Retributive Community Justice Research Report by the Restorative Justice Centre

by Mike Batley

Introduction
Over the past few years, there have been a number of media reports about communities taking the law into their own hands. Recently, several of these have involved children. Given that the proposed Child Justice Bill aims to give families and communities a greater stake in justice processes, the Restorative Justice Centre was commissioned by the UN Child Justice Project to compile an investigative research report.

There should be no underestimating the seriousness of the dilemma: on the one hand there appears to be a growing trend towards communities meting out their own ‘justice’ and being increasingly vindictive in doing so. On the other hand, proponents of the Child Justice Bill are convinced that involvement by families and communities, within clear parameters and with the support of professionals, can make a significant impact in helping children understand the consequences of their behaviour. Is this viable in the light of the developments in communities? The research was aimed at understanding this phenomenon better and making recommendations to relevant sectors on how to promote more restorative community justice responses. The scope of the research project was limited and exploratory.

Methodology and findings
The researchers conducted a literature survey and worked with three case studies, all of which involved children. The first case was that of Lorraine N, a 14-year-old girl who lives in one of the villages on the outskirts of Louis Trichardt. Lorraine entered PEP Stores to buy some groceries. Before she got to the till to pay for the goods that she intended to buy, she was accosted and accused of shoplifting. Following this, her upper torso was stripped of clothing and painted white by a manageress and two other employees of PEP Stores. In the process Lorraine lost the money her mother had given her. She laid a charge against the three PEP Stores employees with the help of a security guard from a neighbouring store.

At the police station she was photographed and helped to a shower to wash the paint off. After she had laid the charge, the police escorted her home. On the way the police met a bus that was going to the village and Lorraine was put on the bus in her half-washed traumatised state.

Kagiso was from a semi-rural community, where there is a headman and where community meetings are held on a regular basis. The traditional courts system seems to have little credibility in the community. The nearest police station is approximately 40 km from the village. There are no other services in the area except for the schools, churches and other community structures. There is a high unemployment rate among the youth.

At the time of the incident Kagiso and his two brothers were staying with their grandmother. Their mother is an adopted child of the M family. The community in this village is divided along ethnic lines. The parents who were outside the shop were mostly from the Tswana ethnic group and although they were aware that Mr S was interrogating children in the back room of the shop, Mr S interrogated them. They were subsequently doused with petrol and set alight to get them to confess. While the interrogation was taking place, a group of parents from the community was outside the shop, aware of the proceedings inside. Kagiso’s grandmother was among them. Kagiso sustained serious burns and later died at the Jubilee Hospital. At the time of the study, the murder case against Mr S was still in progress.

“The traditional courts system seems to have little credibility in the community.”
back room in an unacceptable way, they did not interfere because they thought all the boys were from the Shangaan ethnic group. When a burning child (Kagiso) ran out of the room where Mr S was interrogating them, the parents saw him and did not run forward to help him.

Mr S transported Kagiso and his grandmother to Jubilee Hospital. After Kagiso was pronounced dead, Mr S apologised to the M family and offered to cover all funeral expenses. The incident was reported to the police, and they arrived on the scene a day later.

The third case study involved an incident which started on 15 December 2000 in Pimville Zone 3. The Evangelical Missionary Society Church was broken into and 33 chairs were stolen. The church elder reported the incident to the police and it appears that they did not take any action. On 13 February 2001 another break-in occurred and this time 11 chairs were stolen. The church elder reported this to the police again and was told that the investigating officer was not available. On 19 February 2001 yet another break-in occurred. Again the elder reported the incident to the police. He was sent home and the police promised to visit the church.

On 20 February 2001 the community held a meeting to discuss the recent spate of break-ins in the area. The police were invited to the meeting but failed to attend. After the community meeting, people went out to look for the suspected offenders. Four teenage boys were arrested by the community and interrogated. Some of the stolen property was found in their possession. None of the four boys were from Pimville, but from the neighbouring township.

The community proceeded to attack the boys with blunt objects. Three died on the scene and one was taken to the Chris Hani-Baragwanath Hospital. After this, the police arrested some of the community members. The community raised the necessary bail for them. At the time of investigating the incident most community members were wary of talking to the research team.

A community meeting was held afterwards to discuss the incident and to reconcile the community and the police.

The researchers interviewed a range of people who had been involved in these cases.

The dynamics that were identified include:
- The particular contexts of the communities in which the incidents occurred, and the specific dynamics of poverty, dependency and power that exist in these areas;
- the functioning of traditional or local community structures;
- the functioning of the criminal justice system in the areas concerned, and the frustration people experience, as well as the distrust and misunderstanding they have of the system;
- the role the media played in reporting the incident;
- African concepts on child rearing; and
- the role that children play in discipline issues.

The researchers conclude by making a number of recommendations based on the implications of the above factors identified for the following sectors:
- Communities and their structures;
- the police;
- the criminal justice system;
- social service professions; and
- policy-makers and planners.

Conclusion

The recommendations focus on the need to continue to address poverty (in all its forms) and the lack of services, for increased awareness of the needs of communities, victims and offenders, and for multi-sectoral education, training and co-operation on a range of matters. The need to be creative in actively implementing restorative justice approaches, as outlined in the Child Justice Bill and otherwise, emerges as a key recommendation. The research raises issues about evaluation and monitoring of services to children.

The research report is also aimed at generating more research interest in this area. One of the outcomes has been that the RJC has received funding to develop a diversion model that can be implemented in the rural and semi-rural areas.

The research report can be found on the Restorative Justice Centre web site: www.rjc.co.za