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From the Editors

There were indications earlier this year that the system of automatic review by the judiciary in certain criminal cases was to be abolished by proposed amendments to the Criminal Procedure Act. Due to pressure from the Bench, allegedly, the legislation was withdrawn, and (for now) the involvement of the High Court in scrutinising lower court decision remains. Our feature article in this issue reflects the substantial and positive role that the institution can play, especially where the incarceration of children is concerned. Moreover, as the facts of the two cases discussed in our article illustrate, the special review procedure used in both these instances can be set in motion by ordinary people who perceive that injustice has occurred.

At a purely practical level, all that is required in order to bring a matter to the notice of a judge is the following: the case number and the name of the court of origin (where the child was sentenced). Then telephone the Registrar of the High Court which has jurisdiction over the magistrate's court or regional court where the proceedings occurred, and request that the matter be taken further.

The Editors hope not only that this procedure will become a useful mechanism for remedial action in the child justice system, but also that the growing interface with the High Court will inspire a whole new generation of children's rights oriented judges!

Rescue Remedy

S v S, reported in 1999 (1) SACR608 (WLD) and S v Khuliliwe Precious Mtshali and Lindiwe Mokgopadi (unreported, case no. A863/99, WLD) illustrate that there are ways for social workers, correctional officials, staff of NICRO, and even members of the public to become activists in challenging the imprisonment of children where this is perceived to be unfair. Although these cases involved quite different factual situations, both were brought to the attention of a high court judge concerned individuals, enabling the judge to step in to correct injustice.

The first case, before Judge Nugent, involved two girls of 18 years who were sentenced to reform school in lieu of punishment. The judge notes that when such an order is made, it is possible for the court to order that the person concerned be kept in a place of safety until such time as the order can be put into effect (i.e. the necessary designation of and transfer to a reform school). In this case (as is common both in Gauteng and other provinces) the girls were detained in Johannesburg prison, pending placement in a reform school. The chief

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difficulty, caused by the fact that there is no reform school for girls in Gauteng, was that over a year since the order was made, the girls were still in prison, one having been in prison since the time of arrest: a period of over two years! And, as the judge pointed out, "they will presumably continue to be incarcerated indefinitely, in the absence of some form of intervention."

The hurdle to their transfer to a reform school was that the only reform school for girls is in the Western Cape, and the Western Cape Provincial Authority has taken a decision that children from other provinces will not be admitted to its reform schools unless the person from which the person emanates accepts responsibility for the costs. The Gauteng Provincial Authority, on the other hand, had declined to accept responsibility for the costs, thus the impasse, and continued incarceration of the two girls.

The cases of the two girls were brought to the attention of the judge by a concerned social worker, who was commended for her initiative in having done so. The court, the judge said, was empowered to intervene by virtue of section 304(4) of the Criminal Procedure Act, as it had come to the notice of the court that the proceeding in a magistrate's court were not in accordance with justice. This special review procedure is intended for criminal matters in which a sentence has been imposed which is not subject to the usual automatic review procedure. This special review can be set in motion by anyone: the matter must simply be brought to the notice of the provincial or local division of the high court which has jurisdiction.

In this case, the judges set aside the orders made by the respective courts, so that the girls could be sentenced afresh. "The proceedings were not in accordance with justice if the magistrates concerned through no fault of their own, made orders founded on a misapprehension as to the nature of the consequences that would follow", the judge argued. He was of the opinion that upon reconsidering the sentence, the magistrates would take account of the long period of time already spent in prison by the girls.

The second case, *S v S*, illustrates even more dramatically the merit of a provision such as section 304(4). The review concerned the putting into operation of a sentence of 12 months imprisonment, suspended for 5 years. The sentence (for theft) had been suspended on condition that the 16 year old child be placed in a drug rehabilitation centre. The child had been placed in a foster care at an early age due to his parents having been declared unfit, and had had an unstable childhood. At the time of his arrest, he was living on the streets and abusing drugs.

He spent over a year at the centre, passing standard 6 at school and earning provincial colours in an athletic event. But, over a December holiday, he attempted to return early from a legitimate leave of absence from the centre; travel arrangements went awry, and the boy missed the bus. When he did not arrive timeously at his destination, a warrant was issued for his arrest. From the house of a family friend, the child contacted the centre, but due to the administrative confusion, the warrant was executed, and when the child appeared in court, an application for the suspended sentence to be put into effect was made. It was common cause that, due to the leave of absence, the child was not obliged to have been at the centre at the relevant time in any event. However, the review judge assumed that, for the purposes of the application, that he did in fact leave the centre "unlawfully".

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Although the child was represented by a lawyer when this hearing took place, and the prosecutor in fact conceded that he should be returned to the centre as "no offence has been committed", the suspended sentence was put into operation by the lower court, on the grounds that the accused had been "uncooperative", "resisted attempts to rehabilitate him" and that he had "run away from the centre". No evidence of any of this was put forward, and nothing offered to counter the implication that he had made progress with his rehabilitation, had not attempted to abscond, and that he had missed the bus through no fault of his own. Asking "What was it then, that required the programme of rehabilitation to which he had subjected himself for the past year or more should have been interrupted and the accused incarcerated instead?" , the review judge found no justification for the decision. Examining the reasons provided by magistrate, he remarked that they were "perverse", resulting in a "gross misdirection in the exercise of his discretion".

This all took place thanks to the efforts of the concerned family friend. But, by the time the matter reached the attention of Judge Nugent for the extraordinary review procedure, the child had already been in prison for some seven weeks (in addition to the period of more than a year that he had already spent at the centre). In exercising the powers conferred by section 304(4), the order putting the suspended sentence into operation could have been set aside. However, in view of the fact that the child had already served part of the prison sentence, and could possibly qualify for early parole, a special order had to be structured so as to give the child the choice of serving the remainder of the original sentence or returning to the centre.

The special review in terms of section 304(4) can be set in motion by anyone: the matter must simply be brought to the notice of the provincial or local division of the high court which has jurisdiction.

Young Sexual Offender Treatment Programme

Dr Uli Meys - Child Psychiatrist, SAYSTOP

Last year saw the start of the SAYSTOP (South African Young Sexual Offender Treatment Programme) working group, an ambitious intervention programme aimed at assessing the young sex offenders. This was partly in response to the growing number of children who commit sexual offences and the need to provide an alternative to the existing criminal justice measures, as children charged with sexual offences are generally not accepted on conventional diversion programmes.

Research elsewhere has shown that the majority of serious sexual offenders started at early age by committing relatively minor sexual offences. This calls for early intervention - the main advantage of addressing sexual offences is the positive spin-off in the contribution towards the reduction of numbers continuing into adult sexual offending. Thus potential victims of sexual offences benefit. SAYSTOP was aimed at filling the gap in the present juvenile justice system - child offenders often escape punishment or are returned to their families, without being afforded any kind of intervention to deal with the underlying causes.

The SAYSTOP initiative is a result of the joint effort of various sectors involved in juvenile justice. An experienced and a multi-disciplinary team of professionals from the medical profession, police, welfare, justice, NGO's and universities

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joined forces in developing a viable intervention and treatment programme. This resulted in the production of a training manual, which consists of assessment guidelines, group intervention strategies and all the other detailed steps involved in the programme.

The programme started with three pilot groups, each group consisting of approximately ten young sexual offenders who were referred by the Wynberg Magistrates Court where they had been charged for committing various sexual offences. The funding for this pilot project was obtained through RAPCAN (Resources Aimed at the Prevention of Child Abuse and Neglect). Since then further programmes with youngsters from the Cape Town area have been run.

The Content of the Programme

The group co-ordinators elicit important background information such as the sexual history of the perpetrator and social circumstances. The reason for this disclosure is that the most important part of the programme is its ability to hold the children accountable for their actions while at the same time providing them with treatment. The intervention programme consists of eight group sessions of two hours each, facilitated by two professionals. Each session consists of lessons on the following topics:

- Crime Awareness (parents are included in this session);
- Self esteem (motivational talks);
- Sexuality (socialisation and myths);
- Victim empathy;
- Dispute resolution and self control (managing one's anger);
- Preventing re-offending;
- Future prospects (parents are involved in this session.)

Results of the Programme

The attendance rate by the young offenders was above 90 % and the response from both the children and their families was positive. Although the short-term impact of the programme appears to be excellent, the long-term benefits still need to be investigated. The programme was able to achieve the following goals:

Achievements:

- the young offender took responsibility for his actions;
- the perpetrator did not 'get away with the offence committed';
- the relationship between the perpetrator and his family tended to improve after the intervention;
- both the victim and the offender were saved the trouble of attending a long and tedious legal process;
- victims and their families felt that some action and punishment had occurred. This is especially important as charges against the child offenders are frequently withdrawn or they are given suspended sentences;
- young offenders who were at high risk of re-offending were identified and appropriate intervention measures were put in place.

The programme co-ordinators are collecting statistics in order to build a database from which vital information about the former participants can be maintained for

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research purposes. Reliable statistics are crucial for monitoring the programme's success over time.

Challenges and future Prospects

The programme has shown that there are more young sexual offenders than previously estimated. Offences range from the perceived non-serious "hands off" offences to more serious offences such as indecent assault and rape. Participation in the programme was voluntary and the children were in no way obliged to attend. This could be overcome by incorporating some elements of the programme into legislation, such as compulsory attendance. Also this would assist greatly to make ongoing or long-term monitoring in particular cases possible.

The fact that the programme was confined to one district limited its usefulness. The lack of publicity also meant that very few people could take advantage of the programme. However, the programme has the potential of growing and becoming the standard treatment for young sex offenders. It is difficult to determine whether or not the programme is succeeding without empirical research. An in-depth and continuous study of the programme and its effect would need to be conducted to prove its efficacy.

The steady growth in the number of children entering the programme requires training of facilitators and volunteers to run group sessions for young sexual offenders. This will help in setting up the programmes in other districts and provinces. A consultative workshop is earmarked for early next year in order to introduce the programme to other areas as well.

Dr Meys is a child psychiatrist in private practice. His interest in child sexual offenders started during the period he worked at Red Cross Children's Hospital attending to victims.

Training trends: Training in probation practice - a new vision

By Dr Roland Graser, UCT School of Social Work

In 1998 the School of Social Work at the University of Cape Town embarked on a unique project to start the first Honours and Master's programmes in Probation and Correctional Practice in South Africa - if not in the world. The decision to develop these courses [see below] resulted from the vision and work of the Inter-Ministerial Committee on Young People at Risk (IMC), particularly from its project of transforming the child and youth care system.

In developing the programmes in probation practice, the School relied heavily on the experience of training more than five hundred probation officers and social workers in all nine provinces over a two-year period. This training included a process of consultation with the trainees, who imparted a great deal from their practical experience. Discussions were also held with staff at different departments (mainly Social Work and Criminology) at various universities and some NGO's. Valuable insights were gained from workshops and symposia on new approaches to juvenile justice, especially from experts from the USA, Canada and New Zealand. As a starting point, the School of Social Work built basic elements of probation practice into its fourth-year Social Work course early in 1998. A full Honours course in this discipline was first offered in July 1998. In

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order to enable persons from across the country to enrol in the Honours programme, it was decided in 1999 to offer the course in module form. The first two modules were presented during a two-week period in February, and the other two modules for two weeks in the June-July vacation. Offering the course during the University vacations enables students to stay at the University residence at reasonable rates.

The current enrolment of students (19) comes from various provinces, including eight from Gauteng and one from Namibia. Students have come from a variety of different backgrounds, including from the Departments of Welfare, a school of industries, NICRO and University support staff. Most hold a Social Work qualification, but some are qualified in related fields such as Sociology, Criminology or Psychology. The evaluation of the course has been extremely positive and inspiring so far.

The School of Social Work also offers a course-work Master's programme in Probation and Correctional Practice which runs over two years and consists of four modules (Forensic Practice in Probation and Corrections, Law and the SA Family, Group Dynamic and Mediation, Social Policy).

Students present a short dissertation, although the option of completing a Masters by full dissertation is still available.

Challenges and Future Prospects

As with any new programmes, there were a few 'teething problems'. The liberal admissions approach to the programmes has attracted students from a variety of backgrounds and with mixed capacity. This is a positive element as it brings different perspectives to the programmes, but the flip-side is that it has also brought persons lacking social work training to the course. They experienced difficulties coping with the tasks that required basic interviewing, assessment and intervention skills.

Also, some students had just completed their first degrees. Even extra instruction failed to compensate adequately for their lack of practical experience.

These challenges will be considered in dealing with student selection, orientation and course content. It is anticipated that several of the Honours students will enrol in the Master's programme next year. There is already great interest for the next year's programme, with enquiries coming from as far afield as Ireland.

The four modules are:

1. Probation and Correctional Practice (relevant legislation, the SA criminal justice system, sentencing, probation practice, community corrections and restorative justice);
2. Juvenile Justice (theoretical perspectives on youth crime, international conventions for the administration of youth justice, policy and legislation, programmes for youth at risk, prevention and early intervention, and institutions for youth offenders);
3. Human Development (understanding human development and behaviour, basic assessment and intervention skills); and
4. Research Method (research design, data, collection methods, data analysis, writing research proposals and reports).

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Does diversion work?

By L.M.Muntingh (Director: Research and Programme Development NICRO)

Does diversion work? Does it prevent crime? Does it teach the client anything? These are the questions that are asked by both sceptics and advocates of diversion alike. NICRO and Lawyers for Human Rights established diversion in South Africa on a fairly informal basis in the early 1990's. Advocates of diversion have campaigned for the expansion of diversion and enactment of legislation so that diversion can become the cornerstone of juvenile justice system. Diversion has been successful in Europe, Britain, North America, Australia and New Zealand.

NICRO offers five core diversion programmes, namely the Youth Empowerment Scheme (YES), Pre-Trial Community Service, Victim Offender Mediation, Family Group Conferencing and The Journey Programme. The programmes can be varied to cater for different types of child offenders and high-risk children. The overall aim of the programmes is to divert the child from the mainstream criminal justice system and to encourage acceptance of responsibility for the wrongdoing. The child is presented with practical ways to account for his or her infraction.

In 1998, NICRO conducted a national survey of 640 children who had participated in its five diversion programmes in the preceding twelve months before the survey. NICRO drew up a stratified sample of its clients according to geographical location and programme participation.

The research was aimed at providing the following:

- accurate information on the past participants of NICRO's diversion programmes;
- identifying trends in re-offender and non-offending cases;
- collecting feed-back from past participants of the programme;
- assessing the impact of the programmes on the participants; and
- creating a profile of recidivists.

Research Methodology

The field workers were able to interview 70% of the 640 children in person or through an immediate family member. The questionnaires covered a number of issues including the following:

- biographical data
- case history
- residential situation and household structure
- reasons for attending the
- NICRO programme
- expectations of the programme
- retention of the programme content
- best and worst impressions
- what was learnt
- current opinion of the programme
- reasons for finishing
- personal change after the programme

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- commission of offences after the programme
- time lapse between the re-offending and the completion of the programme
- the reasons for committing further offences;
- and reasons for not committing further offences.

Overview of Findings

The study represents the first evaluation of diversion in South Africa and was in itself a learning experience for the researchers. The focus was not limited to tracing recidivists, but also yielded valuable feedback from the former participants to inform future planning. The study was able to build a countrywide profile of programme participants and a representative sample was selected from all the programmes.

Completed Diversion Cases by NICRO for March - August 1999

March: 175

April: 787

May: 809

June: 801

July: 886

August: 699

Results of the Study

It became clear that the typical diversion programme participant is a 15-17 year old male first offender, charged with a property crime, residing with his parents and in his second to third year of secondary schooling. The compliance rate for all the programmes was above 75% and this indicates the commitment of the participants to completion of the programme.

The majority of participants were pre-trial referrals, which resulted in the withdrawal of the charges and the child not having a criminal record. This is in line with the stated objectives of diversion to limit the conviction rate of the children, and not merely provide alternative sentencing options. Avoiding re-arrest and conviction is the single most important reason for complying with the conditions of diversion.

The programmes had a significant impact - participants could remember the programme content in detail. Participants expressed a positive personal change after the programme, the highlight being acceptance of responsibility for their actions.

In the first twelve months after participating in the diversion programme, only 6.7% of the sample re-offended.

The average time lapse from completing the programme to re-offending was 7.2 months. The majority of re-offenders showed a degree of "specialisation", with all the recidivists again committing property offences.

Taking transformation from big cities to gravel road communities - a rural outreach programme

By Riaan Marais - Provincial Project Manager: Diversion (NICRO Eastern Cape)

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NICRO has joined forces with other role players in the criminal justice system in setting up a pilot project, the Stepping-Stones One Stop Youth Justice Centre, in Port Elizabeth. The Centre is aimed at rendering one stop early intervention services to young offenders in the city and surrounding areas.

The Centre marks a significant transformation in the way child offenders are dealt with. It provides a child-friendly atmosphere with police services, judicial services and social services delivered under one roof. It has its own Magistrate's Court dedicated to rendering diversion service to young offenders.

The in-house social service staff and family finders play an important role in providing for the young offender's social needs and locating his or her next of kin. But one of the major criticisms levelled against this pilot project and others has been that they often ignore the rural areas. The rural areas of the Eastern Cape have in the past not benefited directly from the new initiatives aimed at transforming the juvenile justice system.

NICRO and its partners at the Stepping-Stones decided to tackle this isolation by undertaking a hugely successful whistle-stop training campaign in the rural Eastern Cape. It was led by Neels Goosen (magistrate at Stepping Stones) and Dawie Marais (Assistant Manager at Stepping Stones), whose initial aim was to target three rural magisterial districts before spreading the initiative to other rural areas. Rural and peri-urban Eastern Cape is characterised by a lack of basic infrastructure for the delivery of effective, efficient and professional services to child offenders.

The training programme consisted of workshops during which the scope of the pilot project at Stepping Stones was presented. Other innovative diversion initiatives that rural role players (probation officers, prosecutors and members of the public) can utilise when dealing with child offenders were explored. The team focussed mainly on the principles of restorative justice, the need for early intervention, different services offered by Stepping-Stones and also the constitutional principles relating to child offenders.

To ensure continuity and sustainability, NICRO has undertaken to train staff and volunteers. This shows that with committed and dedicated people, transformation processes can reach even the most remote parts of the country. The initiative has succeeded in introducing the tried and tested NICRO diversion programmes to areas where they have never existed before.

Due to the relatively small number of child offenders in the rural areas, the only programmes that could be successfully use. were pre-trial community service, family group conferencing and victim-offender mediation. The pre-trial service has proved to be the most popular form of diversion. Instead of being prosecuted, the offender has to perform a number of hours of community service at a non-profit organisation or community institution. Tasks have included the laying of stones on potholes on the rural roads, painting of clinics and the cutting of grass at municipal grounds.

The table below shows that diversion has finally started to make an impact in the areas that were covered by the outreach programme.

DISTRICT	OUTREACH	YOUTH DIVERTED SINCE THE
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		OUTREACH PROGRAMME
Graaff-Reinet	9 July 1998	29
Humandsdorp/ Jeffrey's Bay	23 July 1998	48
Patensie/ Hankie	23 July 1998	9
Grahamstown	March 1999	90
Cradock	January 1999	60
Joubertina	25 February 1999	16

African focus: Juvenile justice in Cameroon

***Dr. Temngah Joseph Nyambo- Faculty of Laws and Political Science,
University of Yaounde***

Cameroon has a strange, yet interesting juvenile justice system. It is based on two foreign legal systems inherited from the colonial period, namely the English common law and the French Civil Law. The two systems operate side by side in practice and all attempts to fuse them into a single comprehensive system have so far failed to bear fruit. The failure to harmonise the two systems has made all attempts to enact unified and comprehensive child-focussed legislation unsuccessful. The clear evidence of this failure is the spectacular lack of success of the longstanding Civil Law Reform Commission (which has been in existence since 1964) in producing any tangible child focussed programme.

The juvenile justice system in Cameroon can at best be described as fragmented. The main sources of the Cameroon's juvenile justice system are the preamble to the Constitution to the Republic of Cameroon; the Penal Code of 1967, which embodies most of the laws that have some relevance to children; the Civil Status Ordinance of 1981; and international law, particularly the Convention on the Rights of the Child, ratified on 11 January 1993.

The Penal Code classifies children into different categories, which carry with them certain legal consequences. For instance, children under the age of 10 are deemed not to have criminal responsibility and those between the ages of 10 and 14 are subject to special measures. There are no intervention programmes aimed at preventing children from entering into the mainstream system, and as a result thereof, children land up in the adult criminal justice system.

Cameroon, like many other developing countries, is plagued by a problem of homeless children, who come from the rural areas, roam the streets of the big cities and become trapped in squalor and criminal activities. The government has, through the Ministry of Social Welfare, attempted some half-hearted measures aimed at remedying the plight of child offenders. To this end NGO's, church bodies and volunteers were called in to assist the state to implement a massive repatriation programme of street children from Yaounde, the capital city of Cameroon. The children were then relocated to the rural northern parts of the country. This initiative has generated a new interest in children's issues. Several NGO's are currently involved in research that aimed at improving the conditions

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of child offender's. The results will feed into the on-going debate on improving the position of children in conflict with the law.

It is clear that inconsistent laws applying to children are an impediment to reform. As a signatory to the Convention on the Right of the Child, Cameroon is under an obligation to establish separate laws, procedures and authorities aimed at dealing with child offenders. The Convention lays down a foundation for international assistance for those countries that are unable to fulfill their obligations under the Convention. Sadly, Cameroon has neither fulfilled her obligations, nor has she sought international assistance to help her to do so.

Book review: Cries without tears - Amanda Dissel

Amanda Dissel - Centre for the Study of Violence and Reconciliation

An anthology of writings from rehabilitating offenders, Corrective Action Holdings, Craighall, June 1999.

Cries Without Tears is a book, which arises from the Khulisa programme, a collaborative project between Leslie Ann Tintinger and Credo Mutwa. Khulisa, which is a Zulu word for "Let the young child grow", is a grass roots project directed at young offenders in prison. It is geared towards deterring and reforming recidivist behaviours by intervening at an early stage in the lives of these young offenders. Through the utilisation of multiple creative exercises, story telling, group therapy and self-guided therapy, it aims to stimulate personal transformation based on the theory of 'self-renewal' and self-understanding.

Cries Without Tears is a collection of 'short cuts', or examples of some of the writings of young prisoners who have participated in the programme. The excerpts are grouped according to different themes concentrating on life outside, life inside, memories, life in South Africa, and anxieties, which they experience. The creative writings give us an insight into the many different personalities behind the words. We are given some glimpses of why these young people became involved in crime, their thoughts and experiences, and their hopes for the future.

Through these journeys, the book hopes to present a possible path towards 'social recovery' and reintegration of offenders. In some of the writings the slow dawning of a sense of self-respect shines through, and the emerging belief in oneself and in the capability to change and contribute meaningfully to society. This is the one of most inspiring aspects of the book. The extracts from Colin's diary - in the last chapter of the book - documents one individual's growth and development. This is a young prisoner who joined the programme in prison, and then finds employment with Khulisa after his release. His last entry, where he describes performing an impossible feat - walking over hot coals - metaphorically illustrates how his positive attitude, enthusiasm, determination, as well as the support of others, enables him to carve out a different future for himself.

However, I found that on the whole the book did not establish a sufficient link between the writings of the youth, and the Khulisa programme itself. We are not clear how the writings emerge - whether as the outcome of certain tasks, or interventions, or as a spontaneous process. And, while the format of including numerous short stories allows for maximum participation by many offenders, I found this frustrates the reader's ability to engage more meaningfully with the

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stories, and the individual development of any one offender through the programme. We are left uncertain of the impact of the creative writing process on the young offender's chance of successful reintegration. I also felt that the themes which emerge could have been grouped together and developed in a more helpful way.

Despite these reservations, this book is a stimulating read for anyone interested in listening to the voices of young people. For practitioners dealing with young offenders, there is a valuable source of information in this collection of thoughts on early childhood, facing the challenges of living in South Africa, and dealing with the harshness of prison life. It also provides some hope that with well-directed early intervention, there is a chance of a different future for these young people at risk.

Available from Corrective Action Holdings, tel: (011) 781 3411, at R88 each, excluding packaging and posting.