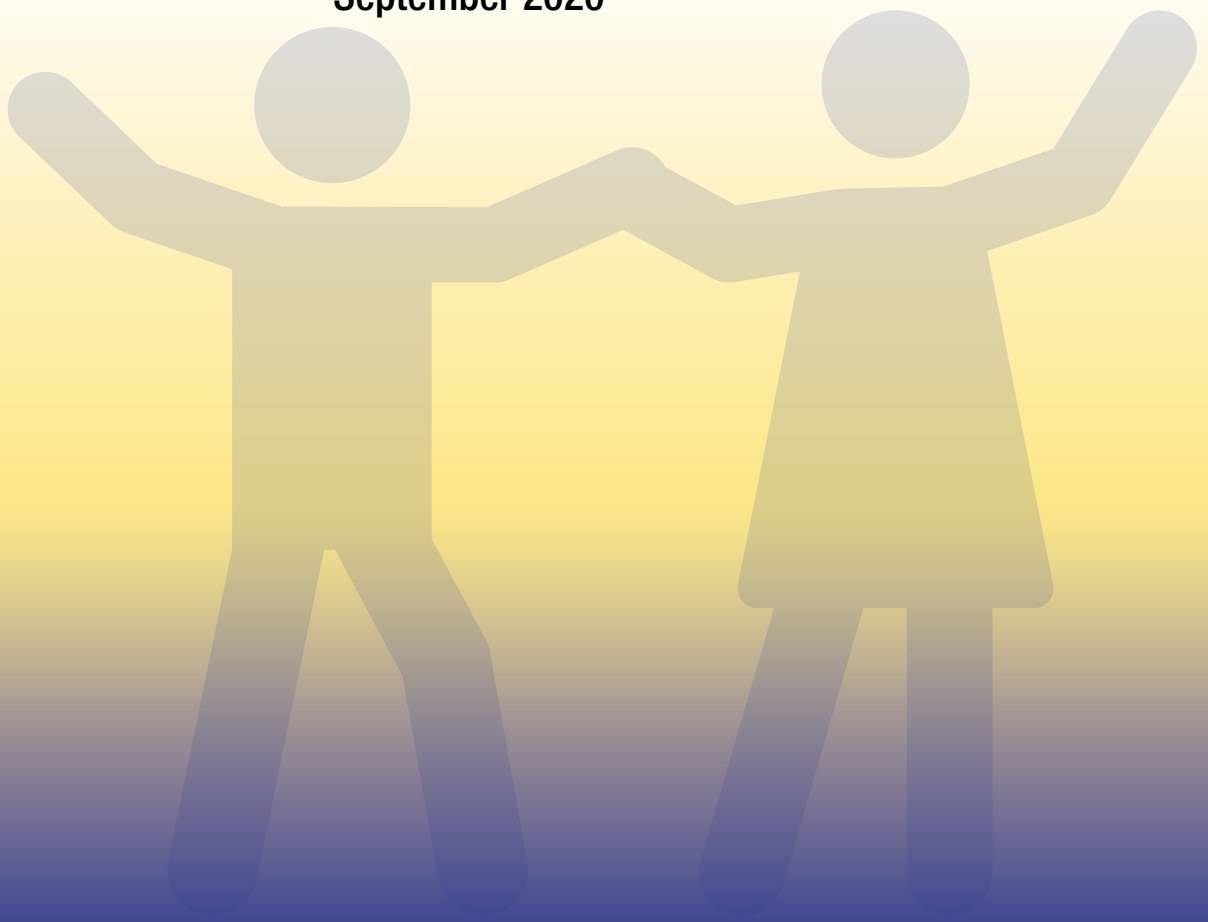




National Council on the Administration of Justice Special Taskforce on Children Matters

Policy on Continuous Professional Development on Juvenile Justice

September 2020



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List of Acronyms

CPD	Continuous Professional Development
JICA	Japan International Cooperation Agency
NCAJ	National Council on the Administration of Justice
UNAFEI	United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders

I. Introduction

Article 260 of the Constitution defines a child as an individual who has not attained the age of eighteen years. The term “juvenile” refers to a child between the age of ten and sixteen who has committed an offence under the penal law, and is used interchangeably with “a child in conflict with the law.” Children in contact with the judicial system, including children in conflict with the law, are particularly vulnerable and require utmost care and protection. For this reason, it is critical that officers who deal with children in the administration of juvenile justice be equipped with the requisite knowledge, skills and attitudes in order to maintain professionalism and the highest standards of care so as to uphold the best interest of the child at all stages in the proceedings.

The NCAJ Special Taskforce on Children Matters was appointed by the Chief Justice of the Republic of Kenya on 10th December 2015 vide Gazette Notice no. 369 of 2016. The general mandate of the Taskforce is to address access to justice for children and emerging issues in the Juvenile justice sector, and to review and submit a report on the status of children in the administration of justice. The Taskforce was tasked with 16 Terms of Reference. Among its main tasks was “to develop a policy on mandatory Continuous Professional Development (CPD) program on child rights for juvenile justice agencies, examine and review the training curricula on children.”¹ This two-pronged mandate requires (a) the development of a policy on training; and (b) review of the existing curricula (if any) administered by the respective agencies.

2. Justification

The Children Act, 2020 is intended to give effect to Article 53 of the Constitution, to make provision for parental responsibility, fostering, adoption, custody, maintenance, guardianship, care and protection of children; to make provision for, and regulate the administration of, children’s institutions; to establish the National Council for Children’s Services, and for connected purposes.

The Act makes substantial provision for children in need of care and protection, including children in conflict with the law, and prescribes the manner in which children should be dealt with in and outside the judicial system in the course of juvenile justice. The golden thread that runs across the 2020 Act is the promotion and protection of the rights of the child in discharge of the treaty obligations binding on Kenya. Accordingly, all State and non-state agencies are mandated to act in “the best interest of the child” – the common theme that runs across all policy, legislative, institutional and administrative frameworks relating to children matters.

Kenya is a signatory to a diverse range of human rights instruments that impact the rights of the child. These treaty instruments are binding on Kenya by virtue of Article 2(5) and (6) of the Constitution, which read: “(5) The general rules of international law shall form part of the law of Kenya. (6) Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.”

¹ The Kenya Gazette Vol. CXVIII - No. 8 of 2016, Notice no. 369

Key among these treaty instruments is the United Nations Convention on the Rights of the Child (CRC). The Convention is the foundation of rule 22 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“the Beijing Rules”). The rule recognizes the need for professionalism and training, and requires that “professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.”

In addition to the foregoing, rule 6.3 of the Beijing Rules requires States Parties to ensure that those who exercise discretion (with regard to the administration of juvenile justice) are specially trained and qualified to exercise their discretion judiciously, and in accordance with their mandated functions. Rule 12 and the commentary thereto require specialised training for the police service in view of the fact that the police are the first point of contact with the system of juvenile justice for a child in conflict with the law.

Guideline 85 of the United Nations Rules for the Protection of Juveniles Deprived of Liberty requires personnel who deal with children in detention to receive such training as will enable them to carry out their responsibilities effectively. The Guidelines recommend such training as child psychology, child welfare, and the international human rights norms and standards pertaining to children. The Guidelines for Action for Children in the Criminal Justice System pay special attention to children who are victims of crime. They require the police, lawyers, the judiciary and other court personnel to be trained on how to deal with criminal cases involving children. The Guidelines under Chapter XIV (on Justice in matters involving Child Victims and Witnesses) require “... adequate training, education and information [to] be made available to professionals working with child victims and witnesses, with a view to improving and sustaining specialised methods, approaches and attitudes, in order to protect and deal effectively and sensitively with child victims and witnesses.”

Guidelines 114 and 115 of the Guidelines on Children in Alternative Care require all personnel dealing with children in alternative care to be trained on the rights of children in need of care and protection. The training is aimed at, among other things (a) underscoring the importance of being sensitive to the cultural, social, gender and religious issues facing children; and (b) helping them to deal with challenging behaviour among child offenders. In our rapidly changing work environment with heightened public expectation of efficient service delivery, these officers are expected to provide effective leadership in service delivery. The implementation of continuous professional development and periodic review of training curricula is integral to maintaining the highest standards of service delivery and professionalism in the best interest of the child.

The legislative, institutional and administrative frameworks of the juvenile justice system in Kenya are such that different officers handle a child offender at different stages in the proceeding. These frameworks inform the formulation of this Policy to ensure that these officers are adequately trained to handle the children they deal with, and to do so in the best interest of the children in conformity with section 7 of the Act. To this end, continuous professional development will equip these officers with the requisite knowledge and skills in the administration of juvenile justice to ensure the highest standards of service delivery in accordance with the Constitution, the Act, the international and regional treaty instruments binding on Kenya. This calls for a multi-sectoral approach in the implementation of this Policy towards effective training and continuous professional development.

In addition to compulsory CPD programmes, the effective administration of juvenile justice is also dependent on effective co-operation and collaboration among the National Police Service, the Office of the Director of Public Prosecutions, Kenya Prisons Service, Probation & Aftercare Service, the Judiciary, the Department of Children Services, public benefit organisations and non-state agencies that have a stake in child welfare. Their collaborative training programmes enhance understanding of their respective functions in the administration of juvenile justice.

There is an existing curricula on the rights of the child targeting specific practitioners, such as the Child Care and Protection Officers that was developed with the support of JICA-Kenya and UNAFEI, which is in the process of review to align with the 2010 Constitution and take into account emerging issues following the promulgation in 2010 of the Constitution. For example, the curriculum makes no reference to the office of the Director of Public Prosecutions, which was established under the Constitution long after formulation of that curriculum.

The National Council on the Administration of Justice has been identified as best placed to house the Policy. Its statutory mandate makes it the focal agency for the coordination of the State and non-state agencies engaged in the administration of justice. Accordingly, the Council is best positioned to coordinate and oversee curriculum development, training needs assessment, review and implementation of continuous professional development programmes for all agencies in the justice sector and, in particular, for officers engaged in juvenile justice.

3. The Legal Framework

This Policy is anchored on the inalienable rights of the child as enshrined in the Constitution and various international and regional treaty instruments binding on Kenya by virtue of Article 2(5) and (6) of the Constitution. In addition to Kenya’s treaty obligations to promote and protect the rights of the child, the Beijing Rules recognise the need for professionalism and training (i.e., Professional education, in-service training, refresher courses and other appropriate modes of instruction of all personnel dealing with juvenile cases) to establish and maintain the necessary professional competence. Table I below sets out the statutory obligations for training.

Table I – Statutory Obligations for Training

Juvenile Justice Actor	Legal provision on training
Department of Children Services (Children Officers)	<p>Section 32(2) of the Children Act 2001 mandates the National Council for Children Services to prescribe training requirements and qualifications for authorised officers. Section 2 defines “authorised officer” to mean a police officer, an administrative officer, a children’s officer, an approved officer, a chief appointed under the Chiefs’ Act (Cap. 128), a labour officer, an officer of the national adoption society or any other officer authorised by the Director for purposes of the Act. Section 72(d) and 72(e) states that the Cabinet Secretary in consultation with the Council shall make regulation on the qualifications of managers and the training of persons employed in children’s remand homes, and rehabilitation schools;</p>
Judiciary	<p>In addition to the authorized officers specified in the Act, judicial officers play a critical role in the administration of juvenile justice. They play an active role in handling and interacting with children in contact with the law. Section 4 of the Judicial Service Act requires judicial officers to -</p> <p>“... (a) have the technical, infrastructural and administrative competence to ensure that the requirements of the judicial process are fulfilled;</p> <p>(b) adopt quality service as a core principle; ... and</p> <p>(c) be guided in their activities by the relevant provisions of the Constitution.”</p> <p>to uphold this principle, the Judicial Service Commission, in collaboration with the National Council on the Administration of Justice and the Judiciary, through the Judiciary Training Institute, are mandated to formulate a modern and constantly updated scheme of judicial and other training for all categories of Judges, judicial officers and staff of the Commission pursuant to sections 4 and 47(2) (e) of the Judicial Service Act.</p>

<p>Police Officers Probation Officers Prosecution County Government</p>	<p>Section 2 of the Public Service Act defines a “public officer” as a person other than a state officer who holds a public office. A public office is, within the meaning of the Constitution, an office in the national government, a county government or the public service, if the remuneration and benefits of the officers are payable directly from the Consolidated Fund or directly out of money provided by Parliament. Section 56 of the Public Service Act affirms the Constitutional mandate of the Commission to –</p> <p>“(a) review and issue human resource training and development policy and guidelines;</p> <p>(b) prescribe procedures and instruments governing the development of human resources in the public service;</p> <p>...</p> <p>(d) ensure that training needs assessment and projections are undertaken by every authorized officer;</p> <p>...</p> <p>(h) ensure that every authorized officer undertakes annual assessment of the impact of training programmes in the concerned public body;</p> <p>(i) prescribe measures to guarantee effective orientation and induction programmes in the public service; and</p> <p>(j) monitor and evaluate the effectiveness of Government training programmes geared towards improvement of performance and qualifying to hold a public office.”</p> <p>The Public Service Act requires the development and implementation of training programmes to –</p> <p>“... (a) continuously improve professional knowledge and skills needed for better performance of duties by public officers and public bodies;</p> <p>(b) bring about the right attitudinal orientation of public officers;</p> <p>(c) promote responsiveness to the prevailing socioeconomic and political environment in which the public bodies operate and scientific and technological developments;</p> <p>(d) enhance commitment to democratic values, partnership and participative decision making;</p> <p>...</p> <p>(f) achieve high performance in every public body or public office;</p> <p>(g) promote and protect human rights and freedoms as provided for in the Constitution; and</p> <p>(h) promote an ethical environment for public service delivery in accordance with the national values and principles of governance and principles and values of public service as provided for in the Constitution.”</p>
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Article 53(1) (d) of the Constitution states that all children have the right to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour. Article 53(2) provides that a child’s best interests are of paramount importance in every matter concerning the child.

This policy aims to ensure that all officers engaged in the administration of juvenile justice, or otherwise deal with children in contact with the law, are adequately trained to treat the children under their care and protection with dignity at all stages of the justice chain. To this end, training programmes on how to deal with children in contact with the law should be prioritized. This is because children in need of care and protection are especially vulnerable. Accordingly, the officers under whose charge such children are placed need to be adequately trained to discharge their respective duties in the best interest of the child.

4. Objectives of this policy

4.1 The Main Objective of the Policy

The main objective of this policy is to guide the formulation, review and implementation of appropriate collaborative training curricula to equip officers entrusted with children in need of care and protection as well as practitioners in the administration of juvenile justice with the requisite skills to ensure that they uphold the highest standards of Child protection and the best interests of the child. To this end, the Council shall, in collaboration with other relevant agencies –

- a). set standards for mandatory Continuous professional development for professionals engaged in the administration of Juvenile Justice, and ensure that such programmes are suitably designed to equip them with the requisite knowledge, skills and attitudes to continuously improve their ability to meet expectations for high quality, competitive and expeditious service delivery;
- b). undertake training needs assessment, and harmonize the training programmes with a view of bridging gaps; and
- c). collaborate in facilitating knowledge management and information sharing to enhance the competence of all players in the administration of juvenile justice.

4.2 Specific Objectives

The specific objectives of this policy are to guide the Council and all State and non-state agencies engaged in the administration of juvenile justice to, among other things –

- a). establish a framework for continuous professional development for officers engaged in the administration of juvenile justice;
- b). annually, establish a calendar to guide collaborative training of the agencies engaged in child protection and the administration of juvenile justice;
- c). guide the formulation of a curriculum on the rights of the child for officers engaged in the administration of juvenile justice;
- d). guide the review and development of curricula on continuous professional development of officers who deal with children in need of care and protection; and
- e). guide the coordination and harmonization in training of officers engaged in the administration of juvenile justice.

5. Guiding Principles

The establishment of mandatory CPD framework and periodic review of training material shall be guided by the national values and principles set out in Articles 10, 54, 56, 159 and 232 of the Constitution, the Children Act and other written law. The curricula contemplated in this Policy shall be guided by the principles of –

- a). (a) best Interest of the Child;
- b). child-friendliness and gender sensitivity;
- c). equality and non-discrimination;
- d). diversion and de-institutionalisation of children;
- e). restorative Justice;
- f). restitution;
- g). expedition, fairness of process and quality outcomes (characteristic of alternative dispute resolution);
- h). relevance – CPD programmes shall be relevant and responsive to the needs of children in contact with the law, and to the interests of the community at large;
- i). accessibility – CPD programmes shall be accessible to professionals engaged in the administration of juvenile justice countrywide; and
- j). accessibility and cost-effectiveness – CPD programmes shall be accessible, flexible and affordable by all stakeholders in the juvenile justice system.

6. Establishment of a collective mandatory CPD program

Policy statement

There is established a mandatory continuous professional development program on the rights of the child to guide the collective training of personnel engaged in the administration of juvenile justice throughout Kenya. The programme shall be supervised by the Council, which shall undertake periodic training needs assessment and review to address emerging issues, and ensure that the curricula meet the highest standards of training in the rights of the child, juvenile justice and in all matters relating to child care and protection.

The mandatory CPD program shall be administered by –

- a). the NCAJ with regard joint CPD programmes for the agencies engaged in child protection and the administration of juvenile justice; and
- b). the respective State and non-state agencies engaged in the promotion and protection of the rights of the child, the administration of juvenile justice, and in matters relating to the care and protection of children in contact with the law.

In relation to paragraph (b), the respective agencies may administer their sectoral CPD programmes either individually or jointly with others. For the purposes of this Policy, “continuous professional development” means the systematic maintenance, improvement and broadening of knowledge and skills, and the development of personal qualities necessary for the execution of professional and technical duties throughout a person’s career.

7. Continuous Professional Development Model

7.1 Personal Development Planning

The first step in implementing the CPD Model is Personal Development Planning (PDP). PDP is a planned process conducted by line managers with individual staff members who directly report to them. The model is adopted to identify the Learning and Development needs of the individual officer in order to strengthen their professional role within the organisation.

7.2 Training Needs Analysis

Training Needs Analysis (TNA) is the strategy that involves the identification of new knowledge, skills, attitudes and values that people require to meet their own and their organisation's development needs. TNA focuses on the identification of the CPD needs of the team as a whole rather than individual personal development needs. The primary aim of the process is to identify and analyse the CPD needs of staff to ensure safe and effective service delivery. The process actively involves all staff and promotes a learning organisation. It is a method that identifies gaps between current and required levels of knowledge skills, attitudes and values.

7.3 Participation in Training activities

State and non-state agencies shall support their staff CPD programmes by releasing them to attend and actively participate in formal training programmes. Such support facilitates the effective administration of the compulsory CPD programmes. In addition to attendance at face-to-face training events, CPD programmes include (a) attendance at meetings; (b) writing case reports; (c) reflective learning opportunities; (d) participation in research activities; (e) coaching and mentorship; and (f) other activities that provide the opportunity for "new learning" and knowledge sharing.

7.4 Monitoring and Evaluation

Each agency shall, in consultation with the Council, formulate and implement a monitoring and evaluation plan to track and assess the results and effectiveness of their CPD programmes. The monitoring and evaluation of the outcomes of the respective CPD programmes may be conducted either individually or jointly with other agencies with a view of identifying gaps and challenges (if any) that need to be addressed during the periodic review of the programmes. The agencies shall keep and maintain a record of their CPD programmes conducted every financial year containing recommendations for review and further training, and report to the Council at the end of each year.

Each officer shall be required to have a workplan to implement what he or she was trained on. They shall be supervised against their performance-based contracts to track the effectiveness of the training. The officers shall be assessed annually on what they were trained whether the training was collaborative or undertaken by the individual agency. The outcome of the assessment shall determine whether the officer shall continue to handle children.

8. Basic Thematic Content in CPD Curricula

Policy Statement

The contents of CPD curricula administered by State and non-state agencies engaged in child protection and the administration of juvenile justice shall cover the following, among other basic thematic subjects:

- a). procedure in the administration of juvenile justice;
- b). rehabilitation treatment;

- c). the National Children Policy; support networking;
- d). ethics, responsibility and quality assurance;
- e). the guiding principles of child protection and juvenile justice;
- f). the rights of the child under the Constitution, the children Act and other written law, and the international standards for the promotion and protection of the rights of the child under various treaty instruments binding on Kenya;
- g). the duties and responsibilities of the child under the Act or other written law;
- h). international best practices for the promotion and protection of the rights of the child;
- i). child friendly communication, and the role of media in child protection;
- j). behavioural and other issues during the initial contact with a child;
- k). how to handle children in conflict with the law;
- l). how to handle children in need of care and protection, including children with disabilities;
- m). how to handle child victims or survivors of crime;
- n). how to handle child witnesses;
- o). case Studies;
- p). the agency's role in child protection and administration of juvenile justice;
- q). agency-specific case management techniques; and
- r). emerging issues in child protection and juvenile justice.

9. Alignment of CPD Curricula to Statute Law

Policy Statement

All CPD programs relating to child protection and the administration of juvenile justice shall be aligned to the Constitution, the Children Act and other written law. The training content shall reflect the international and regional standards for the promotion and protection of the rights of the child, taking into consideration Kenya's country-specific experiences, needs and interests on children matters, and emerging issues in juvenile justice.

10. Entrenching the Rights of the child in CPD Curricula

Policy Statement

All agencies engaged in child welfare programmes, child protection programmes, and the administration of juvenile justice, shall incorporate units on child protection and child rights training in all their CPD programs, community education and public awareness materials, handbooks, and guidelines.

Before developing their respective CPD curricula, community education and public awareness materials and guidelines, the National Council on the Administration of Justice shall (a) undertake a training needs assessment

with representatives from each agency to ensure that the materials meet the specific needs of their personnel; and (b) address all gaps in their continuous skills development programmes.

The mandatory CPD program shall be conducted by the State Departments or agencies mandated to assess the training needs, review, develop and administer the training programmes within each agency. Such departments or agencies shall adopt appropriate information communication technology, including teleconferencing, videoconferencing, and other audio and audio-visual media, to facilitate cost-effective distant learning within the sector.

At the conclusion of every training programme, the administering institution shall conduct a post-training assessment to (a) evaluate the level of improvement in knowledge and attitudes of the trainees on child protection and the rights of the child; and (b) identify gaps for future training and skills development.

11. Review of CPD curricula

Policy Statement

Each agency engaged in child protection and the administration of juvenile justice shall, in consultation with the Council and other agencies, develop, review, supervise and implement its agency-specific CPD programme. Curriculum review shall be informed by emerging issues and the outcome of periodic needs assessment undertaken by the individual agency.

12. Establishment of Implementation and Review Committee

Policy Statement

The Council, State Department or other agency mandated to assess the training needs of officers engaged in juvenile justice shall –

- a). (a) develop, review, and administer the training curriculum for all officers involved in juvenile justice;
- b). (b) set standards and issue guidelines for continuous professional development of all officers engaged in the juvenile justice sector ;
- c). undertake or oversee collective training for officers engaged in juvenile justice under the relevant State and non-state agencies;
- d). oversee the continuous professional development and certification of officers engaged in juvenile justice; and
- e). co-operate and collaborate with other State and non-state agencies in curriculum development and review, and in the administration of continuous professional development programmes in juvenile justice.

The National Council for the Administration of Justice shall, in consultation with the relevant agencies in the sector, establish an implementation and review committee comprised of representatives of the State and non-state agencies engaged in child protection and the administration of juvenile justice to review the continuous professional development curriculum every five years and address emerging issues.

I3. Planning

Policy Statement

Each agency in the juvenile justice sector shall take responsibility for –

- a). the formulation, review and administration of its CPD programme;
- b). its community education and public awareness creation with respect to its role in child protection and the administration of juvenile justice;
- c). the content of its training materials, handbooks and guidelines in accordance with this Policy;
- d). the active participation of its personnel in CPD programmes, community education and public awareness programmes; and
- e). co-operation and collaboration with other agencies in the sector with a view of facilitating multi-agency training programmes.

The selection of trainers shall be guided by the National values and principles set out in the Constitution. Such trainers shall have proven knowledge and expertise in the rights of the child, child protection and juvenile justice.

The selection of personnel for training shall take account of (a) their specific roles in the agency in relation to children matters; (b) how often the officer comes into contact with children in the course of duty; and (c) the officer's training needs. The CPD training programmes shall be inclusive, and shall ensure equalization of opportunity for officers with special needs, including persons with disabilities

I4. Coordination and Collaboration

Policy Statement

The State and non-state agencies mandated to undertake training needs assessment, formulation, review and implementation of continuous CPD programmes shall do so in coordination and collaboration with other agencies engaged in child protection and the administration of juvenile justice. Accordingly, the CPD programmes shall be informed by (a) the needs and experiences of the individual agencies; and (b) the issues affecting children with whom these agencies are involved.

I5. Training Methodology

Policy Statement

So far as is reasonably practicable, CPD programmes shall be experiential and participatory in approach. As part of their training, the officers shall be required to work with children, and with officers from other agencies engaged in children matters. Accordingly, the training programmes shall be multi-sectoral in order to facilitate appreciation of all aspects of child protection and the administration of juvenile justice. In every case, a post-training assessment shall be administered, preferably by means of a questionnaire, to evaluate and gauge the impact of the training and the trainees' appreciation of the course content.

In addition to the foregoing, the agencies shall undertake visits to other institutions engaged in child protection and the administration of juvenile justice by means of local and regional exchange programmes to familiarise themselves with best practices in the sector.

16. Funding

Policy Statement

Funding should be prioritized for programmes in juvenile justice. The effectiveness of policy and practice shall be evidence based and backed by research. Funding and resources for CPD opportunities, particularly training and qualifications, are available through a range of national, regional and local agencies. To this end, the Council shall be responsible for holding and managing funds pooled for the purpose of training. The Council shall prepare budgetary proposals to ensure contribution into the pool of funds by other agencies to facilitate multi-sectoral training of officers engaged in child protection and the administration of juvenile justice.

