

CHAPTER 6

Interviewing and counselling



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Outcomes

At the end of this chapter you will be able to:

- Know the elements of client-centred and child-centred interviewing
- Know how to approach patients in crisis
- Deal with the consequences of death
- Facilitate networking with support structures in the community
- Understand the debate on victim empowerment
- Understand the need to deal with the criminal offender
- Understand the issues of restorative justice and community reconciliation.

With the increase in violence, the first port of call of victims will frequently be the health facility. At the interface between health, police and social services, the health professional will need to be equipped to handle victims effectively, while contact is made with the other role players.

6.1

Client-centred interviewing



CLIENT-CENTRED

To enter the client's world and explore what this looks like from his or her point of view.

It is important that all professionals in service positions dealing with the public know the basic elements of client-centred interviewing. In essence 'client-centred' means that the needs, feelings and circumstances of the client are given priority during the interview. To enter the client's world and explore what this looks like from the client's point of view is the starting point of 'client-centred' interviewing.

There is an important difference between client-centred interviewing and giving advice. There is a place for advice, but only after clients have been heard from their inner world. Advising is a professional function, and must be kept on hold until the patient is ready to hear suggestions from the outside world. Advice should be seen as suggestions which patients can take, think about and decide what to do with.

Counselling as an art and technique is a specialised field, studied intensively by psychologists, social workers and lay counsellors. Counselling skills are acquired through ongoing practice and learning. However, whatever is learnt about client-centred interviewing and the skills used, will be very beneficial during the interview, and in equipping the professional to assist the client meaningfully.

6.2

Basic elements of client-centred interviewing

CLIENT-CENTRED INTERVIEWING:

Place

Relationship

Confidentiality

Empathetic listening

6.2.1

Place

The first component of client-centred interviewing is to have a place where you can interview without distractions, without curious eyes and ears, and where privacy can be ensured.

Ideally, the environment for dealing with trauma should be friendly, with some soft furnishings and curtains. Toys for children are especially important. [See pg 141] An environment like this conveys nurturing and support, without the need for words.



Relationship

The next component is to establish a relationship of trust with the patient. This has to come from a genuine interest and care for the patient as a total person with a wealth of experience, needs, dreams and ideals. Unconditional acceptance of the patient means that whatever their inner world is, that is what is real and important, irrespective of what the professional thinks about it. When this is genuine, a warmth will be conveyed to the patient that they are in a safe space emotionally.

Having regard to the different cultures in South Africa, the body language of the professional is important in conveying understanding and acceptance of the client. Eye contact is an essential element of contact and interest, although this is not necessarily appropriate in African culture. Being there for the client is shown by the professional focusing on the client, and a refusal to be distracted by other 'noises' in the environment.

Confidentiality

For the health professional the concept of confidentiality comes into play not only as regards medical records, [See pg 112] but in respect of all interactions between the professional and the patient. In a counselling relationship, everything that transpires between the professional and the client must be kept in trust between these parties. It is important to explain this to the patient and the professional must properly understand the meaning of confidentiality. It means for example, not talking about the patient to any outsider (including friends and relatives) in any way that could identify the person. The professional may not talk about patients or cases at reception or in corridors. A person who breaches confidentiality can be sued for breach of contract, defamation or invasion of privacy. [See pgs 91-93]

Listening skills

Listening as a skill is essential for client-centredness. It springs first of all from the deep-seated belief that the patient is the only person who knows his/her world, and reality is the way the world is seen through his/her eyes. If the professional wants to enter this unique world he/she must remove the filters to listening through which we normally screen what we hear in our everyday listening to others.

6.2.2



BODY LANGUAGE

The body language of the professional is important in conveying understanding and acceptance of the client.

6.2.3



COUNSELLING

In a counselling relationship, everything that transpires between the professional and the client must be kept in trust between these parties.

6.2.4

The barriers or obstacles to effective listening

There are many, some of which are:

1. consoling (e.g. "I understand why you are unhappy")
2. blaming (e.g. "It is your own fault")
3. criticising (e.g. "You should not have done that")
4. judging (e.g. "You were wrong")
5. preaching (e.g. "Don't do that")
6. cross-examining (e.g. "You did that didn't you?")
7. sympathising (e.g. "I feel sorry for you").

Inappropriate responses

When the listener responds to a patient, for example, with:

"You should have known that would provoke him" or

"That's what happens when people stay out all night" or

"Shame, you poor thing!"

the professional has not listened to the inner world of the patient. Responses like these will have the effect of closing or blocking the communication, as the patient will not feel understood from his/her inner point of view.



See the world through their eyes.

Empathetic listening

If the professional listens for patients' feelings, for their state of mind, for their inner reality, the professional will use phrases like:

"I hear the pain in making that decision" or

"You feel angry that ...".

Words like these that try to follow the world of the patient will keep the communication open as the patient will feel understood. He/she will be inclined to tell the professional more.

When the professional listens for feelings and then tries to respond to the patient's experience, as if the professional were looking at the world through the patient's eyes, in the totality of his/her experience at that moment, the professional will be an **empathetic listener**. An example is:

"When he forced you to undress you felt angry and helpless because it was now too late to react."

6.2.5

Additional skills

Another skill to encourage the patient to tell their story is the use of **paraphrasing**. This is used when the listener rephrases what the patient has said in the listener's own words in order to check understanding with or to gain clarification from the patient. This has the effect of urging the patient to keep connected with the listener, as it is evident

that the listener is staying closely with the patient's thoughts.

Another skill is to use verbal encouragers, such as "yes... go on... and then?" to show you are listening. A technique like this, or any other, should never be used to convey attentiveness that is not actually there.

These are the basic elements of client-centred interviewing, and need to be practiced in specialised workshops. Advanced skills can then be acquired.



PARAPHRASING

Paraphrasing is when the listener rephrases what the patient has said in the listener's own words.

Do's and don'ts of effective listening

DO'S

1. Listen with your 'inner' ear to 'inner' feelings (the feelings behind the actual words)
2. Respond to the client's feelings, behaviour and experience
3. Convey warmth and acceptance through your eyes and body posture
4. Control your own emotions
5. Stay in touch with the client's perceptions at all times.

DON'TS

1. Listen through filters
2. Interrupt because you have something more important to say
3. Make hasty judgements
4. Convey your own emotions through negative facial expressions (e.g. shaking your head from side to side when saying that you agree)
5. Allow distractions to intrude (e.g. interruptions such as telephone calls).

6.3

Crisis counselling

A crisis is a situation which is filled with danger, threat, injury, or sometimes death. When there is a crisis or trauma at issue, additional understanding and skills are brought into play to respond to the situation.

Crises disrupt the normal flow of a person's life and threaten to overwhelm the person. While the crisis is traumatic, it is also recognised by psychologists as an opportunity for change, growth and development on the part of the survivor.

Characteristics of people in crisis

Although each person's experience is unique, it is important to understand the typical state of mind of the person in crisis.

Definition

CRISIS

A crisis is a situation which is filled with danger, threat, injury, or sometimes death and the emotions associated with them.

6.3.1



Victims often eat, drink or smoke excessively.





A survivor typically feels:

- overwhelmed
- emotionally drained
- immobilised
- unable to cope
- guilty (as if they are to blame)
- overly dependent or overly independent
- the need to eat, drink or smoke excessively.

6.3.2

Typical crisis sequence

A crisis situation tends to move through a pattern of distinct phases.

PHASE ONE	PHASE TWO	PHASE THREE	PHASE FOUR
<p>Impact phase The person feels stunned, disoriented and unable to think.</p> 	<p>Disequilibrium phase The person feels overwhelmed by a mixture of anger, resentment, depression, guilt or shame. The person's balance is severely disturbed, and he/she appears to withdraw into him/herself.</p> 	<p>Adjustment phase A new sense of hope and some future-oriented thoughts come to the fore.</p> 	<p>Reconstruction phase The person begins to reconnect and starts to rebuild his/her life.</p> 

6.4

Crisis Intervention

Definition

CRISIS MANAGEMENT

Crisis management is the administering of physical and emotional first-aid.

Crisis management is the administering of physical and emotional first-aid to people experiencing psychological and physical trauma. This process involves emotional presence, that is, being there physically and emotionally to absorb the shock and nurture the victim emotionally until equilibrium is re-established. During the earliest phases, the helper assists with very practical tasks, such as finding keys, contacting family, cancelling any immediate appointments or arrangements,

informing close relatives, and generally assisting the victim to collect the self together in a very practical way.

Debriefing

6.4.1

Perhaps the most important part of assisting the person to restore their balance is to understand and be able to conduct the process called debriefing. Once again this is a specialised area and professionals need workshop training and practice in the skills which are outlined below.

Debriefing is the process of re-experiencing the trauma so that it is not buried and later undermines relationships or manifests in depression and other disorders. The principle is that traumatic experiences which lie buried remain toxic to the personality. In debriefing, victims express verbally the things they have experienced so that the experience is not suppressed. The debriefer assists the victim to 'work through' the negative experience. Through this process, the victim of violence is transformed into a survivor.

Debriefing is most beneficial when it occurs within 24 – 48 hours of the crisis.



DEBRIEFING

Debriefing is the process of re-experiencing the trauma.

Steps in the debriefing process

STEP ONE

The victim recounts the traumatic experience on three levels:

The sensory level

At the sensory level, the debriefer helps the victim verbalise by asking open questions like "What did you see? What colour was the jacket? What happened next? What did you do?"

As the facts of the event are told, in terms of what the victim saw, heard, smelled, tasted or did, fear and isolation start to recede.

The thoughts level

The debriefer continues to aid expression by asking "What did you think at that moment? What went through your mind when ...?"

This helps the victim start to put the pieces of the story together, and put his/her own reactions into perspective.

The emotional level

In this level the debriefer explores with the victim the feelings he/she experienced at the time and what he/she is currently experiencing, using listening skills and empathy [See pg 133, para 6.2.4]. This is the longest and most important level as it is vital to ventilate fully all the feelings, which will be a mixture of guilt, helplessness, anger, fear etc.

STEP ONE RECOUNTING THE TRAUMA



- senses
- thoughts
- emotions



CONTINUED



**STEP TWO –
NORMALISING**

STEP TWO

The debriefer **normalises** the feelings of the victim. This means reassuring the victim that what he/she is feeling is the normal response to an abnormal situation. This is an important step as victims will feel enormous relief to know they have not 'lost it' and are not sick. The debriefer should only embark on the step of normalising after the victim has extensively explored his/her feelings. If the victim is reassured too early or flippantly, he/she will feel his/her unique experience is not important and will bottle up further expressions of his/her emotional state. This is not helpful to the victim.



**STEP THREE –
REFRAMING**

STEP THREE

The debriefer assists the victim to **reframe** the experience so he/she can understand that many of the symptoms he/she is experiencing are protective and healing mechanisms of the mind. By giving new meaning to the experience, the victim can now begin to integrate psychologically what has happened, how he/she reacted, and how he/she felt and is now feeling. As the person's self-image begins to change, he/she is able to move from being a passive victim to an active survivor.



**STEP FOUR –
RECONSTRUCTION**

STEP FOUR

The debriefer assists the survivor by exploring the person's own coping mechanisms that will help him/her to regain control and take up life again. The person can be encouraged to explore options and to make plans that he/she can implement. The debriefer also assists the survivor to make connections with family, friends and other support systems in the community.

The process of **reframing** and **regaining** control correspond to the phases of **ADJUSTMENT** and **RECONSTRUCTION** in the crisis sequence. These processes are touched on in debriefing but in reality occur over a period of time. The person is most amenable to short-term crisis counselling in these phases, which is the reason why linking with crisis centres, support groups and specialised NGOs in the community is so beneficial for the survivor.

STEP FIVE

Symptoms of trauma occur normally for at least one month after the event, and frequently up to three months. The person who is still experiencing severe symptoms after three months should certainly be referred for specialised psychological help, as s/he is likely to be suffering from Post Traumatic Stress Disorder.

The goal is achieved when the person can absorb the experience, for example, as follows: "A terrible thing befell me. Not only have I survived it, but I have incorporated it into me. I may hurt more, but I am wiser or stronger. I have overcome the darkness and the pain. I can move forward in my life, I can laugh and love and work. I overcame the trauma; it did not overcome me."

(Peterson, Prout and Schwarz)

The symptoms of Post Traumatic Stress Disorder

The American Counselling Association has compiled a *Crisis Fact Sheet* to enable professionals to recognise the symptoms of Post Traumatic Stress Disorder. These are:

- Re-experiencing the event through vivid memories or flash backs
- Feeling emotionally numb
- Feeling overwhelmed by what would normally be considered everyday situations and diminished interest in performing normal tasks or pursuing usual interests
- Crying uncontrollably
- Isolating oneself from family and friends and avoiding social situations
- Relying increasingly on alcohol or drugs to get through the day
- Feeling extremely moody, irritable, angry, suspicious or frightened
- Having difficulty falling or staying asleep, sleeping too much and experiencing nightmares
- Feeling guilty about surviving the event or being unable to solve the problem, change the event or prevent the disaster
- Feeling fears and a sense of doom about the future.

[American Counselling Association, *Crisis Fact Sheet*
www.counselling.org – June 2001]



One of the symptoms of Post Traumatic Stress Disorder is relying increasingly on alcohol or drugs to get through the day.

6.5

Statement taking

Only once client-centred interviewing, crisis management, and debriefing have been attended to, should the professional put his/her mind to the taking of a statement.

A statement is a record in the patient's own words of what has occurred, either over a long time, or a single incident. This is tantamount to an affidavit as it will be signed by the patient before a commissioner of oaths as representing the truth of the situation, from the patient's knowledge and understanding.

It is essential that the patient use his/her own words and is not given words by the professional, or that the professional adds nothing of his/her own attitude or views.

The professional may only assist by asking open questions that prompt the patient to think through the event and to give as many details as possible, that can be accurately recalled. Details will include factual details about time, place, sequence of events, alleged pe-

Definition

STATEMENT

A statement is a record in the patient's own words of what has occurred.



STATEMENT

The statement may be made at the health facility or at the police station.

trator's identity, appearance etc. Details about the patient's state of mind, his/her thoughts and feelings at the time of the event will also form part of the record.

If a patient cannot or does not wish to write their own story, then the professional can write their words down, as they are spoken, taking care to be true to the patient's own words and experience. This written statement will later be confirmed and signed by the patient in the presence of a commissioner of oaths.

The statement may be made at the health facility or at the police station, wherever the patient feels more comfortable or as is appropriate.

6.5.1

Collecting and documenting other medico-legal evidence

The collection and documentation of other medico-legal evidence is objective, emanating from the point of view of the professional. It notes such aspects as the type and condition of the clothing of the patient at the time of being seen, as well as the mental and emotional state, as observed by the professional.

These observations may become important as evidence in a subsequent court case. [See Collecting medico-legal evidence, pgs 259-260]

6.6

Child-centred interviewing

The child may enact a scenario, using dolls or other items to represent his or her world.



Engaging children as participants in a process that connects the health care professionals with the children's experiences in health care promotes **child-centred practice**. Child-centred practice is arguably more than just a method of practice. It is contended that child-centred practice is a way of thinking that seeks to prevent the marginalisation of children in health care.

In connecting with children, play is a very important way of communicating. Children of all ages will communicate through play, but especially for children below adolescence, play is the most effective medium. Verbal communication tends to be too abstract for a young child, whereas the language of play is always based on something concrete to which the child can relate.

In order to engage the child in play, the professional needs space and play materials.

Space

Physical space is desirable for unrestricted movement, as is some protected space where concentrated, private play, such as drawing, building or acting can occur.

Where a special area is not possible, a place can be set aside specifically, or at least a basket or shelf full of toys for use by children provided.

There must also be emotional space [See pg 133] such that children feel the unconditional acceptance conveyed by the professional that will allow them to feel free to play imaginatively in an unstructured way.

Play materials

Play materials can be extremely basic, as long as children can use them to give free rein to their imagination (inner worlds). Basic materials such as paper, crayons, scissors or play dough are effective. Soft toys which can be made to represent family members (and pets) are very helpful, and items that can aid the child in creating familiar home or school situations are useful. For a crisis facility that will encounter child abuse, anatomical dolls are very helpful.

Types of play

Play will take many forms such as:

Drama: A scenario is created, with or without the assistance of the professional, in which the child has the opportunity to act out a familiar situation, using dolls or items that represent the figures in the child's world.

Creative play: Play by means of drawing, painting or moulding play dough etc., allows the child to express their world and understanding, and lends itself to becoming a communication channel between the child and the professional.

Through the medium of play a child will express such experiences as: "empty... the house is always empty" or "the doll's heart is breaking".



CHILD-CENTRED

Processes that connect the health care professionals with the children's experiences promote child-centred practice.

6.6.1



SPECIAL AREA

Where a special area is not possible, a corner can be set aside for the child.

6.6.2

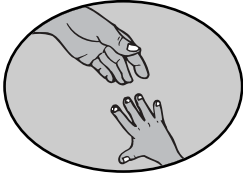
6.6.3

It is very difficult to achieve this level of communication by means of the usual interviewing skills.

6.6.4

Reaching out to a child

REACHING OUT TO CHILDREN



- relate immediately
- get down to child's level
- exchange names
- get involved
- play too
- talk simply
- offer choices
- draw a picture
- try to see through his or her eyes

Some useful guidelines have been developed in the social sciences to assist professionals in making successful initial contact with a child:

1. Relate immediately and directly to the child
2. Gain eye contact by moving physically to the child's level for example, kneel, sit, or crouch
3. Ask the child's name, use it and give the child your name
4. Comment on some aspect of the child's current situation, such as the clothes or shoes they are wearing, or something they are eating
5. A playful manner or gesture can be helpful in easing the relationship
6. Use simple language and gestures
7. Offer a choice of activities, including talking, for the time that you are together
8. For the younger child, drawing a picture is a favourite first activity
9. Use the first activity as a foundation for further talk or for other activities, focusing the talk and other activities on the child's perception of the scenario.

As with other areas of counselling, handling children effectively is a specialised field, requiring that the health professional attend training workshops.

6.7

Dealing with death



DEATH

Death is a particular form of trauma, requiring immediate and longer term assistance for the family.

Death is a particular form of trauma, requiring immediate and longer term assistance for the family.

In violent death, it is the health professional who will most often be called upon to manage the psychological impact of death and to be the grief counsellor of first instance.

All the principles of dealing with trauma [See pg 136, para 6.4.6] are applicable. In addition, it is useful to understand that the process of dying tends to proceed through stages (not necessarily sequential). Bereaved relatives and friends also go through stages similar to those of the dying person. It is helpful if the family, patient and health personnel can assist one another through these reactions. The stages are:

The stages of dying and grieving

DENIAL

The first response of a dying patient (or grieving relative) tends to be “No, not me, it cannot be true.” Denial is a way of coping with shocking, unpleasant news as it functions as a buffer in the short term, allowing the patient to develop other mechanisms to cope with the reality of death.



denial

ANGER

As the patient (or bereaved relative) gains some beginning acceptance of the finality of death, the response is often “Why me? Why is this happening to me?” The central feeling comes to be one of anger and even resentment. This anger is often very difficult to cope with, as it tends to be anger directed at anyone who happens to be available – usually family members or the health personnel.



anger

BARGAINING

After the anger subsides to an extent, the stage of bargaining can be helpful to the dying person for brief periods of time. It is as if the dying person tries to strike a bargain with God, with the health personnel, or with the illness itself. Bargaining thoughts manifest in “If only I could live long enough to ...”, or “I will dedicate myself to ... if I can only be spared a little longer.” Examples of bargaining do not seem to be as obvious as the other stages; and possibly not all patients attempt to cope with dying in this way, or if they do, their bargains are relatively subtle.



bargaining

DEPRESSION

In this stage, the dying or grieving person feels a great sense of loss, usually experienced as a ‘preparatory depression’. This stage is about giving up the things of the world and preparing oneself for the final separation. The patient (or grieving relative) needs to be able to express sorrow in the presence of helpers who will understand and be willing to sit with them as an emotional presence through this time. Warmth, body language which expresses caring, and patience are helpful to the person in this stage.



depression

ACCEPTANCE

If the patient (or grieving relative) has sufficient time to work through the denial, anger, depression, and general fear and anxiety about death, he/she will come to a certain degree of acceptance of the ultimate separation.

The stages may come and go in any kind of sequence as more complete acceptance is achieved.

It is useful if the grieving family and extended family can be counselled together as then the professional can ensure that members keep talking to one another and do not withdraw into private grieving spaces. In time the family can become a support system for one another. It is typical in a bereavement situation for the symptoms of post-traumatic stress to last much longer than in other types of trauma. This is important to convey to the relatives.



acceptance

In all cases of trauma, it is helpful for grieving people to join a support group. This is where healing over time best occurs. Age differences appear to be very significant, as the issues for grieving parents are very different from those of grieving children.

6.7.1

Reporting deaths

When a patient dies, a death certificate must be completed by a medical practitioner. The certificate will stipulate the time, place and cause of death.

The health care worker should stress the importance of this certificate to the family. This is the document that will be used to register the death at the Department of Home Affairs. It is important to register the death as soon as convenient as all other formal processes depend on obtaining the official death certificate.

If there has been a violent incident and there is no relative at hand, the police will normally be involved in the situation. A death certificate will then be completed and the police will take charge of the corpse in order to have the body identified.

A violent death will usually mean that an autopsy will have to be performed in order to establish the precise cause of death and to establish other medico-legal evidence which may be used in a future murder or culpable homicide trial.

6.7.2

Arranging funerals

When there is a death, the issue of assisting the relatives with funeral arrangements may arise.

Where the deceased belonged to a burial society, the family will be assisted by the society. In the case of a funeral policy, the family may need assistance to make contact with the insurance company and sometimes to make sense of what the actual clauses of the policy entitle the family to claim.

Death of a loved one is a very sensitive time for a family, but if at all possible, some advice to the family may be appropriate to help them resist the commercial pressures of funeral parlours who stand to gain by the family spending large amounts on ornate caskets and showy flowers.

Sometimes a timely suggestion that people who care about the family can make a donation towards the schooling or further education of the children will make a huge difference to the surviving members.

Many families experience extreme economic pressures at the death of a relative (e.g. funeral and other costs). Where there is a burial society, the society will usually contribute towards this expense. Where there is none, for example in a traditional funeral, it may be possible to talk to the family about looking at the meaning of the slaughter ritual and what options may be symbolically equivalent in an era in which people do not have cattle as part of their everyday possessions.



AUTOPSY

A violent death will usually mean that an autopsy will have to be performed.



Some advice to the family may be appropriate to help them resist the commercial pressures of funeral parlours.

In some extreme situations of death where the body can be identified and there is no need for an autopsy, but no relatives come forward to bury the body, the health facility will need to assist. A pauper's burial is available via a government mortuary on the recommendation of a social welfare officer. This is extremely unpopular in communities, but is the only solution when there is no family to take the responsibility.

The 'Living Will'

The 'living will' is a new concept and relatively unknown to people generally. Where it exists and the relatives can produce it, it will be persuasive in assisting health professionals in how to handle the case of a person who is so incapacitated that their life is being preserved by artificial means such as a heart and lung machine, with no prospect of recovery. When an injured person is unable to indicate their will, the 'living will' stands as the person's expression of their will not to be preserved unreasonably by artificial means.

This area has been researched by the SA Law Commission as part of the debate on euthanasia and the legal standing of the 'living will' is being considered by the government.



PAUPER'S BURIAL

A pauper's burial is available via a government mortuary on a social welfare officer's recommendation.

6.7.3



LIVING WILL

The 'living will' stands as the person's expression of their will not to be preserved unreasonably by artificial means.

Should active euthanasia be legalised?

Most people agree with the concept of passive euthanasia (e.g. where a doctor withdraws treatment that can no longer help a patient), but not with active euthanasia (e.g. where a doctor gives a patient a lethal injection to end their suffering).



TALKING POINT

1. What are the arguments in favour of active euthanasia in cases where patients are experiencing unbearable suffering?
2. What are the arguments against active euthanasia in such circumstances?
3. What would you recommend as Minister of Health?



Division of estates



SMALL ESTATES

All estates valued at below R50 000 will be handled informally by the nearest Magistrates Court.

When a violent incident results in the death of an adult, the children (or other relatives) may need advice on what happens to the property, especially if there is a house. The property of a dead person is called their 'estate'.

Where the estate is governed by a will, this will determine what happens to all the property of the deceased person, and will be handled by the appointed executor. The executor is responsible for winding up the estate of a dead person (i.e. collecting the property, paying the debts and distributing any balance left over to the heirs).

Many families do not have wills and thus will need advice. The estates of African people may be handled by the Magistrate's court, in consultation with the family. This procedure is currently under review. It appears that all estates valued at below R50 000 will be handled informally by the nearest Magistrates Court. All estates above this amount will be handled by the Master of the High Court.

Relatives who need assistance can be referred to Advice Offices, or the clerk of the nearest Magistrates Court, or the Master of the High Court's office in Pietermaritzburg.

Custody and guardianship of minors

Definition

CUSTODY AND GUARDIANSHIP

Custody means providing material and emotional support to children. Guardianship means the legal responsibility of a person who has to provide for the upbringing and welfare of a child.

Custody means providing a home for feeding, supporting, caring for and educating children. Guardianship refers to the legal responsibility of a person to provide for the upbringing and welfare of a minor.

Where a child is left without a custodian or guardian, as a result of a violent incident, the procedure is for the person who finds the child immediately to contact a social worker from the Department of Welfare (child over 12) or from a Child Welfare Society (child under 12). Where the child is 'in need of care', both physically and legally, it is the social worker who is required to bring this situation to the children's court and to recommend a solution. [See pgs 191-192]

6.8

Victims and survivors of trauma

Networking with support structures

Effective support for trauma victims requires a great deal of physical and emotional effort. The debriefing process also needs unhurried, concentrated time. It is thus essential for professionals to work closely with Victim Support Centres or Crisis Centres in civil society in order to involve care givers, lay and professional counsellors at an early stage. Such support organisations are specialised and can give the time and correct emotional support to victims.

Support for crisis staff

Professionals who respond to public emergencies encounter highly stressful events every day, often several times a day. Occasionally an event is so traumatic or overwhelming that people responding to an emergency may experience significant stress reactions. Sometimes the accumulation of stressful situations and the need to give constant emotional care to trauma victims causes the development of Post-Traumatic Stress Disorders among emergency services professionals themselves.

Such stress also needs to be managed, otherwise the burn-out among professionals makes them unable to perform their tasks and to be there for victims. *Critical Incident Stress Management* is a system of interventions, including debriefing, which is designed to prevent or lessen the adverse psychological reactions that so often affect emergency service personnel. Every Crisis Centre should be aware of the effects of stress on its personnel and take steps to manage it (e.g. it may be necessary to provide special back-up counselling for health workers dealing with daily incidents of domestic violence or rape).

6.8.2



STRESS

Every crisis centre should be aware of the effects of stress on its personnel and take steps to manage it.



It may be necessary to provide special back-up counselling for health workers dealing with daily incidents of domestic violence or rape.

Crime victim empowerment initiatives

Once the immediate crisis has been managed, and the medical needs and legal examination of the survivor have been attended to, the next step is to ensure that the survivor receives deeper counselling. Therapeutic counselling is time consuming and should not be hurried. It is provided by psychologists, social workers and properly trained counsellors, to whom the survivor should be referred. Emotional and social support is available from social workers of state departments or

6.8.3

Definition

VICTIM EMPOWERMENT

Victims are empowered by receiving assistance from the state to become aware of the functioning of the administration of justice.



COMPENSATION

The establishment of a state compensation fund which will give monetary compensation to the victims of criminal violence is being investigated.

VICTIM EMPOWERMENT:

- State Compensation Fund
- State co-ordinating agency
- Victim Impact Statement

Definition

VICTIM IMPACT STATEMENT

A statement made by the victim of a crime and ordered by the presiding officer to be considered in the sentencing decision.

the family welfare societies. Specialised play therapy for child survivors exists and should be sought.

Because victims of violence have been sorely neglected in the South African criminal justice system, the SA Law Commission is currently investigating what additional legislation may be needed to give victims greater priority. One of the issues under discussion is the establishment of a state compensation fund which will give monetary compensation to the victims of criminal violence for the harm they have suffered. Another issue is whether a governmental agency should be established by legislation to assist victims formally with their needs, including negotiating the legal process. Another function of such an agency would be to co-ordinate all the components and services that are needed to assist victims through their ordeal.

The aim of these new initiatives is *victim empowerment*. In this process, the victim is empowered by receiving assistance from the state to become aware of the functioning of the administration of justice. Victims tend to feel disempowered by not knowing or understanding the complex procedures and feel intimidated by the legal process. Informing victims of their role and what is expected of them, the scope and timing of their involvement, referring to victim support services, and keeping the victim informed of the progress and outcome of the case, and if the alleged offender is acquitted, of the reasons for this, gives victims some control over aspects of their lives that were lost during the crime.

Another empowerment procedure under consideration is the *victim impact statement*. This is a statement made by the victim and addressed to the presiding officer to be considered in the sentencing decision. The statement consists of a description of the harm in terms of the physical, psychological, social and economic effect that the crime had, and will have in future, on the victim.



TALKING POINT

Should Victim Impact Statements be allowed to influence the courts?

There are still difficult considerations on the issue of the victim impact statement – such as balancing the right of the victim to inform the court of the extent of the trauma experienced, as against preserving an objective court system which views the offence from an impartial stance in order to ensure a fair trial to the offender.



1. What are the arguments in favour of allowing victim impact statements to influence the court?
2. What are the arguments against?
3. What would you recommend if you were Minister of Justice?

6.9

The criminal offender and the community

While focusing on the victim it is vital not to forget that the offender requires treatment or some form of rehabilitation in order to be capable of returning to society.

The treatment programmes currently available from the social sciences are: *behavioural* (retraining deviant sexual behaviour), *psychotherapeutic* (seeking the origins of deviance within the psyche), *family therapy* (changing the behaviour of different family members, not only the offender), or a combination of these options. The situation at present is that no treatment is provided in prisons by the Department of Correctional Services. Offenders may submit themselves voluntarily for treatment. This occurs infrequently and there are very few therapists in the private sector who specialise in the treatment of offenders.

The SA Law Commission is investigating some possibilities. One suggestion is that where a court convicts an offender, there could be a postponement for a period not exceeding five years, of the passing of sentence. The offenders could be released on condition that they perform community service, submit to correctional supervision and treatment. In this scenario treatment would be mandatory. Another possibility is that offenders be imprisoned, and then required to enter a treatment programme as a condition of being released on parole.

OFFENDER REHABILITATION:

- Behavioural treatment
- Psychotherapeutic treatment
- Family therapy

When should treatment programmes be used?

1. At what stage in the criminal justice process should treatment programmes be available?
2. Who should pay for the costs of this treatment?
3. How effective do you think treatment programmes are?



TALKING POINT



Reconciling the crime with the community

6.9.1

Civil society in South Africa has developed a sophisticated and specialised network of services available to the survivors of crimes. Although these services tend to operate only in the urban areas, the public service needs to interact closely with these resources and to refer

6.9.1.1



NETWORKS

Civil society has developed specialised networks with which the public needs to interact.

Definition

RESTORATIVE JUSTICE

Restorative justice is a form of criminal justice based on reparation to the victim and community.



REDEFINING CRIME

Restorative justice seeks to redefine crime, not so much as breaking the law but as an injury or wrong done to another person.

survivors for counselling and to join support groups where long-term healing can occur.

Restorative justice

Crime violates the victim, the family of the victim, and the balance of interests in the community. For healing in the community to occur, the concept of restorative justice is beginning to be debated.

According to the SA Law Commission, restorative justice is a form of criminal justice based on reparation. Actions are aimed at repairing the damage caused by the crime, either materially or at least symbolically. When someone wrongs another, that person has an obligation to make things right. The goal of the process is to heal the wound of every person affected by the crime. In this context reparation to the victim and community is regarded as a duty or obligation of the offender.

Crime is best controlled when it is done by members of the community through active participation in persuading offenders to accept responsibility for their actions then, having done so, through concerted efforts of participation, to reintegrate the offenders back into the community of law abiding citizens. Central to the notion of restorative justice is the recognition of the *community* rather than the *criminal justice agencies* as the prime site of crime control.

Restorative justice is also closer to indigenous, traditional African culture. Traditional African principles are based on *reparation* with less emphasis is placed on the *retributive* aspect of justice. Traditional judicial systems tend to give due recognition to the victims of crime, to restore their pivotal role in the system.

The process of restorative justice seeks to redefine crime, interpreting it not so much as breaking the law, or offending against the State, but as an injury or wrong done to another person. It encourages the victim and the offender to be directly involved in *resolving* conflict and thereby becoming central to the criminal justice system. The State and legal practitioners become facilitators, supporting a criminal justice system which aims at offender accountability, full participation of both the victim and the offender, and putting right the wrong.

6.9.1.2

Mediation

Mediation is appropriate when the offender and the victim wish to come to an agreement about the offender's future contact with the victim or where the parties desire some form of compensation or reconciliation. Restitution can take the form of monetary compensation or community service at the agency chosen by the victim. Through person to person communication, tension can be alleviated and conflict can take a humanitarian form. It may also contribute to a more satisfactory experience of the application of the law. By means of a mediation conference, for example, a sentencing plan can be devised and the offender's support group may become responsible for

the monitoring, implementation and review of the plan.

Various types of mediation schemes are under consideration by the SA Law Commission. Mediation may, for example, be organised without face-to-face contact between the parties, with one of the main aims being to address the concerns of the victim. Another form of mediation is the family conference, in which the families of victim and offender meet with a mediator. This type of mediation is particularly appropriate in cases of juvenile offenders. [See pgs 49 and 51]

RESTORATIVE JUSTICE

- Resolving conflict
- Offender accountability
- Mediation
- Restitution
- Compensation

Justice or not?

Thembi (10 years old) lives with her single mother in rural Qambi. Her mother is unemployed and does some casual work, washing and ironing. Her father visits occasionally, and when he does he leaves some money for her mother.

On her way to school in early February, a boy that Thembi knew by sight, called her into a shed. He told Thembi he was going to give her 'extra lessons'. Inside the shed, he made her undress and when she wanted to run away, he threatened her with a gun. He then had sexual intercourse with her against her will. The boy was about 21-years-old at the time.

When Thembi told her mother tearfully about the 'lesson' she had learnt, her mother told her visiting father as he also knew the boy's family. Her father went to see the boy's family. The men agreed that a wrong had been committed. The boy's father gave Thembi's father a case of liquor to wipe away the wrong that had been done to Thembi.



1. Was this 'restorative justice' Why or why not?
2. Should 'restorative justice' be used for serious crimes such as rape? Why or why not?



TALKING POINT



'Peace' is a state in which it is less likely that the problems that lie at the root of the dispute will re-occur.

Community-based conflict resolution: an example from the Cape

The Community Peace Programme began working in Zwelethemba (Worcester) in late 1997, building a 'model' of community-based conflict resolution in co-operation with members of the community. The aim is to mobilise local (grassroots) knowledge and capacity to promote safety and security in communities; and to reduce the demand on the police, the courts, and other state agencies.

When disputes are reported to the Peace Committee, the first step in peacemaking is to interview the persons involved. The main purpose of this interview is to identify persons in the community with the knowledge and capacity to help resolve the dispute. The disputants are then asked whether they would be willing to attend a gathering, to which the other identified people would also be invited to attend.

At the gathering, the Peace Committee facilitate a process in which the people present are asked to identify a plan of action which will establish peace. 'Peace' is a state in which it is less likely that the problems that lie at the root of the dispute will re-occur. The gathering is concluded when a resolution is agreed upon and those present commit themselves to a plan of action.

[Source: *ChildrenFirst*, April/May 2001]



1. What do you think of these new ideas about justice and reconciliation?
2. Could these ideas be put into practice in your community? Why or why not?
3. Should victims of crimes be able to prevent the State prosecuting offenders? Why or why not?