and justice. The juvenile justice model of conflict resolution is based on the ethical position that children are less developed and prone to be affected negatively by any intimidating or threatening situation, suggesting that in certain situations, conflict resolution has different meanings and may take up certain special functions, justifying the theory that ethical obligations should be derived from concrete situations (Arras & Steinbock, 1995).

The crime control model has features that promote hostility, non-cooperation—a nutshell it is a coercive process of conflict resolution. The crime control model borders on humiliating, excluding and sanctioning the transgressor. This implies a process of conflict resolution where one party loses and the other one wins (Deutsch, 2000b).

The restorative model seems to suggest that people or parties own both the process and the outcomes of conflict and justice, making a mediator or any third party a distant intervener. By embracing a people-oriented approach, restorative justice is geared towards the creation of opportunity for participation in conflict resolution, suggesting common interest in peace and democratic transformation of dealing with conflict (Stedman, 1991; Anyang'nyong'o, 1991; Msabaha, 1991; Gurr, 1991; Rothchild, 1991).

However, the return to tradition as encompassed by the advent of the 'African Renaissance' portrays a restorative justice juvenile justice system as a cultural tool in the sense that it is driven by the need to restore the traditional philosophies and ways of dealing with justice and conflict—through implementation of previously neglected African ideals, serving as a tool to right and reclaim the past, not only in terms of independence but in terms of social transformation (Bond, 2002). The African Renaissance is deeply rooted in the liberation and African nationalism ideology (Gewald, 2002). As such it is seen and measured in opposition to the European ideals, suggesting nostalgic and romantic feelings about African ways of dealing with conflict and justice in the sense that traditional ways or a communal setting has provided the right and safer milieu for treating children. In this way, culture is equated with being correct and right, therefore tolerating and passively accepting possible contradictions inherent in the traditional ways. In other words, the restorative justice approach is a mere tool for positive self-image and confidence building. Nonetheless, this link points to how culture is important and greatly influences conflict resolution and justice.

Fairweather (2002) warns against viewing a culture-oriented model as a claim to authenticity, or an undiluted past, and so forth because culture is not static. African or

Namibian tradition has undergone a lot of changes and therefore the 'African Renaissance' is not enough to explain the Namibian or the African setting.

From the rights perspective the return to traditional ideals of conflict and justice ignores the danger that the traditional channels of conflicts are adult oriented and therefore might exclude children from decision-making processes that affect their lives.

On the other hand, the convergence between western and traditional philosophies gives the Namibian juvenile justice system a strong quality because it is forward-looking to cater to the changing nature of Namibian youth. Namibia was colonized by two western systems of governance (Germany and South Africa), their impact and effects on Namibian youth cannot be denied. Namibia's youth of today and tomorrow are defiantly a product of both western and traditional circumstances.

The debate about traditional versus general ways points to *emic* and *etic* approaches referred in cross-cultural theories. *Emic* emphasizes the importance and eminence of cultural ways in addressing conflict--subjective or local factors, while *etic* refers to a cross-cultural approach, or an objective approach, characterized by universalized diversity (Avruch, 1998). The international discourse of juvenile justice as expressed through the CRC represents attempts to universalize and standardize treatment of children. This approach suggests that the juvenile justice system has the same meaning everywhere. The CRC in this way serves as an objective (trans-cultural) response to juvenile justice issues. The CRC also suggests that juvenile justice is no longer a national issue but cuts across national boundaries.

Corporatism stresses the importance of strong societal institutions to get involved in the process of conflict and justice. This approach values specialization and skills a means to enhance social accountability and transparent.

The corporatism model in one way serves to break the wall of isolation that had characterized the provisions of services to children in the past—the single agency approach. Each institution rendered services solely based on their rules, regulations and philosophies without inputs from other relevant institutions to question or supplement it. This introduces openness and accountability in dealing with juvenile justice. All its proposed features such as the policy measures implementation, uniform procedures, structure and trained juvenile justice workers, are ingredients for a democratic, fair treatment as well as an ordered way of distributing resources and services to the population. But, more importantly, this approach supplements the restorative justice approach that emphasizes broad participation in the decision-making process and justice in the sense that it will enable the communities that were undermined in taking part in formal justice.

4. The Description of the New Namibian Juvenile Justice System

The principles and philosophies behind the future Namibian juvenile justice system were unveiled in the Juvenile Justice Program Description of the IMC. The IMC adopted the Juvenile Justice Program Description and presented it to the government ministers in October 1999 who also approved it as the guiding document for transforming and implementing the juvenile justice system in the country.

The program description proposes for the creation of a structured and inclusive system that recognizes the society's sacred responsibility to care and provide for children

as well as values their roles and that of their families in building a tolerant society. The program description states, *“our vision is to ensure that children are treated as treasured assets, and that they and their families are valued and capable of contributing to peaceful and caring society in which the principles of restorative justice are practiced”* (Super, 1999b, p.1). By embracing these principles, the Namibian juvenile justice system views conflict as a positive phenomenon from which the society can grow (Bush & Folger, 1994). It also acknowledges the potentials and abilities of human beings to reconcile and make peace. Nonetheless, viewing conflict in this way borders on a mere moral persuasion, unless social mechanisms can be found to translate the ideals of the system into practical realities.

The emphasis on children and their families’ contribution to a peaceful and caring society blends in with the conciliatory principles of the ‘ubuntu’ principle referred to in the literature review section. This blending implies the settling of conflict within a communal social setting.

Consistent with the constitutional norms characterizing post-independent Namibia, as well as the international principles prescribed in the United Nations Convention on the Rights of the Child, the program description proposes a juvenile justice system that is fair, humane, and equitable, as observed by one respondent, *“for Namibia the reform is long overdue because the current treatment of children in conflict with the law through the criminal justice is completely uncalled for and unconstitutional for that matter. As a democratic country we cannot operate outside our constitutional obligations”* (an IMC Official, 2002a)

The comment echoes the observation of the UN Committee on the Rights of the Child in 1994, in its response to the administration of juvenile justice in Namibia. The committee advised Namibia to be guided by international standards, more in particular with regards to the provisions of article 37 and 40 of the Convention on the Rights of the Child (International Network on Juvenile Justice, 1993-2003). Article 37 of the CRC calls for the arrest of a child to be used as a measure of last resort and for the shortest appropriate period of time. While article 40 of the CRC calls for a guarantee and recognition of due process rights of every child alleged or accused of have infringed the penal law (Minnesota Advocates for Human Rights & The Human Rights Resources Center, 2000).

Subscription to constitutional and international norms points to the need to make use of fair measures that promotes human value and cooperation when dealing with conflict and justice. However, there is a tendency in many countries, Namibia included, to only emphasize those provisions in the two articles, namely the inhumane treatment (article 37) administration of juvenile justice (article 40) at the expense of other social issues affecting the children in the juvenile justice system (International Network on Juvenile Justice, 1993-2003).

Furthermore, the program description contains features that recognize and acknowledge the importance of developing a complete juvenile justice system as stated in the program description, “*our mission is to design and implement an integrated juvenile justice system*” (Super, 1999b, p. 1). These imply system measures that respond to both the needs (social, economic, cultural, psychological and developmental) and rights of the children. In the juvenile justice arena a complete juvenile justice system recognizes the

importance of both the civil and political rights, as well as the socio-economic rights. All rights are fundamentally interdependent and therefore demand equal attention when developing or reforming a juvenile justice system (de Waal et al., 2000; International Network on Juvenile Justice, 1993-2000).

As regards restorative justice, the future system stresses the importance of community-based interventions. The restorative justice guide reads, “*punishment that is imposed by relatives, friends or those the wrongdoer personally respects, has more effect than that which is imposed by the formal criminal justice system*” (Legal Assistance Centre, 2002, p.6). The program values a juvenile system that promotes harmony, dialogue and reconciliation between the young offender, the victim, as well as the society.

However, there is a greater need for further research to ascertain how restorative justice may work in the Namibian context. Given Namibia’s diverse cultures and communities, can the restorative justice model be successfully implemented in such cross-cultural situation? Nevertheless, the call for a juvenile justice system that subscribes to restorative justice and the traditional ways gives the community a greater role to participate in the justice-making process. In the words of one respondent, “the importance of the restorative justice is the inclusion of the young offender and the victim as well as their social supports in determining the outcomes of the conflict” (a JJJ Official, 2002a, June 20)

More importantly, the envisaged juvenile justice gives priority to policy measures, human resources and institutional capacity, and socio-cultural environment to improve the conditions of children in conflict with the law, implying comprehensive reform of the

current system. The comprehensive approach acknowledges the importance of the interconnectedness of social issues and the various helping systems within juvenile justices, suggesting availability and accessibility of services. The program description reads, *“young people at risk and their families should have access to a continuum of different services with the aim of promoting the most empowering and least restrictive options/programs which is suitable to their needs”* (Super, 1999b, p.1)

The program description is based on project interventions such as the Policy and Legislative Reform, Training, Structure, Service Delivery System, Evaluation and Monitoring, and Advocacy and Child Crime Prevention.

Policy and Legislative Reform

The Juvenile Justice Program Description proposes an entrenched juvenile justice system defined within the ambit of uniform policies and legislated procedures. The system would require that all treatment and services rendered to children comply with the law as well as reflect the democratic principles provided for in the Namibian constitution and the international standards.

The IMC has produced and conducted workshops on the draft Child Justice Bill twice, which will eventually result in a Juvenile Justice Act. However, there are concerns among the stakeholders that the draft bill is not sustained by proper discussions and policy measures as stated in the pre workshop report, *“the law reform project has resulted in a first draft of a bill, but (at the Ministers’ discretion) has resulted in the bypassing of a policy document and white paper”*(Super, 2002, p. 6). The implication is that no policy decision has been taken on controversial issues such as age and criminal

capacity, status offence, costing of the new system as well as the setting up of new rules and procedures to inform the Child Justice Bill.

The drafting of the new bill is crucial because it aims to replace the old laws, widely perceived to be outdated, retributive, unconstitutional and inadequate. In a country where there is a huge economic and resource imbalance among the population as well as between urban and rural settings of the country, a legislated juvenile justice system is not only important for enhancing human rights and democratic values, but also necessary in the distribution of resources and services to all children in the justice system. In other words, the bill aims to introduce a juvenile justice system that is accessible, acceptable and available to all children. The preamble of the 2002 draft 'Child Justice Bill reads: *"To establish a child justice system for children accused of committing offences which aims to protect the rights of children entrenched in the constitution and provided for in international instruments; to provide for the minimum age of criminal capacity of such children; to delineate the powers and responsibilities of members of the Namibian Police and child workers in relation to such children; to provide for the detention of such children and their release from detention; to entrench the notion of restorative justice; to incorporate diversion of cases from formal court procedures as a central feature of the process; to establish assessment of children and preliminary enquiry as compulsory procedures in the process; to create special rules for a child justice court; to provide for legal representation for children; to extend the sentencing options available in respect of such children; to establish review procedures; to create monitoring mechanisms to ensure the effective operation of this legislation , including a*

child justice commission, and to provide for matters incidental thereto” (Child Justice Bill, 2002, p.1)

The draft bill implicitly proposes for culturally appropriate measures when handling children in conflict with the law. It reads: *“To provide for a code for dealing with children who are alleged to have committed offences so as to ensure that they are dealt with in a manner which is culturally appropriate and recognizes and enhances their cultural identity” (Child Justice Bill, 2002, p.8)*

The bill’s appeal to culture acknowledges the importance of population in the sense that many indigenous communities still resolve conflict based on their traditional values.

The bill also incorporates principles that emphasize the importance of protecting the community from unlawful conducts. “The community must be protected from unlawful behavior”, reads one of the general principles provided for in the draft bill. A balance needs to be found between protecting the welfare and rights of the child and protecting the welfare and the rights of the community. The bill also goes further to stress the need family support and integration into the society, “wherever possible the child must be allowed to remain in his family” *(Child Justice Bill, 2002, p. 10)*.

In juvenile justice, the concept rehabilitation requires a cautious approach because it can mean labeling as well as institutionalization of children who are deemed to be recipients of rehabilitative services.

Noting the benefits of law and policy reform as well as a legislated juvenile justice system to children, juvenile justice commentators warn that the reform of laws and policies are not a panacea for juvenile justice because they may not be implemented

properly (Penal Reform International, 2000). Effective implementation mechanisms, material and human resources, and institutional infrastructures should support the laws and policies.

Despite the IMC's efforts, the perceived political willingness and the ministers' expressive support towards juvenile justice, there is little evidence that suggests that the passing of the juvenile justice Bill is a priority for the government or the parliament. It is also noted in the pre-workshop report that there is no mechanism in place yet how the bill will be implemented. This points to the need for a strategy to coordinate, more in particular a coordinated and sustained advocacy campaign to lobby the legislators.

The law reform aims to shape and regulate the rules and norms governing the transformation of conflict and justice when dealing with children in conflict with the law.

Training

The juvenile reform is providing a new framework to rethink and redefine the roles, responsibilities and functions of juvenile justice service providers at all levels of the system. The program description calls for the creation of networks and institutional capacity to respond to juvenile justice in a collective way. The program description states further, "*juvenile justice is a multi-sectoral issue and there is a need to train various role-players including social workers, community volunteers, management, magistrates, lawyers, youth officers, staff in institutions, statisticians, traditional leaders and school teachers*" (Super, 1999b, p. 8). This suggests the modification of behavior, attitude and perception of the people working in the juvenile justice field at all levels of the system.

More importantly, the program description emphasizes the need for a structured system and specialized juvenile justice professionals. The program description states, *“it is necessary to systematically instill a sense of professionalism in the field of juvenile justice in order to ensure that actions are taken in the best interest of children”* (Super, 1999b, p. 8). This implies the need to integrate and design a training program that caters to the cross-needs of the various institutions and actors involved, including reshaping the roles and functions of each institution and professional involved in the juvenile justice program.

Despite some points of intersection in the program description, the pre-workshop report found no evidence of a clear structured and cross-systematic training intervention at the program level as observed, *“although the Family Life Empowerment Program (FLEP), sponsored by UNICEF, covers aspects of training, it is unclear as to how this interfaces with the Training project described in the Juvenile Justice Program Description”* (Super, 2002, p.6).

The training component is very crucial because it aims to build and enhance confidence of the new juvenile justice system, legitimating it as a reliable channel of conflict resolution and justice.

Structure

The program description proposes a juvenile justice system that is driven by interagency collaboration and networking both structurally and philosophically. At the center of this approach is the vitality of formulating and implementing structural mechanisms and strategies to coordinate the management and administration of the system. The program description states: *“there is a lack of clarity as regards roles,*

efforts and resources. There are different levels of members on the IMC and it is not always clear who is representing which ministry or NGO and in which capacity, what mandate members have and what members are supposed to do” (Super, 1999b, p. 9).

The structure aims to clarify and allocate the roles, tasks and responsibilities of stakeholders and partners in the juvenile justice system. At the time of this review, the IMC, through the Juvenile Justice Project D, had commissioned a process mapping and structure study to ensure an effective and sustainable implementation of juvenile justice at program level.

However, the realization of a coherent structure seems a far-fetched task, as one respondent put it, *“yes, on paper we can maybe talk about the IMC and JJF structures, but when it comes to the practical reality there is no IMC nor JJF, the situation is completely different. Each of these agencies on the IMC and JJF seems to operate differently and still stuck to the procedures and rules of their institutions (an IMC Official, 2002b, June 19).* The pre-workshop report points to a serious unstableness of these structures due to lack of continuity, clear mandate and proper decision-making process, *“members do not really feel answerable to these structures (IMC and JJF)”*, one respondent had commented. The pre-workshop report also found ‘wavering’ commitment regarding the roles and functions of members of IMC and JJF, *“many interviewees questioned the role that the IMC was playing” (Super, 2002, p.16).* Through Project D, the IMC has appointed a Program Manager, but it is not clear whether, the Program Manager is only for Project D or for the overall Juvenile Justice Program Description. The general feelings among the interviewees are that there is a tacit consensus among IMC members and stakeholder that project D is an implementation

strategy resulting in a shift away from implementing the whole Juvenile Justice Program Description. In actual fact, project D is a short-term strategy to establish implementation structures of the program description. It only focuses on limited areas of the program description.

Service Delivery System.

The future child justice system will be based on a structured and coordinated service delivery system to ensure that every child who comes into contact with the juvenile justice system is attended effectively at every stage of the way throughout the system. The service delivery system aims to enhance accessibility and availability of services as well as diversify resources to cover all children in conflict with the law, *“the government of Namibia would like to ensure that screening is a service that is available to all children who conflict with the law”* (Super, 1999b, p5).

The new system incorporates provisions for cost saving measures by making use of local and community based resources and intervention. The service delivery system entails child-friendly measures and alternative conflict resolution aimed at promoting the child’s sense of self-worth, social responsibility and societal harmony. It consists of protective services such as:

- *Screening of Young Offenders-* Trained professionals or semi-professional assess children accused of having committed crimes at the police station, courts and other holding facilities in order to determine which resources will be made available to them in the juvenile justice system.

- *Consensus Decision Making Process*- Measures to open communication channels between young offenders and victims in order to promote reconciliation.
- *Pre- and Post-Trial Diversion Options* (the Life Skills Program and the Pre-and-Post Trial Community Service)- Diversion options aim to promote positive self-image, ethical and social responsibility of the young offenders.
- *Monitoring Mechanism*- Measures and procedures to monitor the treatment of children at arrest, trial and sentencing, including makes use of volunteers to trace parents of children alleged to have committed crime.
- *After Care and Reintegration Services*, with a great emphasis on utilizing the opportunity provided by the extended family support as well as friendly safe homes.

Despite the general understanding that after care and reintegration of young offenders back into the society is very crucial for the new system, this service seems not to be accorded as much attention as it demands. The recidivist figures of cases screened at the Windhoek Magistrate court in 1996 was nearly 30% (Muntingh, 1997).

These protective measures makes the new child justice system acknowledges the importance of social responsibility and constructive decision-making processes. However, this does not necessarily mean that children will not enter the justice system because the very community based program and diversion may lead to the net-widening phenomenon—the extension of social control over children in the justice system through diversion programs (Traver, 2002). Diversion is not a guarantee that the best interests of the child are being protected because in certain situation it is used to serve the interest of

the justice system. Instead of considering the interest of the child before it, the prosecution may be motivated by the need to ease the caseload and therefore subject a child to unnecessary diversion program.

Despite the fact that the Program Description has identified five pilot projects to spearhead the setting up and implementation of the service delivery system, however, only *“the Assessment, Reception and Referral Centre, and the Oshakati Safe Home have been prioritized in the process mapping study commissioned by the IMC”* (Super, 2002, p. 12). It also appears that most of the diversion options professed in the service delivery are only applied in Windhoek (Schulz, 2002). The suitability and appropriateness of these options in rural parts of Namibia still remain to be seen.

Evaluation and Monitoring

The program description provides for a structured juvenile justice information system to monitor and evaluate the implementation and administration of the child-care system as well as monitor the treatment and the state of children in conflict with the law at every stage in the juvenile justice system. These entail mechanisms to assess the service to be rendered as well as to research and to keep data or statistical information in order to guide further the planning of the system. The program description reads: *“Constant evaluation and monitoring is vital to plug gaps and identify problems as and when they arise and not merely at the end of a project cycle: if a system is not working there is a need for a mechanism to detect this as soon as possible. It is also necessary to ensure that financial management and administration is as efficient and effective as possible and there is a need to create a chain of accountability for role-players in the*

system.” Information is vital in regulating the juvenile justice system” (Super, 1999b, p.10).

Under the IMC’s Juvenile Justice Project D (funded by the Austrian Development), the Juvenile Justice Information System has been prioritized. However, there had been confusions as how to integrate Project D to the overall Juvenile Justice Program. It also seems that the participants are in consensus as to the broadness of the proposed program, *“I just think that the program description is too broad and over ambitious and it seems that stakeholders are not clear of what their roles and function regarding the program” (an IMC Official, 2002c, June19).* Six of the people interviewed expressed the need to revisit the whole program description in order to narrow it to a manageable level, as observed a respondent, *“maybe we need to revisit the program so that we can identify what is workable and achievable because at this moment it seems that there is a confusion as regard to what is supposed to be implemented and by whom” (an IMC Official, 2002a, June 20).*

Advocacy and Child Crime Prevention

The Juvenile Justice Program Description suggests for a strategic advocacy plan to mobilize, sensitize, organize and build a strong national network capacity and support towards the new child justice system. The advocacy component as the public face of the new system, aims to legitimate and build confidence of the new system in order to discount negative public perception about the need and importance of such a system in terms of curbing crime and violence in the society. The program description states, *“it is necessary to utilize the media in accordance with a well thought out and planned multimedia campaign so as to win the ‘hearts and minds’ of the general public, whose*

support is required for a properly funding juvenile justice system” (Super, 1999b, p. 10-11). In order to win public support and achieve its objectives, the proposed juvenile justice system would be based on proactive response towards crime prevention by establishing formalized strategies that give attention to all children, instead of only responding when they have committed crimes. These include policy measures to address factors that push children to commit crime, linking the juvenile justice to other societal issues such as poverty, education, employment and health.

Despite the fact that the IMC and other juvenile justice partners have conducted some advocacies at different levels, those efforts have only been done on an ad hoc basis, as one respondent put it, *“at this moment it seems that only the IMC members know what they want to achieve with the juvenile justice program* (a JJF Official, 2002b, June 19).

As for the crime prevention, the new system recognizes the overall roles of education in curbing youth crime, the program description reads, *“primary prevention is not given enough attention in Namibia and there are also not enough crime prevention activities aimed at children between the ages of 10 and 14 years. There [is] no formalized crime prevention programs at school”* (Super, 1999b, p. 100). However, there seems no clear evidence supporting that the IMC is moving towards the creation of program based crime prevention strategies. The only mention of crime activities is in reference to occasional crime prevention events hosted at some schools, and which in many instances are conducted outside the mandate of the IMC.

5. Analysis

Based on Stedman’s arenas of conflict (identified in the previous section), the future juvenile justice system exposes, a new framework of dealing with children in

conflict with the law, providing a context to define and shape its purpose and meaning in terms of claiming and justifying its position within the Namibian society; providing resources and services to children, including the processes and outcomes for conflict and justice, the system hold for children and the society.

The juvenile justice models influencing its course seem to embody factors, at least in conflict resolution, considered as pre-conditions for a peaceful society. These include values such as the fair and humane treatment of children as portrayed by the justice model, the needs and personal circumstance as depicted by the welfare principles, the restorative justice's emphasis on dialogue and participation as well as the corporatism model's strength approach--using of the resources and strengths from multiple actors.

On the other hand, the crime control encroaches on the legitimacy of the new system in terms of its acceptability and approval. Increased negative public perceptions towards juvenile offending may lead to people lose confidence in the system's ability to deliver.

It is against this background that the core principles (below) underpinning the new system are analyzed to determine how they overcome the obstacles depicted in the arenas of conflict, namely the need to provide a social context for dealing with children and justice, the need to allocate services and resources to children in the system as well as the need to ensure democratic and participatory processes of conflict and justice.

The Welfare Model

Given Namibia's history of oppression, social exclusion and segregation, a juvenile justice system that incorporates welfare mechanisms is relevant to the socio-economic situation of Namibia because post-independence did not result in automatic

discontinuity of historical injustices as stated that “the legacy of colonialism and apartheid policy have burdened the country in respect of both racial segregation and the distribution of wealth: there is a stark contrast between rich and power. Money is concentrated in the hands of a few Namibians and foreigners and, as such, the allocation of resources is grossly uneven” (Gratz et al., 1997).

The transition from colonialism to post independence has tremendous impact on many of the youth of Namibia due to their vulnerable position in the society. Various commentators attribute this phenomenon to freedom of movement, economic inequalities and rural-urban migration (Mufune, 2002; Schulz, 2002). According to Mufune (2002) “the third effect Namibia’s apartheid legacy has on the youth is that under apartheid, authoritarianism in the form of killings, repression and imprisonment meant that a certain measure of order was preserved. However, with independence came greater personal freedoms” (p.178). The apartheid authoritarianism social control measures suggest that coercion and social control are effective means to deter crime, putting it on a collision course with the rights approach that stresses respect for human rights and freedoms.

The well being of the children can only be promoted and safeguarded under a nurturing and supporting social setting. The adoption of welfare principles that focus on children needs and social circumstance militate against these factors perceived to be pushing children into a life of crime, as portrayed by the function of the screening process that “the screening and assessment of arrested juveniles by properly trained screeners forms the basis of any juvenile justice system, since this service should activate and mobilize other resources as required. Screening therefore has the vitally important ‘gate-keeping’ function, since it by and large determines which children will move deeper into

the child-care system and which resources will be made available to them” (Muntingh & Super, 1999, p.18). In this way the welfare approach links the child to resources and supports available to him.

The new Namibian juvenile justice system gives the welfare model a modified character, function and meaning because it emphasizes the importance of de-institutionalized services. In other words, the approach or welfare policy should be used to provide resources and services to the child instead of the traditional approach of welfare that focus on depriving their personal liberty in the names of access to services, “young people at risk and their families should have access to a continuum of differentiated services with the aim of promoting the most empowering and least restrictive options/programs which are suitable to the individual child’s needs. Institutionalization will be used as a last resort measure” (Super, 1999b, p.1). This does not only imply that the system will enhance accessibility and availability of services to children in conflict with the law and their families, but also access to social services even when they are not in conflict with the law. In this way, the function of social services and policies towards children, crime and justice take on the meaning of a proactive, and preventative approach.

For Namibia, if carefully planned and implemented, the welfare model as depicted and modified in the program description makes the new system acknowledges the interdependence of social issues in juvenile justice, as noted in Super, (1999b) that “crime prevention should be aimed at all children and not only just at those who have already conflicted with the law” (p.10). In this way, the welfare model suggests that the juvenile justice system is a means of social development rather than a controlling tool.

Therefore, it should serve as a tool to bridge the gap between criminal behavior and other social problems. Zigler et al. (1992) have found research evidence that preventative strategies on child delinquency are more effective than intervention.

The effect is that a careful redefinition of the current social and welfare policies that still define the provision of social service fragmentally and in terms of institutionalization and rehabilitation, is needed. There is a great need to unify and harmonize its principles because the institutions and role players involved in the process hold different interpretations and meanings of what it means to promote the welfare and interests of the child. In the absence of common understanding, the practical implementation of social policies and services will remain an illusion.

The Justice Model

The justice model accords well with the Namibian constitution that professes equal treatment of all people, including those suspected of having infringed the law (Schulz, 2002). The Namibian Constitution, which is 'the mother of all laws' in Namibia, gives the future juvenile justice systems a strong justice or rights outlook, Article 11 of the constitution is specifically important because it emphasizes the importance of due process rights when dealing with conflict and justice. These provisions include the prohibition of arbitrary detention, the right to be informed properly of the ground for such arrest and detention, and the right to be brought before the nearest court within a period of forty-eight (48) hours (Legal Assistance Centre, 1998). Some of the people interviewed were of the opinion that 48 hours is even too much when the person under arrest is a juvenile.

By implication, the administration of juvenile justice in Namibia should be in conformity with the norms, values and principles underpinning the constitution, Article 1(6) of the Namibian constitution states “the Constitution shall be the supreme law of Namibia” (Legal Assistance Centre, 1998). The constitution of Namibia recognizes fundamental rights and freedom of every person in Namibia, including children’s rights and freedoms (Schulz, 2002; Diescho, 1994). Article 15 of the Namibian constitution is importance for children’s rights and provides some protective measures aimed at promoting the rights and welfare of children.

However, under the Namibian Constitution, the justice procedural rights equates and treats children as adults by according them the same treatment, “anticipated by the liberal theory” (Naffine, 1993). In juvenile justice the very legal self-determination is reason for concern when the person before the court is a vulnerable minor who does not posses the necessary skills and competencies to claim, articulate and comprehend such legalities.

In order to cater for the concern in the above, the proposed system seems to have modified and went a step further with regards to the justice approach. Instead of the rigid process characterizing the justice process, the new system made some flexible provision for child-oriented and child-friendly measures such as the importance of informalities, legal representation and diversion options. These are believed to serve the best interest of the child in the sense that they protect the child from being exposed and traumatized in the criminal justice process. In adopting these informal procedures, the new system is acknowledging the role of informal channels of conflict resolution in the formal justice system.

The preeminence of strong justice principles in the envisaged system shows the importance of procedures of conflict resolution, suggesting strong control of the process—or guided conflict resolution. Fair process and procedures promote cooperation and reconciliation, as stated that, “unfair procedures employed in resolving conflict undermine confidence in the institutions that established and implement the policies and rules regulating conflict” (Deutsch, 2000a).

On the other hand, the individual rights oriented approach seems to be at odds with the community -oriented philosophies practiced by some of the Namibian communities which emphasis the concept of rights within the context of a group, and therefore places the treatment of children within the context of the family and community (Diescho, 1994; Penal Reform International, 2000). In most of sub-Saharan Africa, resolving the dispute belongs to the community and therefore controls the process and its outcomes. In juvenile justice arena, this raises the issue of how to balance the liberty of those young offenders accused of committing crimes with the liberty of the victims and the society to be free from harmful conduct.

The Crime Control Model

Although this model seems not a strong and visible indicator of the envisaged Namibian juvenile justice system, its influence on the new system cannot be dismissed. Namibia’s main criminal justice system is based on retributive justice that embraces the crime control approach. The criminal justice system serves as the mother institution of formal justice in the country from which all other institutions of justice and conflict, including the envisaged juvenile justice system, draw their values and inspirations to deal with children in conflict with the law. The influence of the criminal justice on the new

system is visible in the proposed Child Justice Bill (2002), “[the] court may divert the matter, if at any time before the conclusion of the case for the prosecution it comes to the attention of a court that a child acknowledges or intends to acknowledge responsibility for an alleged offence, the court may, subject to section 50, with the consent of the prosecutor, refer the child to any diversion option referred to in section 51 and may postpone the matter to enable the child to comply with the diversion conditions ” (p.67). The degree of conditions attached to diversion as well as the power the court has to determine eligibility for diversion limits the choices and participation of children in the justice decision-making process.

In addition, children in conflict with the law attract negative public perceptions that may fuel the need for tough measures than those provided for in a restorative setting. In urban centers of Namibia some local authorities have already criminalized or threatened to prosecute loiters, street children who are believed to contribute to the increase in the crime rate in Namibia (Mufune, 2002).

The lesson from the developed world indicates a steady regression towards the crime control approach, despite the increase in rights based and restorative approaches (Penal Reform International, 2000). On another level, the introduction of the reform may only reflect a symbolic change while the practical reality in terms of how it is implemented remains and is based on the old system, suggesting that the reform is not necessarily a panacea for best practices (Gelsthorpe & Kemp, 2002).

The Restorative Justice Model

The future Namibian juvenile justice system subscribes to the ideals of the restorative justice approach, emphasizing reconciliation and social harmony. At the

center of this move is the notion that the restorative justice reflects the traditional philosophies of conflict resolution that places the handling of conflict within the setting of community responsibilities. The Draft Child Bill (2002) defines restorative justice as, “the promotion of reconciliation, restitution and responsibility through the involvement of the child, the child’s parents, family members, victims and community” (p.7)

The appeal to community and local resources acknowledges the importance of making use of what is available, what people know and are familiar with. Juvenile justice commentators are almost in agreement that the restorative approach is affordable because it incorporates features that are readily available in the community (Penal Reform International, 2000). These features entail diversion innovations such as the family group conference and pre- and post-trial community services, which point to justice as responsibility, accountability, participation and dialogue. Diversion options accord well with the traditional philosophies of character building to mould and instill civic responsibility in children. The philosophy of education and socialization in most traditional communities in Namibia is geared towards building the character of the child by involving the child in practical activities such as traditional hunting, crop production and other community oriented related activities in order to prepare him or her for the adult world. Though in juvenile justice, the very emphasis on the responsibilities as portrayed by the restorative and traditional ways, appeals for caution because it creates the impression that rights must be earned (Penal Reform International, 2000).

However, there is a high level of generality in terms of how the linkage between the restorative justice and the traditional ways is being used. It seems that the concept of community or tradition is being romanticized and referred to as static with no regard to

the fact that Namibia is a land of many cultures and communities with varying philosophies of child justice. What exactly tradition or community means and implies in juvenile justice in the Namibian context is not clearly defined. There is a tendency to think of a tradition in terms of black Namibians, ignoring other communities such as the Afrikaners and Germans who are of European descendents. It is crucial that the new juvenile justice system have a concept of how children, conflict and justice are conceptualized and internalized by these various communities in order to respond inclusively.

Nevertheless, the restorative justice and a return to a traditional way of dealing with conflict and justice provides post independent Namibia an opportunity to include and integrate traditional and informal ways, which have long been neglected, into the formal and legal domain, as stated that “[those] who have criticized [informal traditional justice forums] as being too traditional to promote development are often too simplistic in their arguments. They are bound up in the traditional-modern dichotomy in which ‘traditional’ is equated with ‘backward’ and ‘modern’ with ‘advanced’. Development can thus only occur within a ‘modern’ framework. The main problem with this equation is that it is based on a very static view of tradition. It ignores the fact that traditions are often ‘invented’ and hence, very ‘modern’ in content” (Penal Reform International, 2001, p.1). It also provides an opportunity for Namibia to define its own path and solution towards the juvenile justice instead of depending on responses based on western approaches. However, integrating juvenile justice with traditional and informal ways does not mean that best practices in dealing with children and conflict will result.

The Corporatism Model

The establishment of the IMC and JJF and the emphasis on comprehensive reform process are a clear examples of the attempt to build network capacity to implement the new system--honoring and appreciating the power of unity in diversity. In the juvenile justice arena network capacity implies the human resources, material resources and skills brought to the juvenile justice system by various actors and institutions involved in the interagency process.

The interagency provides an opportunity for broad participation and planning as well as share resources and the burden involved in the juvenile justice system. It also provides an opportunity to address juvenile justice issues from multiple perspectives and approaches, but organized into a coherent and coordinated strategy to make sure that children receive quality services and attention at every stage in the juvenile justice process, as stated in Super, (1999b) that “all persons who play in the process should be held accountable for their action” (p.2). This means redefinition of roles and functions, not only at institutional level, but also at the level of professional, semi-professional and management levels. It is hoped that the process mapping and the draft bill will pick on this point to assign new roles and functions to service providers such as police, prosecutors, parents, teachers and youth officers as well as volunteers.

Theoretically, it seems clear that the interagency strategy supports an improved version from the single approach, but for Namibia the practical realities to realize this approach suggest a long and complex process. This is because there is a lack of institutional capacities and mechanisms to translate the ideals into practice. The establishment of structures such as the IMC and JJF does not suggest that the program will automatically result in an integrated and holistic implementation. Law and policy

implementation does not necessarily mean that best practices are happening in the system (Penal Reform International, 2000). Good policies must be matched with a coherent institutional structure, mechanisms and strategies to put them into practice. In the case of Namibia, the interagency approach gets its values from the traditional values of single agencies such as police, social workers, prosecutors, community who in their involvement in the networks brings their traditional roles, perceptions and philosophies to the network. There is a great need to harmonize their varying needs, perceptions, beliefs, values and philosophies with regard to juvenile justice issues. The proposed training and advocacy components proposed in the juvenile justice description picks up on this because they aim to build capacity as well as modify perceptions towards juvenile justice.

The pertinent question is should the interagency in Namibia be based on a single integrated system (various systems merge to form an integrated system) or be based on a coordinated approach of these single systems, while each system maintains its identity? The former will imply building a completely new system to redefine the roles and functions of the actors, providing a new beginning for juvenile justice. While the latter implies that the actors maintain their identities, traditional roles and functions but a cross system approach has to be found to coordinate and moderate their functions in order to meet the demands of the new juvenile justice system.

6. Conclusion

Theoretically, the envisaged Namibian juvenile justice system holds values that promote children's well-beings as well as features conducive to democratization, fair and humane transformation of conflict resolution process. Various institutions, actors and philosophies are shaping the purpose and the meaning of the new system, creating

opportunities for justifying and legitimating the purpose of the system; distributing resources; and empowering the parties to take part in the conflict and justice decision-making process. The willingness at the government level, the presence of strong child right oriented NGO's, community based interventions and international technical assistance support favorable conditions for a strong collaborative approach to implement the new system.

However, this interagency and cross-system is a very complex and fragile process because it requires a clear and a coordinated approach to translate it into practice. How then should the new system maximizes its chance of success and minimizes its losses? The new child-care system, as a public oriented institution, fits in well with the "strategic triangle" referred (see Annexure D: Figure 1) in implementing a public institution.

The first leg represents a public face of the juvenile justice system in terms of its values, principles and philosophies. These entail, among others, the welfare, justice, crime and corporatism principles aiming to reduce violence among the youth, promote adherence to democratic and constitutional principles and participation in justice decision-making process. This means that activities or programs aimed at promoting these values must be developed to translate them into practice. The law reform, crime prevention and advocacy components of the new child-care system are hoped to promote these principles.

The second leg refers to legitimacy and support in terms of human and organizational resources, infrastructures, institutions and people. This implies human, material and moral resources to enable the system achieve its goals. These will entail defining the roles and functions of all the actors, including harmonizing the varying

perceptions and expectations of stakeholders. The structure component proposed by the program description is therefore crucial in realizing these functions. Yet, there is a great need to define what kind of system integration is being envisaged. This relates to the level of relationship governing the interagency and the cross system approach. Is it collaboration, coalition building, or networking? Doing so will help clear the issue of vague roles and functions characterizing the current situation of the program.

The third leg of the triangle is about the operational capacity of the system in terms of implementing and managing the system. This implies that the implementation and management of the child justice system will demand coherent strategies and joint strategies such as training, advocacy, crime prevention programs and evaluation mechanisms already catered for in the Program description. However, these components and projects of the program description must be integrated and consolidated to inform each other when being implemented.

In a nutshell, the future Namibian child justice system's responsiveness depends how it presents and addresses the values it seeks to produce. It is crucial that the system gets its legitimacy and supports from everybody involved—public legitimacy and support is a necessary ingredient for sustainability of the system (Moore, 2002). Above, all there must be a capacity of resources, programs and institutions to steer the system.

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Annexure A: The experiences of young people under the Namibian Criminal Justice System

The children at Ondangwa were distributed in three cells and were being held together with adults. The cells were filthy and in shocking condition. In one cell where five children were being held with adults (on the day in question there were 17 people in a cell designated for 10 people), a tap was leaking, and it is unclear how long the tap had been broken but the courtyard outside the cell was totally wet. Rats were also running around. In another cell where children were being held (also designated for 10 people), there were 32 inmates. Blankets appeared to be in short supply and there were no beds or mattresses, but only 13 blankets on the floor. In another cell there were only four blankets. The cells are very dark. There are two toilets-one in the adjacent courtyard and one in the cell. There is one shower in the courtyard.

Most of the children were charged with theft and housebreaking, and all had been in detention for at least one month. There appeared to be uncertainty about their ages. For example, the youngest who was arrested on 31.12.98 on a charge of rape, was reflected as being '12 and 18 years of age. A 13-years old arrested 31.3.99 was being held in custody for being in possession of suspected stolen property. In one case the arrest had been effected on 20.10.98 on a charge of housebreaking.

The reasons given for the long periods in detention are that parents do not wish to take custody of their children, seriousness of the offence for which the child is arrested, the decision of the court to postpone the case and remind the child in custody, and the fact that there is a perception that those who are reputedly repeat offenders should in detention (Super, 1999a, p.47)

Annexure B: List of Interviewees

1. Marthinus Hamutenya: Program Manager-Inter-Ministerial Committee on juvenile justice
(IMC)
2. Joyce Nakuta: National Coordinator of Juvenile Justice, Directorate of Youth Development, Ministry of High Education Training and Employment Creation
3. Gail Super: Juvenile Justice Consultant
4. Reverend N. Nakwatumba: Chaplain-Ministry of Prison and Correctional Service
5. Martin Pool: Deputy-Inspector General Administration- Namibian Police
6. Jan Swartz: Statistician-National Planning Commission/ Bureau of Central Statistics
7. Celeste Zaahl: Coordinator of Juvenile Justice Project-Legal Assistance Centre
8. Clive Willemse: Director-Change of Life Styles Home Projects
9. Anna-Rosa Katjivena: Social worker-Ministry of Prison and Correctional Services
10. Ricardo Mukonda: Screening social worker-Legal Assistance Centre's Juvenile Justice Project

Annexure C: Agencies and Stakeholders in the Juvenile Justice Program.

Name of agency/institution	Possible held philosophical assumptions and roles they bring to the new juvenile justice system	Possible roles or contribution to juvenile justice
Ministry of Justice	Justice, law development and public order.	Law reform and child rights bill or acts, training promote human rights of children.
Office of the Prosecutor-General	Law enforcement, public order and prosecution and crime control	Child friendly legal measures, policy recommendation to promote due process rights, referrals
National Planning Commission/Central Bureau of Statistics	National Planning, Information Control	Juvenile justice information system management, develop and promote juvenile justice national strategy and program evaluation
Ministry of Home Affairs/Namibian Police	Law enforcement, public order, crime control	Screening and referral at arrest, child friendly arresting procedures
Ministry of Health and Social Service	Rehabilitation, social services, pre-sentencing reports, referrals.	Pre-trial assessment (screening), Advocacy, crime prevention, social policies and services
Ministry of Prison and Social Services	Incarcerations, Rehabilitation, institutionalization	Life skills education, reintegration, child-friendly policies and training
Ministry of High Education, Training and Employment Creation (MHETC)	Education and Training	Diversion and skills development training, Crime prevention education, juvenile justice material and curriculum development
Ministry of Basic Education and Culture	Education, Diagnostic & Therapeutic Services, schools of industries	Life skills program, crime prevention education, Material and Curriculum development
Ministry of Women's Affairs	Gender issues	Gender policies and training, advocacy
The Legal Assistance Centre	Human Rights, individuality principles	Monitoring, legal advise and law reform, advocacy

		training, material development
The Bridge	Humanitarian service/ church base ideals to re-socialize released prisoner back into society	Advocacy, crime prevention, reintegration service, training
Change of Life Styles Homes Project	Church based values	After care services, placement, diversion and life skills program
Community/Volunteers	Community values/traditions	Community involvement program, safe homes, community service, reintegration and after care services

Annexure D: Figure 1.

