



Sending children to prison – a measure of last resort for the shortest possible period.

Section 28(1)(g) of the Constitution states:

Every child has the right “not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time...”

The right of a child to be detained as a last resort and for the shortest appropriate period of time has been addressed in **DPP KwaZulu Natal v P 2006(1) SACR 243 (SCA)** where the court stated:

“Having regard to s 28 (1) (g) of the Constitution and the relevant international instruments, as already indicated, it is clear that in every case involving a juvenile offender, the ambit and scope of sentencing will have to be widened in order to give effect to the principle that a child offender is ‘not to be detained except, as a measure of last resort’ and if detention of a child is unavoidable, this should be ‘only for the shortest appropriate period of time’.”

The approach of the 2007 Cabinet version of the Child Justice Bill encourages in many ways the imprisonment for children and in this respect runs contrary to the principle contained in section 28(1)(g) of the Constitution. The following are issues of concern:

- there is no lower age limit for imposing a sentence of imprisonment
- there is no lower age limit for detaining an unsentenced child in a prison
- the Bill does not exclude imprisonment for certain offences.
- the Bill relies on the punitive provisions of the Criminal Law Amendment Act (minimum sentences legislation) in sentencing certain children; those older than 16 years having committed a Schedule 2 offence
- the Bill limits the access of children older than 16 years to legal representation at state expense
- the Bill does not guarantee legal representation at state expense if a child is being prosecuted for an offence that may attract a prison sentence
- the Bill places great emphasis on the offence committed, steering presiding officers in a punitive direction
- the maximum prison sentence that can be imposed under the Bill is 25 years, which is equal to the period that a person sentenced to life imprisonment must serve before he/she can be considered for parole
- the Bill's provisions on appeal and automatic review, exclude children sentenced to imprisonment who were 16 years or older at the time of the offence, from the automatic review and appeal without application for leave to appeal provisions.