

Article

40

The Dynamics of Youth Justice & the Convention on the Rights of the Child in South Africa

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Article 37 (b)

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

UN Guidelines on child victims and witnesses of crime

by Daksha Kassan

The UN Guidelines: Background

The Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime were adopted by the United Nations Commission on Crime Prevention and Criminal Justice at its 14th session held in Vienna from 23 – 27 May 2005. The adoption of these Guidelines brings the world one step closer to becoming a safer place for children, as they seek to protect the rights of child victims and witnesses of crime. They set forth a framework to ensure that these children are treated in a fair, dignified and secure manner when they are involved in a judicial process.

The UN Guidelines were finalised by an inter-governmental group of experts convened by the UN Secretary General at the request of the United Nations Economic and Social Council (ECOSOC) as contained in its resolution 2004/27 of 21 July 2004¹. These Guidelines are primarily based on the Guidelines on Justice for Child Victims and Witnesses of Crime that were finalised in 2003 by the International Bureau for Children's Rights (IBCR), an international NGO based in Montreal, Canada.

EDITORIAL

On 16 June 2005, South Africa celebrated the 10th anniversary of its ratification of the Convention on the Rights of the Child. On 22 June 2005 the National Assembly passed the Children's Bill. Does this mean we have any hope of the Child Justice Bill being passed in 2005? Unfortunately, it does not appear that the Bill has been placed on the parliamentary agenda for the near future. This begs the question whether the political will to ensure rights and a separate justice system for children, which was so evident in the mid-1990s, has dissipated and children who are in trouble with the law are no longer a priority for our politicians. If this is the case, then it is a sad indictment of the state of our nation for the most vulnerable of the vulnerable.

While the passing of the Children's Bill by the National Assembly (it still has to go before the National Council of Provinces) is encouraging and can be seen as a progressive step forward in the efforts to secure children the rights they are entitled to in terms of the Constitution and the Convention on the Rights of the Child, the plight of children accused of committing crimes remains and the cries for change seem to fall on deaf ears.

While government departments such as the Department of Justice and the Department of Social Development can be commended for working towards the implementation of the Bill, in its absence, children in the criminal justice system still suffer many atrocities and miscarriages of justice. One of the articles in this edition illustrates that four years on from S v Petersen, courts still finalise children's cases without a probation officer's report. This illustrates the need for a legislative framework to manage the child justice system. It is heartening that our superior courts are in the process of forming a body of jurisprudence and precedents on how children should be treated in the criminal justice system that is compliant with the rights-based approach contained in the Convention.

It is unfortunate that litigation and the courts seem to be the arena that child justice advocates are forced to turn to in the absence of a separate justice system for children. The work of the Centre for Child Law, which is highlighted in this edition, has made great strides in assisting children, and although litigation should be the last resort in resolving matters, in certain instances of critical injustices urgent steps are necessary and vital to protect children at risk.

Summary of the Guidelines

The UN Guidelines comprise 15 parts and a total of 46 sections which seem to fall into four main categories. Parts 1 – 3 generally cover the objectives of the Guidelines, the considerations taken into account in developing the Guidelines and the principles to be respected in order to ensure justice for child victims and witnesses of crime. Part 4 provides definitions, Parts 5 – 14 deal with the specific rights of children, and Part 15 refers to the implementation of the Guidelines.

Objectives, considerations and principles

It is noted that the Guidelines set forth good practice based on relevant international and regional norms, standards and principles and that they should be implemented in accordance with relevant national legislation and judicial procedures. They provide a practical framework to achieve the following objectives:

- to assist in the review of national and domestic laws, procedures and practices
- to assist in designing and implementing legislation, policy, programmes and practices related to child victims and witnesses of crime
- to guide professionals working with children
- to assist those caring for children in dealing sensitively with child victims and witnesses of crime.

The Guidelines are not intended to be exhaustive and could also be applied to processes of informal and customary systems of justice, such as restorative justice, and in the non-criminal fields of law such as divorce.

Special considerations relating to children were taken into account in the development of these Guidelines. These appear in Part 2, in sections 7a-k, and include the following, to mention but a few: recognising that children are vulnerable and require special protection; recognising that girls are particularly vulnerable and may face discrimination at all stages of the justice system, and reaffirming that every effort must be made to prevent the victimisation of children.

In order to ensure justice for child victims and witnesses of crime, it is noted in Part 3 that professionals and others responsible for the well-being of these children must respect the principles of dignity, non-discrimination, the bests interest of the child and the protection of the child. In addition, the child's right to harmonious development and his/her right to participation must also be respected.

Definitions

In Part 4, definitions are provided for the following: "child victims and witnesses", "professionals", "justice process" and "child-sensitive". Interestingly, the definition for "child victims and witnesses" denotes persons under the age of 18 years who are victims of crime or witnesses to crime regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders (section 9a). This implies that even where children might be the alleged perpetrators of the crime, they would also be viewed as victims of crime given their vulnerability.

"Professionals" refer to persons who, within the context of their work,

are in contact with child victims and witnesses and are responsible for addressing the needs of children in the justice system. These persons include a range of people such as child and victim advocates and support persons, child protection service practitioners, child welfare agency staff, prosecutors, defence lawyers (where appropriate), diplomatic and consular staff, domestic violence programme staff, judges, court staff, law-enforcement officials, medical and mental health professionals, and social workers.

The “justice process” as defined encompasses the process commencing with the detection of the crime, the making of the complaint, investigation, prosecution, and trial and post-trial procedures. Hence, it is clear that these guidelines must be applied throughout all the stages of the justice process. The term “child-sensitive” denotes an approach that balances the child’s right to protection and takes into account the child’s individual needs and views.

Specific rights of children

Parts 5 – 14 of the Guidelines concentrate on and emphasise ten fundamental rights and principles regarding the participation of child victims and witnesses in the judicial process. These include the right:

- to be treated with dignity and compassion (Part 5)

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- to be protected from discrimination (Part 6)
- to be heard and to express views and concerns (Part 8)
- to effective assistance (Part 9)
- to privacy (Part 10)
- to be protected from hardship during the justice process (Part 11).

Under most of these rights, various obligations are set out for the professionals to fulfil in order to ensure full respect for the rights of child victims and witnesses of crime.

Implementation

Finally, in Part 15 it is recognised that professionals should be trained to effectively protect and meet the needs of child victims and witnesses and that adequate information should be made available with a view to improving and sustaining specialised methods and approaches in order to deal effectively and sensitively with these children. The Guidelines further list the relevant aspects that should be covered in the training aimed at the professionals. In addition, section 43 states that professionals should make every effort to adopt an interdisciplinary approach in aiding children by familiarising themselves with the wide array of available services such as victim support, counselling, education, health, legal and social services.

Conclusion

In conclusion, these Guidelines provide a practical and user-friendly framework to assist and guide professionals working with child victims and witnesses in their day-to-day practice. They also help to ensure that the rights of child victims and witnesses to crime are protected and respected throughout the justice process. The adoption of these Guidelines by the UN Commission on Crime Prevention and Criminal Justice comes at a crucial time given the fact that more children are found to be victims of crimes such as trafficking, sexual exploitation and abuse. Every effort should thus be made to draw upon these Guidelines when drafting legislation and policy relating to children to ensure the protection of the rights of children. ●

1 The Guidelines adopted by the United Nations accessed at www.ibcr.org/PAGE_EN/E_PROJECT on 24 August 2005.

New project brings hope

by Adv. E Fivaz

Adv. E Fivaz, prosecutor from the One Stop Child Justice Centre in Bloemfontein, salutes the community of Bloemfontein for showing their care for children by investing in them, giving them their time and sharing their knowledge. She tells us more about this inspiring project.



The Heidedal community in Bloemfontein has launched an exciting new project for young offenders and troubled children, called the Life Solution Programme.

Initially the project was established as an alternative to the diversion options already running at the One Stop Child Justice Centre in the city. The focus of the Life Solution Programme was to enable children to dream again; to open up new ideas and opportunities for them.

“Ever visited Paris on a rainy afternoon, wondered what the French language sounds like, how croissants taste? Or, closer to home, have you visited God’s Window (there truly is such a place), or baked a pancake all by yourself?” These are but some of the imaginary trips the children undertake in discovering that there is a wonderful world to be discovered beyond the borders of Heidedal, and that life can offer more than the crime-riddled, poverty-stricken life they know.

Children between the ages of 7 and 14 are currently referred to this 10-week programme, but in 2006 older children will also be considered.

The best part of the good news is this: the programme is run in the community, by the community. Teachers, lecturers, authors, librarians

and members of the Kreare dance and drama organisation share their knowledge and skills with the children. These include candle-making, knowledge of library and information skills, story-telling, writing stories, dancing, paper-making, book discussions, baking, etc. All this is aimed at developing the children’s creative skills, improving their social and emotional functioning, and establishing a sound value system.

The Department of Social Development refers children, provides training and monitors progress. This department also funds the project, but the possibility exists that other sponsors might get involved next year.

The project is very enriching and feedback from all the role-players has been so positive that it is now being rolled out to Bainsvlei and Rocklands, two other suburbs of Bloemfontein. ●

A warning on sentencing in the absence of a probation officer's report (again)

S v M and Another 2005 (1) SACR 481

This matter involved two accused, aged 15 and 17 years respectively, who were convicted and sentenced for house-breaking with intent to steal and theft in a Magistrate's Court. Each accused was sentenced to two year's imprisonment, half of which was suspended for five years on certain conditions. However, neither their parents nor guardians were present at the proceedings. In addition, the magistrate finalised the matter without a probation officer's report.

It appears from the record that no attempt was made by the magistrate to establish the whereabouts of the parents or guardians, or secure their attendance at court. The investigating officer indicated to the court that no one was prepared to accept responsibility for the 15-year old. During the course of the matter the magistrate recorded that both the accused appeared in person and would conduct their own defence.

Noting that the provisions of section 74 of the Criminal Procedure Act are pre-emptory, but that non-compliance is not a fatal irregularity provided there is no substantial prejudice to the accused or a miscarriage of justice, the Court of Appeal held, per Pickering J, that:

"It is disturbing that in the present case no attempt at all was made by the magistrate to ascertain the identity and whereabouts of the parents or guardians of the two accused." (at 483A)

He went on to state (at 483C) that:

"The failure of the magistrate to comply with the provisions of section 74 of the Act becomes all the more serious in light of his later failure, to which I shall refer hereunder, to obtain a probation officer's report in respect of the two accused."

Probation officer's reports had been requested and the matter was postponed on more than one occasion for the reports to be presented to court. However, when they remained unavailable, the magistrate finalised the matter without attempting to establish the reasons for the unavailability of the reports. In sentencing the accused, very little information on their personal circumstances was placed before the court.

Pickering J, referring to and confirming *S v Petersen en 'n Ander 2001 (1) SACR (SCA)* and *S v Z en Vier Ander Sake 1999 (1) SACR 427 (E)*, held:

"In the present matter, the magistrate has also clearly erred in proceeding with the sentencing of the accused in the absence of a probation officer's report. He should have launched an enquiry into the reasons for the unacceptable delay and should have taken the matter further. It is unacceptable that, especially in the case of No. 1, a 15-year old offender, he should have been sentenced to a period of imprisonment on the basis of the paltry evidence before the court as to that accused's personal circumstances."

The High Court then proceeded to confirm the convictions and set aside the sentences for the matter to be remitted to the trial court so that probation officers' reports might be obtained and the accused be sentenced *de novo* in light of those reports.

Apart from the fact that the judgment clearly reiterates the need for presiding officers to have as much information as possible about a child's personal circumstances and that this should be obtained from a probation officer's report, the judgment is also critical of the unacceptable delays occasioned by the failure of probation officers to timeously place their reports before court. This judgment is therefore a further lesson, in a well-established line of judgments, that probation officers' reports are crucial when sentencing children. ●



No kids behind bars

“No Kids Behind Bars: A Child Rights Perspective” was the title of a conference held by Defence for Children International in Palestine from 30 June – 2 July 2005. It was aimed at discussing ways to reduce the number of children awaiting trial or sentenced to prison worldwide. Some interesting comments which have relevance for South Africa were made by members of the UN Committee on the Rights of the Child.



The keynote address at the conference was delivered by Paulo Sergio Pinheiro, the Independent Expert for the UN Secretary General’s Study on Violence against Children. He noted that juvenile justice was critical to the UN Study as children in trouble with the law are vulnerable and it is easy to predict that children are exposed to a high degree of violence when coming into contact with the juvenile justice system. He went on to explain that the Study would also examine a multi-disciplinary approach to children in trouble with the law that included issues such as health and early intervention. He added that it was crucial for the judicial system dealing with children to be efficient, accessible and accountable.

“Tough on Crime”

Mr Pinheiro specifically referred to the fact that public frustration in relation to crime and the fear of violent young offenders fuelled the impetus for states to take a tough stance on crime. He emphasised that the popularity of “get tough” measures in many States, for example countries in South America, had to be addressed. Prof. Jaap Doek, chairman of the UN Committee on the Rights of the Child, also dealt with this trend. He stated that the tendency was to “be tough on crime”, but studies had shown that this approach didn’t work*. Rather, the challenge for a juvenile justice system should be to ensure the child was a fully developed individual.

Perhaps the most interesting comments on this issue came from Dr Norberto Liwski, vice-chairman of the UN Committee on the Rights of the Child, who again noted that many States have bowed to society’s concerns about security, making society’s safety their main concern. He underscored the point that the UN Committee on the Rights of the Child saw the “strong-hand approach” to adolescents as the wrong one. He posed the question: “What group of adolescents are they talking about?” He observed that it wasn’t those adolescents that could go to university or those that had stable families, but adolescents who found themselves with no rights and who had families who had been subjected to long periods of suppression or deprivation. They were the most impoverished sector in society, which was why the UN Committee criticised the “be tough on crime” approach.

These comments are perhaps pertinent to the situation in South Africa in relation to the

* Editor’s note: See for example WL Sherman et al (1997), “Preventing Crime: what works, what doesn’t, what’s promising”, National Institute of Justice, US Department of Justice, Washington.

Child Justice Bill. The parliamentary debates by the Portfolio Committee on Justice and Constitutional Development have revealed that some of the provisions of the Bill will be changed. These changes indicate a more punitive approach to children who commit serious crimes. The potential change that clearly illustrates this move towards a “tough on crime” approach is the one that seeks to allow children under the age of 14 years who are charged with a serious scheduled offence to be held in prison awaiting trial. If this comes to fruition, it will signal a step back from the present position under section 29 of the Correctional Services Act 1996, which prohibits children under 14 years from being held in prison awaiting trial.

Country Reports

Both Prof. Doek and Dr Liwski mentioned reporting by States in their plenary addresses to the conference participants. They noted that whilst all States dealt with juvenile justice and Articles 37 and 40 in their Country Reports, most information contained therein was merely descriptive of the situation in the country. The reports did not mention the minimum standards of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, which meant that most reports did not contain information on children in prison. It was also rare for reports to include information on education, health care, disciplinary measures, contact with the outside world and complaint mechanisms.

It was further noted that it was dangerous for countries to presume that only Article 37 and 40 of the Convention on the Rights of the Child were applicable to Country Reports when dealing with juvenile justice. Rather, all rights contained in the Convention should be taken into account when dealing with the practical aspects of juvenile justice.

Conclusion

The conference allowed for many countries, NGOs and academics to discuss various aspects of juvenile justice and to debate means of reducing the number of children behind bars. However, it will be interesting to see the reaction of the UN Committee on the Rights of the Child when it examines South Africa’s country report in light of the comments made at the conference on the Committee’s approach to child justice and country reporting. ●



From left are Paulo Sergio Pinheiro, UN independent expert; George Abu Al-Zulof, general director: DCI Palestine; Prof. Jaap Doek, chairman of the UN Committee on the Rights of the Child, and Nidal Al-Ayasa, representing the "Kids Behind Bars" Children's Conference.



Participants at the Africa workshop that dealt with developments in Kenya and West African countries such as Togo and Nigeria.



Palestinian graffiti on the Israeli-built wall in the West Bank, near to where the conference was held.

Children in prison:

Some good news, some bad news

and some questions by Lukas Muntingh

Introduction

After monitoring children in prison for the past ten years, there has seldom been cause for optimism. We saw the number of children awaiting trial in prison increase from fewer than 600 to over 2 000, despite the efforts of government departments and non-government organisations. It degenerated from a manageable problem into a crisis that somehow we've become accustomed to.

It is therefore all the more satisfying to report that there are some good signs emerging from the data, and that we are perhaps seeing some sustained improvements.

Total number of children in custody

As can be seen in **Graph 1** on the next page, from 1995 until 2003 it looked as if the growth in the number of children in South African prisons, both sentenced and unsentenced, was unstoppable. However, since 2004 there has been a change and the downturn that started in 2004 persisted into February 2005 (the month for which the latest figures are available).

Admissions to prison to serve a prison term

On average 371 children are annually admitted to prisons to serve prison terms ranging from under six months to more than 20 years. **Graph 2** on the next page clearly illustrates the trend that from 1995 to 2002 there was a substantial increase in the number of children sentenced to imprisonment, and that from 2002 to 2004 there has been a slight decrease.

Total number of children awaiting trial in prisons

We have also seen since 2004 a reduction in the total number of children awaiting trial, from 2 329 in 2003 to 1 921 on average in 2004, as shown in **Graph 3** on the next page. Although the number of children awaiting trial has declined, awaiting-trial children constitute 53% of the total number of children in South African prisons. Comparatively, adult awaiting-trial prisoners constitute approximately 25% of the total number of adult prisoners. In essence this means that children's cases are progressing slowly through the criminal justice

system and that procedural delays result in children having to spend longer periods awaiting trial in prisons.

Young children in awaiting-trial prisons

There has been a small but significant improvement in the proportion of very young children awaiting trial in prison as a percentage of the total number of children awaiting trial in prison (**Graph 4**). In 1995 nearly 12% of the children awaiting trial in prison were under the age of 15 years. By 2004 this proportion had been reduced to 5,8%. Similarly, the proportion of children under the age of 16 years was also reduced from 28,4% to 19,8%.

Geographical spread of children

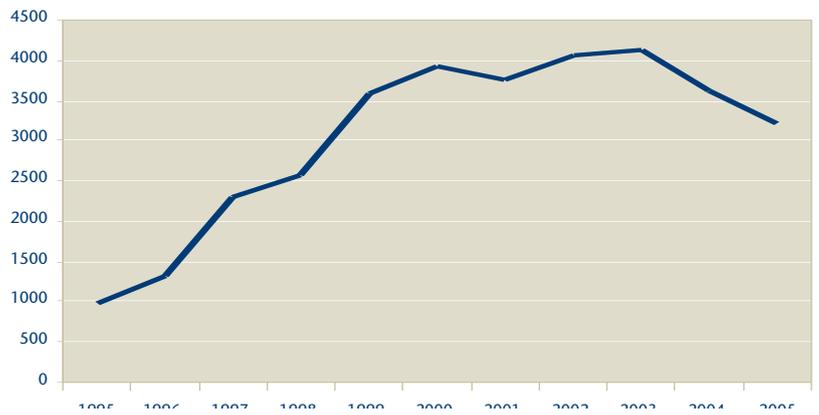
Although there is a higher concentration of children in certain prisons, primarily those in the large metropolitan areas, most prisons hold some children, or sometimes only one child. At the end of February 2005 only six out of 239 prisons were holding more than 100 children, namely Durban, Pollsmoor Medium, Pollsmoor Maximum, Port Elizabeth, St Alban's and Leeuwkop. The result is that children are very spread out in prisons across South Africa, which obviously creates a monitoring problem.

Conclusion

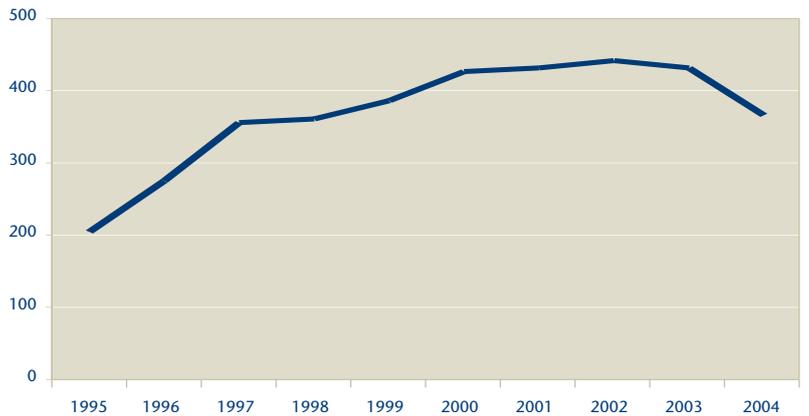
To summarise: the bad news is that children's cases are taking very long to be adjudicated, with the result that there are now more

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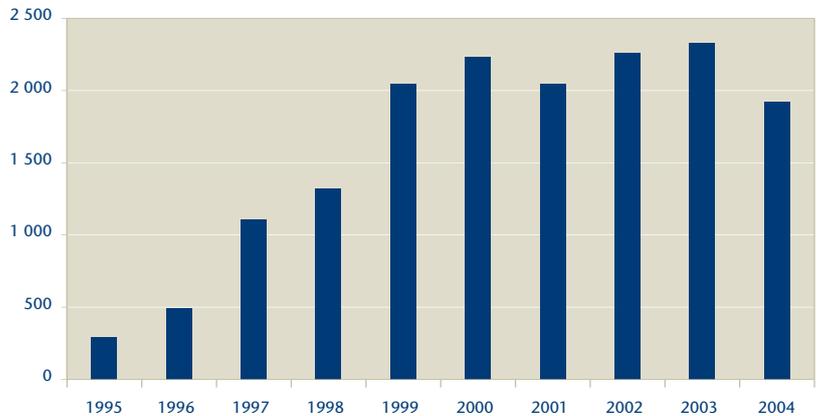
Graph 1: Total average number of children in SA prisons (sentenced and unsentenced)



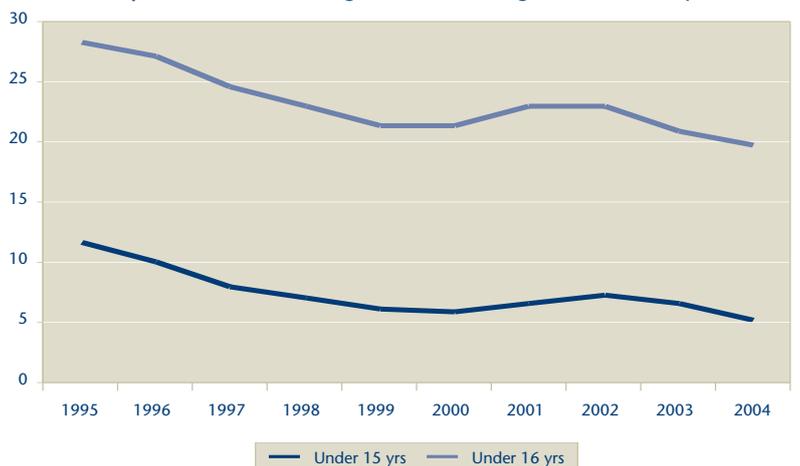
Graph 2: Children admitted to serve prison terms as a sentence



Graph 3: Average number of children awaiting trial in prisons



Graph 4: Children awaiting trial under the ages of 15 and 16 years



awaiting-trial than sentenced children in South African prisons. However, there is fortunately more good news than bad news. The total number of children in prison has been reduced to approximately the 1999-level. The proportion of very young children has steadily decreased, although there are still some children under the age of 13 in prisons. This is not in line with the White Paper on Corrections and also does not comply with the spirit of the Convention on the Rights of the Child.

The total number of children being admitted to prison to serve terms of imprisonment has also declined over the last two years.

We are then left with some questions that we should all apply our minds to:

- What is causing the delay in children’s cases?
- Will the Child Justice Bill, once it becomes promulgated as legislation, address this issue?
- How exactly were these reductions achieved, and what can we learn from this for the future? ●

Litigating for children with psychiatric, psychological and emotional needs by Upkaar Mungar

The Children's Litigation Project, established by the Centre for Child Law in August 2003, has made great strides in its first two years. This projects aims to test the boundaries of the law relating to children, establish the content of legal rights, ensure the protection of children, and hold the government accountable on their responsibilities towards children.



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Children who are suffering from psychiatric or psychological problems, or from emotional trauma do not get the attention that they need. When in institutions of any kind, these children are particularly vulnerable. The Centre for Child Law has been tackling some of these problems through applications to the High Court. This article briefly describes some of those activities.

Criminal Procedure Act: sections 77-79

These three sections form an integrated unit. Section 77 deals with the capacity of the accused to understand proceedings so as to make a proper defence to the charges against him, while section 78 deals with the situation where an accused suffers from a mental illness or defect which makes him or her incapable of possessing criminal responsibility. Section 79 provides the procedural means through which the provisions of sections 77 and 78 are put into practice.

Dyambu Youth Centre

Following on a previous matter, in August 2004 representatives from the Centre for Child Law visited the Dyambu Youth Centre in Gauteng which houses male children awaiting trial for a follow-up on that case. During the visit they were approached by the staff and management of Dyambu and informed of eight boys detained in the facility who, in the eyes of the court, had to undergo observation as they were potentially not capable of understanding the court proceedings in order to make a proper defence to the charges against them.

In terms of section 79(2)(a) of the Criminal Procedure Act, such children must be sent to a psychiatric hospital or to any other place designated by the court, for periods not exceeding 30 days at a time. It would

appear, therefore, that the referral of such children to Dyambu Youth Centre was not unlawful per se. However, if one reads sections 77 – 79 in their entirety, it can be argued that any “other place designated by the court” should be suitable for psychiatric observations as the intent of the three sections is to enable the court to be guided by expert evidence where mental illness and criminal capacity are at issue. Dyambu, as a secure care facility, does not have the capacity to observe children for this purpose and they are certainly not able to provide the expert evidence that is required as the staff are not trained to deal with children with psychiatric problems and the facility has not been designed to cater for children with special needs.

During the day, children who are sent to Dyambu for observation were kept in a small separate area surrounded by bars. The other children could see and talk to them, but could not physically interact with them. It has been reported that some of the children with mental health problems had to be drugged and physically restrained.

The managing director of Dyambu reported to the Centre for Child Law that one of the

children had to be sedated using drugs prescribed by a private psychiatrist, as the staff were unable to manage him. Children being observed under the Criminal Procedure Act are not supposed to receive treatment as this interferes with the observation process and may affect the outcome of the inquiry.

Weskoppies Psychiatric Hospital

In October 2004, staff from the Centre for Child Law went to visit another child at Weskoppies in Gauteng. He had previously been released from Dyambu after charges against him had been withdrawn. However, the prosecutor in the case arranged that he go to Weskoppies for assessment on account of him being developmentally delayed. He was in a closed adult ward, and was spending his days with adults. He was wearing tatty hospital pyjamas and it was evident that he had been given medication, because he was very sleepy, his speech was slightly slurred and he was dribbling from one side of his mouth. He reported that he had spent the night of Monday 28 October 2004 in a police cell, alone, in contravention of the Mental Health Act. On arriving at Weskoppies he was given two injections which made his legs feel weak. He did not think he had seen a doctor but he said that two students had interviewed him. He was frustrated about the fact that he was being locked up from 16:00 onwards, with nothing to do. This referral to Weskoppies was wholly inappropriate for various reasons, including the fact that he was kept in an adult ward. This led to the Centre setting up the first of a number of high level meetings with Weskoppies management. Due to the Centre's intervention, Weskoppies no longer holds children together with adults. The particular child in question has been placed at a more appropriate facility where he has settled well, and has been weaned off all medication.

Sterkfontein Psychiatric Hospital

Historically, the Sterkfontein Psychiatric Hospital in Gauteng has detained children under psychiatric observation. However, Sterkfontein closed its doors to children referred by the court for observation in terms of the Criminal Procedure Act, as its children and adolescent section was closed down on account of budget cuts.

In view of the Centre for Child Law's findings, in October 2004 the Centre brought an urgent application for the appointment of a curator *ad litem* for the children detained at

Dyambu who manifested some mental illness. A second application was then brought in February 2005 to add more children from Weskoppies to the list. In March 2005 the Centre obtained an order in the High Court of South Africa whereby the Minister of Health, Ms Tshabalala-Msimang, was ordered to designate Sterkfontein Psychiatric Hospital to admit, care for, treat and provide rehabilitation services to the children under curatorship from 1 April 2005. The Gauteng MEC for Health was also specifically directed to ensure that the children were not detained with adult detainees at the health establishment.

Subsequently there has been a series of high-level meetings with the relevant government departments to further improve the situation for children who are suffering from mental illness. This case is still ongoing, but it has highlighted the fact that the country is lacking a secure treatment centre for children with mental illness or disability or for those with psychological or emotional difficulties. The Centre for Child Law hopes that at the conclusion of this case such a centre will be established. The case also illustrates the courts' need to apply their mind to the appropriateness of referrals of children for observation to certain institutions.

George Hofmeyr School of Industries

The Centre for Child Law also obtained an urgent court order in May 2005 to stop the physical and emotional abuse of girls at the George Hofmeyr School of Industries in Standerton, Mpumalanga and to secure the immediate release of 11 of the school's girls who had been imprisoned for malicious damage to school property.

The purpose of the school is to take care of children who have been referred there, in terms of the Child Care Act, by a children's court. Instead of receiving proper care, however, some of these children, deemed to be "problem children", were locked up in their bedrooms at night, sworn at and ridiculed. Many attempted suicide or mutilated themselves. Such behaviour earned them further punishment which included not being able to contact their families.

The Centre for Child Law stepped in and secured a Pretoria High Court order that prevents further emotional and physical abuse from taking place, and the 11 schoolgirls were released from detention awaiting trial and placed back at the school of industries.

In terms of the court order, the school's principal and the Departments of Education and Social Development in Mpumalanga were ordered to ensure that the management and staff of the school adhered to strictly prescribed rules of conduct aimed at protecting the children in their care. Children may no longer be used to control, guard or discipline their peers; all forms of discrimination, labelling and favouritism are to cease, and children are to receive proper food. They may no longer be locked up in their bedrooms at night, and contact with family may not be used as an incentive or as punishment. It is noteworthy that the terms of the order aim to enforce the minimum standards of detention contained in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Beijing Rules that South Africa has in any event undertaken to comply with.

The school has been ordered to appoint or train youth workers, hostel staff, social workers and a full-time psychologist; the style of management must change within six months to be more democratic, participatory and inclusive, and a strategic plan for change must be completed by the end of October 2005. ●

NOTICE-BOARD



Upcoming events

An Appraisal of the Children's Rights Convention: Theory meets practice is an International Interdisciplinary Conference on Children's Rights

Where: Ghent, Belgium

When: 18 – 19 May 2006

For more information, visit
www.law.ugent.be/pub/iuap/c_welcome.html

Investment and Citizenship: Towards a Transdisciplinary Dialogue on Child and Youth Rights Conference

Where: Ontario, Canada

When: 19 – 21 July 2006

For more information, visit www.childrights.ca

Belfast 2006: Putting the pieces together again is the title of the 17th World Congress of the International Association of Youth and Family Judges and Magistrates.

Where: Belfast, Northern Ireland

When: 27 August – 1 September 2006

For further information, visit
www.youthandfamily2006.com



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