

# Implementation of the Child Justice Act, 2008 (Act 75 of 2008)

Portfolio Committee on Correctional Services.  
Joint meeting with the Portfolio Committee on  
Justice and Constitutional Development on the  
implementation of the Child Justice Act

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# Introduction

- Based on Occasional Paper 10 to be published by the Open Society Foundation for South Africa.
- Presentation made on behalf of the Child Justice Alliance.
- List all the implementation challenges identified and focus on some of them.
- Some recommendations.

# Challenges

- Lack of public awareness about the Act
- Training of police officers
- Decrease in the number of arrests
- Shortage and unavailability of probation officers
- Decrease in the number of diversions

# Challenges

- Conducting preliminary inquiries
- Postponement of proceedings
- Legal representation
- Evaluation of criminal capacity
- Transportation of children in detention

# Challenges

- Lack of uniformity in the official forms
- Educational programmes for children awaiting trial
- Lack of training of all the role players in the child justice system
- Inaccurate and unavailability of statistics

# Lack of public awareness

- International research shows that the public does not favour the locking up of children for crimes that are not serious, especially if they understand the background from which the child comes and if they are informed about the alternatives such as diversion and community-based sentences.
- There are constant demands from the public on government to act tougher on crime.
- One of the aims of the Act is to deal with children in conflict with the law outside of the criminal justice system. To do this successfully, the buy-in of and support from affected communities and the general public - are essential to ensure the effective reintegration of these children back into their families and communities. Information and awareness of the Act and its aims and benefits are of utmost importance in achieving this.

# Lack of public awareness

- It is equally important to avoid negative reporting in the media about children in conflict with the law and the crimes they commit because this contributes to a discriminatory and negative stereotyping of these children and regularly results in a call for a tougher approach in dealing with these children.

# Lack of public awareness

- Since the implementation of the Act there had been a lack of visible information sharing, awareness-raising and communication to the general public about the Act, its provisions and its benefits to both children and society. This lack of public information and knowledge sharing about the Act was clearly illustrated in the media reports and public ignorance following the Terre'Blanche murder and the so-called Jules High School rape case.

# Training of police officers

- Since the police are the first point of contact that children in conflict with the law have with the criminal justice system, the need for specialised training for all law enforcement officials involved in the administration of child justice, has been highlighted in international law.

# Training of police officers

- South Africa does not have specialised units dealing exclusively with children in conflict with the law, and the possibility therefore exists that any police member could encounter a child in conflict with the law. As a result it is essential that all police members on all levels should receive training on the Act and be able to act in an informed and appropriate manner when dealing with children.
- Only a small percentage of SAPS members (6 279) had been trained on the provisions of the Act on 30 July 2010 (four months after implementation).

# Decrease in the number of arrests

- During the period 1 April 2010 to 30 June 2010, a total of 19 487 children were charged by the South African Police Service.
- This translates to about 6 495 children per month, which is substantially lower than the approximately 10 000 children arrested per month, reported to Parliament in 2008.
- Various reasons for the decrease: raising the minimum age of criminal capacity, alternate methods of policing children, World Cup, winter.

# Shortage and unavailability of probation officers

- There are approximately 484 probation officers, in the employment of the Department of Social Development, who are currently servicing 388 magisterial courts, 88 high courts and 299 periodical courts.
- Probation officers play an essential and integral part in the successful implementation, application and operation of the Act.

# Decrease in the number of diversions

- Diversion of child offenders plays a central role in the Act. The Act provides for the possibility of diversion in all matters. There is no exclusion from the possibility of diversion based solely on the nature of the offence and any child accused of committing any crime can therefore be diverted from the criminal justice system, if desirable in the circumstances.

# Children diverted 1 April to 30 September 2010

Forum	Quarter	Total Children	Ages 10 to 13 years	Ages 14 to 17 years
District Court	Q1	3122	151	2971
	Q2	4341	244	4097
Total District Courts		7463	395	7068
Regional Court	Q1	199	0	199
	Q2	74	13	61
Total Regional Court		273	13	260
National total		7736	408	7328

# Type of offences of matters diverted

FORUM	QUARTER	TOTAL SCHEDULE 1 OFFENCES	TOTAL SCHEDULE 2 OFFENCES	TOTAL SCHEDULE 3 OFFENCES
DC	Q1	1499	876	318
	Q2	2010	1316	549
DC Total		3509	2192	867
RC	Q1	19	39	68
	Q2	8	25	19
RC Total		27	64	87
Q1 Total		1518	915	386
Q2 Total		2018	1341	568
National Total		3536	2256	954

# Stages when cases were diverted

FORUM	QUARTER	NO OF SEC.9 REFERRALS	NO OF SEC 41 DIVERSION	PRELIMINARY INQUIRY DIVERSION
District Court	Q1	194	644	956
	Q2	168	756	1222
District Court Total		362	1400	2178
Regional Court	Q1	2	6	39
	Q2	0	2	6
Regional Court Total		2	8	45
Q1 Total		196	650	995
Q2 Total		168	758	1228
National Total		364	1408	2223

# Evaluation of criminal capacity

- Since the implementation of the Act, some magistrates are uncertain whether or not they may still decide on the criminal capacity of children without necessarily referring the child for an evaluation to a psychiatrist or psychologist.
- One of the reasons for this uncertainty is that these magistrates are of the opinion that they are not trained to determine the criminal capacity of these children.

# Evaluation of criminal capacity

- With the inclusion of the evaluation of criminal capacity in the Act, there has been an increase in the number of requests for assessments of criminal capacity and the Department of Health has been requested to assist with these assessments. The latter has indicated that they have a shortage of psychologists and psychiatrists. Private psychologists and psychiatrists can assist in this regard but they charge expert witness fees and budgets allocated for the evaluations of criminal capacity are quickly exhausted.

# Transportation of children in detention

- In terms of the national policy framework the handover of responsibility towards children in conflict with the law between Departments should be regulated and well managed and the transportation of children in detention is an important aspect in this regard.
- This important aspect in the child justice process has for some reason not been addressed in the Act, the Regulations, the National Instruction or the national policy framework. There exists a lot of uncertainty on who should transport children in detention to and from the various places.

# Transportation of children in detention

- From the police station to detention facilities,
- From detention facilities to police in cases where further investigation are required,
- From the court to detention facilities,
- From detention facilities to hospitals (including mental health facilities) or other medical treatment facilities,
- From court to hospital (including mental health facilities) or other medical treatment facilities,
- Transportation of sentenced children from child and youth care centres to attend court as witnesses, and
- From court or detention facilities to deportation centres, where applicable.

# Transportation of children in detention

- Correct and clear guidelines regulating the “handing over” of children in conflict with the law from one role player to another plays an essential part in the successful implementation of the Act. Failure to provide such guidelines also increases the risk of these children failing through the “cracks” in the system at each “handing over” point which in turn increases their vulnerability and also make it more difficult to determine liability in cases where these children’s rights have been violated.

# Educational programmes for children awaiting trial in prison

- The lack of and the urgent need for educational or other programmes for children awaiting trial in prisons have been highlighted before the implementation of the Act. The Act places emphasis on the effective reintegration of children in conflict with the law and to encourage them to become law-abiding and productive adults. One way of achieving this is to ensure that these children's constitutional right to education is protected, even if they are awaiting trial in prisons.
- This issue was again highlighted in the matter *Centre for Child Law v the Minister of Correctional Services* – meals improperly spaced, locked up for 23 and a half hours per day, being hit with batons etc.

# Inaccurate and unavailability of statistics

- Accurate, reliable and available statistics is one of the prerequisites for the successful and effective monitoring of the implementation of the Act. From the submissions of the various reports to Parliament since the implementation of the Act it is clear that the statistics presented only focused on diversions and related statistics (even these appear to not correspond) and do not reflect statistics on issues such as the number of assessments of children, the number of preliminary enquiries or the number of children awaiting trial in secure care facilities (not only those in detention in prisons).

# Inaccurate and unavailability of statistics

- Significant drop in children awaiting trial in prisons.
- The number of children awaiting trial in secure care facilities unknown – how many have been held awaiting trial in secure care facilities every month since the implementation of the Act?
- Important to see whether the decrease of those held in prison match the increase of those in secure care.
- Also important because it must inform the need for increased capacity.

# Inaccurate and unavailability of statistics

- According to the South African Police, they charged a total of 19 487 children during the period 1 April 2010 to 30 June 2010 (the first quarter) and diversion statistics it appears that only 3321 children were diverted during this period. What happened to the other approximately 16 000 children in the child justice system?

# Inaccurate and unavailability of statistics

- Effective monitoring of the implementation and application of the Act will be very difficult, if not impossible, without accurate, reliable and available statistics. It also raises the question whether the integrated information management system as envisaged by section 96(1)(e) of the Act has been established and implemented.

# Recommendations

- Knowledge sharing and public awareness raising about the Act and its benefits to children in conflict with the law and society in general is therefore essential for the successful implementation of the Act. This process should be an ongoing national priority.
- The roll-out of training programmes to all professionals dealing with children should be accelerated as a matter of urgency. Training of police officers essential – drop in children entering the system an indication that something is wrong.

# Recommendations

- More information about the case loads of probation officers and their availability in rural areas are needed – statistics insufficient to measure the probation services.
- Clear and practical guidelines on the transportation of children in detention should be developed and implemented as soon as possible.

# Recommendations

- Consideration should be given to raising the minimum age of criminal capacity of children before the four year period remaining is completed, coupled with a consideration of whether the *doli incapax* presumption should be retained or discarded.
- Every child of compulsory school age has the right to education suited to his or her needs and abilities, and the lack of educational programmes for children awaiting trial in prisons must receive priority attention and solutions must be found.

# Recommendations

- Accurate and detailed statistics on children in conflict with the law are essential in the effective application and administration of the Act. Concerted efforts to publish accurate statistics to all the role players on a regular basis will assist with the identification of trends and early detection of challenges to enable early interventions to eliminate an escalation of problems.
- Detailed information needs to be provided about children in secure care awaiting trial so that proper planning can be done and proper comparisons can be made with children awaiting trial in prisons.
- Transfer of Reform schools needs to be fast tracked and should be used as an opportunity to improve services offered to children in these facilities.

# Thank you.

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