



BRINGING CHILDREN'S RIGHTS  
AND PROTECTION TO THE  
CENTRE OF THE SERVICE  
LEVEL AGREEMENTS IN THE  
CHILD JUSTICE SYSTEM

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**REPORT**

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SHERATON PRETORIA  
HOTEL & TOWERS  
30-31 MAY 2002

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Organised by the Child Justice Project, a UN Technical Assistance Project to the Government of South Africa for the implementation of the proposed Child Justice Legislation.

The financial support for the project is provided by the Swiss Agency for Development and Co-operation & the UNDP



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# BACKGROUND

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The system for the management of children accused of crimes is an area in which there is already practical working experience of service level agreements between government and non-governmental or private sector organisations for the delivery of services. Notable examples of such agreements exist:

1. In the field of Diversion and Alternative Sentencing  
Examples include contracts between the Department of Social Development (or the provincial Departments thereof) and non-profit organisations such as NICRO, YDO & the Restorative Justice Centre.
2. In the field of Secure Residential Care  
Two slightly different models are running: contracts with a private company, and the other with non-profit organisations. Both models have showed positive results. It is noted that privatisation of prisons has been the subject of ongoing debates in South Africa, but there has been little discussion about what special services and standards would be required should prison services for children be privatised.
3. Other Services that have been contracted out  
An example is "family finders". Some provincial departments of Social Development have employed "family finders" to assist with locating parents or guardians of arrested children. According to statute, this is a duty of the South African Police Service, but Probation Officers (who are employed by the Department of Social Development) are required to assess children within 48 hours of arrest, and it is preferable to have parents present at the assessment. The appointment of family finders on contract was a practical way to overcome the problem.

## The Child Justice Bill

The Child Justice Bill makes express provision for the outsourcing of diversion services. The Bill also introduces a system for registration of programmes, linked to a set of minimum standards. The Department of Social Development will need to develop clear systems for the outsourcing of services relating to programmes.

The Bill does not make specific reference to the outsourcing of Secure Residential Care, as the Bill does not have provisions relating to the care of children. Such details will be included in the Child Care Act, which is also currently under review. There is a need to develop a policy for the outsourcing of Secure Residential Care, according to minimum standards.

Inter-sectoral collaboration is a key feature of the Child Justice Bill. This may lead to collaboration in the delivery of services, and there may be a need for departments to have joint contracts with service providers. The Bill empowers the Minister of Justice to establish "One Stop Child Justice Centres", which centralises a range of services for children. It is foreseeable that such centres may have to be managed by project managers, with whom personnel from a number of departments would have to co-operate. The drafting of such contractual agreements will



require careful planning.

To date these contractual agreements have developed on an ad hoc basis as the need arose, and there is no standardised practice for such agreements. In the area of Secure Residential Care, there has been an emphasis on inclusion of minimum performance standards linked to the contract, and the Developmental Quality Assurance process of the Department of Social Development has evaluated performance. Using international instruments and the constitution the conference participants will examine opportunities to bring Children's Rights and Protection to the centre of Service Level Agreements.

# INTRODUCTION

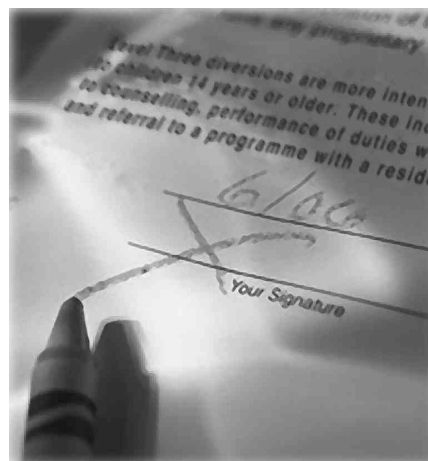
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This report is a summary of the proceedings of the national meeting on child justice and service level agreements. The conference was organised by the Child Justice Project and was held in Pretoria on the 30<sup>th</sup> and 31<sup>st</sup> of May 2002.

The objective of the conference was to look closely at a number of issues related to child justice and its implementation in the form of service level agreements. These include:

- ✘ How has this been done and how should it be done?
- ✘ How has it been monitored and how should it be monitored?
- ✘ How have the agreements been resourced and how should they be resourced?

The conference organised three working groups over the two days of the programme to discuss the details of these issues, to raise key questions, and to present broad perspectives on the implementation of child justice. In addition to these groups, individual speakers gave brief overviews of key issues in their fields of expertise. The result was a comprehensive programme that was able to take large amounts of information and distil it down into a guide for future action.





# DAY ONE

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## Session One - Introduction and Expectations

**M**s Buyi Mbambo from the Child Justice Project gave an introductory presentation. She reminded the participants of the children's rights context of this workshop and pointed out that the conference folder contained copies of the international instruments relating to child justice, as well as the African Charter on the Rights and Welfare of the Child. She also stressed the intersectoral nature of the child justice system - not only are there a number of departments involved, but NGOs also play a vital role in service delivery. This workshop will explore the current service level agreements, as well as the potential for future service level agreements between government and other partners. At the centre of all of these is the child. We must ensure that the services are of a high quality and that they allow children to develop their full potential.

The first session was organised around generating a list of expectations for the next two days. This was useful in giving participants a better sense of all the issues they and their colleagues need to grapple with, in providing a concrete sense of direction for the conference and in acting as a reference point for measuring the amount of ground covered by the end of the conference.

Some of the key expectations, issues and questions the conference sought to address included:

- ✗ Developing a common terminology for service level agreements (SLAs) and potentially a glossary;
- ✗ Developing a database on existing programmes: e.g. locations, costing, cost effectiveness, performance, monitoring procedures, information on rural programmes, etc.;
- ✗ Coming up with clear and uniform guidelines for SLAs;
- ✗ Making sure that SLAs explicitly cover rural areas;
- ✗ Accreditation and standardisation of SLAs: content (e.g. minimum standards). Developing a process for this;
- ✗ What does "partnership" between government departments and NGOs actually mean and look like? Define public private partnership (PPP). What is the basis of the relationship? What is the content of the partnership?;
- ✗ Joint funding of one stop centres;
- ✗ Performance objectives: develop & include definitions & measures in SLAs

After participants outlined a set of specific questions and topics to address over the course of the conference, they split up into the different sectors to look closely at the changes that have occurred in their sectors and the changes that still need to happen. The sectors were: Justice & Constitutional Development, Corrections, SAPS, Education, National Social Development, Provincial Social Development, Treasury, Funders &



Donors, and NGOs. Reports back from the break away session generated the following observations:

What has happened to date? What must change?

1. Correctional Services, SAPS & Education identified the main issue as the number of young people in prison. Services must be provided to youth already in prison and there must be alternatives to imprisonment & prevention services. The cooperative relationship between departments in the child justice field needs to be strengthened.
2. The Justice sector raised the issue of referrals to reform school, which is not being implemented because there are only reform schools in two of the provinces and there are backlogs in referrals. Again the issue of available resources was raised, as was the issue of availability of services.
3. National Social Development highlighted the fact that funding comes from different sources but there is no standard monitoring or evaluation procedure.
4. Provincial Social Development also touched on the need for uniform standards. There is a need for proper training of all people party to a contract and children's rights instruments need to be reflected in contracts.
5. Treasury said that services need to be standardised. Furthermore, performance needs to be clearly and closely evaluated, and costing should be based on this evaluation.
6. Funders and Donors pointed out that the government's role in taking over responsibility for the funding of services needs to be discussed, and donors should facilitate the formation of partnerships between government and NGOs.
7. NGOs raised the problem that partnerships between government and organisations are not always equal. Government needs to support NGOs and facilitate the work that they do - not take over the running of programmes or projects. There also needs to be more consultation about the terms of contract, which points to a broader concern over better communication. There also needs to be as much emphasis on prevention, alternative sentencing and reintegration as there currently is on diversion. Contracts need to be tightened up. The guidelines should be clearer and basic principles should be drawn up to strengthen the partnerships.

**M**s. **Ann Skelton** from the Child Justice Project (CJP) addressed the participants and made a number of broad observations on the current status of child justice and service delivery. There is a need to recognise that service delivery is happening, and much of this is currently achieved through service level agreements between the Provincial Departments of Social Development and non-governmental service providers. However, the arrangements have been *ad hoc* and there are no standardised rules for service level agreements. There is a need to ensure services that are of good quality and are safe for children.

Furthermore, the people who write up contracts are not always the ones who are actually working with children, and are often more cost oriented. Foremost at all times, however, should be actual delivery to the children. Another issue she raised is that of responsibility, which has not been clearly worked out. For example, when government contracts out for a place of safety, who is liable if a child is hurt? Who can be sued? There is a need for a strong, clear framework on the question of responsibility.

The next session featured six people who are experts in their field, and these panel discussions allowed the general themes raised in the opening session to be pursued in greater detail.



## Session Two - Perspectives

**Mr. Henry Mukwevho** of the National Prosecuting Authority chaired the session.

The opening remarks were made by **Mr. Ashley Theron**, Chief Director: Dept. of Social Development, speaking in place of Director General of Social Development, Ms. Angela Bester who was unable to attend.

Mr. Theron opened by pointing out that a legal framework for children's rights is reflected in the UN Convention on the Rights of the Child and in the South African Constitution. The Child Justice Bill (CJB), reflects this rights-based approach to children. It is important, in thinking about child justice, to see children as rights holders, and not as objects of charity and to make sure this perspective also carries over into the SLAs. Protection of rights needs to be built into the contracts.

Mr. Theron also said that partnerships or working agreements need to exist between all the relevant role players: between government and NGOs, between different NGOs, between the various government departments, and between national and international role players. We also need to be mindful of how to bring in other sectors like business.

In what would become a central theme to the conference proceedings, Mr. Theron stressed the need for monitoring and evaluation that had clear and explicit minimum standards and policies spelled out in the SLAs. SLAs should also address financing clearly: how will financing be obtained and what conditions should be built in around effective and efficient management?

Finally, government should steer the process and set the direction. Setting standards, and ensuring quality service delivery are clear functions of government. The Departments should also take responsibility and provide funding. Government, however, cannot do the work of service delivery alone; the partnership with the NGOs is vital.

The first panellist, **Mr. Daniel Plaatjies** of the Treasury, raised a number of questions around accountability, management and efficiency. He stated that the national Treasury is supporting the realisation of children's justice and the Child Justice Bill and there is a clear commitment there. The key issue, from the perspective of the Treasury, is service delivery and he indicated that departments must be certain that they have or will have the capacity to deliver services.

On the outsourcing of services, Mr. Plaatjies said that responsible departments must work within appropriate frameworks as defined by the Child Justice Bill. It must be made clear who is going to do what. Related to this, there also needs to be more work done on the issue of who takes responsibility for the actual delivery of services.

Regarding assets management, there needs to be regular monitoring of outsourced services and regular reporting that clearly articulates the financial issues. This includes information such as the number of children being served, the areas being served, future service projections, and so on. Performance should then be measured against set goals. The Child Justice Bill also needs proper costing, and key outputs have to be identified. This will assist in developing useful performance measures.

One important question that should be raised is the extent to which





outsourcing does (or doesn't) add value. This is important in setting clear guidelines for what services are suitable to be outsourced.

In terms of the transfer of funding, specific Treasury regulations will assist in expenditure management. This will be useful in tracking the flow of funds to and from organisations.

Mr. Plaatjies ended by stressing the importance of identifying who is responsible for the CJB and its implementation. Is the responsibility national or provincial? Once this has been decided, which are the responsible departments? What is the cost of services? And which departments will best deliver the services?

**M**s. **Cheryl Frank** of the Open Society Foundation offered the perspective of a small donor. She stated that our role as guardians of children's rights needs always to be in the forefront of how we act and what we do. She also spoke of the importance of realising that donors are not a homogenous group. Governmental funders, for example, have geo-political interests. Corporate donors and private donors also have their own interests.

Donors have obligations that must be recognised and met. It is important that donors work to entrench democracy, the rule of law, and the outcome of a strong, accountable government and civil society. Donors have ethical obligations and need to be open about their strategies, decision-making and amount of funds, and their experience in an area. They need to make every cent count and work towards the long-term development of the nation.

For larger donors, the question comes up of how they will or can ensure that projects they fund are picked up by government once they leave. Bilateral donors have significant leverage over governments, and this creates obligations to use funds wisely and responsibly. Corporate donors historically have used funds as extensions of marketing programmes, which are meant to appear as doing good for development, although now there is more accountability in this sector.

Donors can encourage sustainability via proper evaluations, costing, etc., that give projects strong foundations. Donors can also build capacity (which should not simply be equated with training) and can act as advocates, and not merely service providers. They can support campaigns, make submissions to government, monitor legislation, and support external evaluations. So they should start exploring their role as advocates. This means, however, not denying the political aspects of what they are involved in. All of this means engaging with government in a very pragmatic way and taking a proactive approach to children's rights.

**M**r. **Lukas Muntingh**, from NICRO, provided an overview of the NGO perspective. He began by asking what it is that NGOs bring to the negotiating table. This question needs to be understood in the context of an absence of an overarching framework for how government and civil society can engage one another.

We need to think creatively, quickly and accurately about this situation in relation to the CJB and the implications the Bill will have for service delivery, and how these obligations will be met. The CJB sets up a range of obligations for the state to fulfil, and it can be said at this stage that the state cannot fulfil them unless they subcontract certain components to civil society.

Civil society should not, however, expect that such subcontracting would just land in their laps without accountability and scrutiny. Just as



the NGO sector has a watchdog function with regard to government, so too it also has to be subject to scrutiny.

NGOs have a number of strengths that they bring to the partnership. They operate from a value base, are flexible in implementing programmes, are creative, are closer to the marginalized communities, are able to identify clients' needs, and have expertise in service delivery.

At the same time they are often localised and lacking in the ability to implement on a large scale. They can lack uniformity in approach and often lack standards and coordination with other relevant stakeholders. Importantly, they cannot guarantee continuity of outputs because of their dependence on outside funding.

Accountability, transparency and good management practices are essential if best services are to be delivered and children are to be protected. There is, however, often a lack of management skills and accountability mechanisms. Monitoring is often lacking, and research and impact evaluations are often absent or incomplete.

Protocols need to be in place that set out exact procedures for programme development. This will test proposed programmes against international standards and solid research. This will also facilitate accurate costing and strong management. Appropriate mechanisms include progress reviews, staff reviews, transparency, and clear complaint procedures. In addition, possible risks need to be identified in advance.

Mr. Muntingh also stressed the need for NGOs to work with other NGOs and CBOs. He also spoke of the developmental responsibility that larger NGOs have to smaller, less established NGOs.

When it comes to agreements, oversight functions and the role of government must be clearly spelled out. These should not be limited to service delivery but should include support functions such as research and development, and management and training.

Finally, inspection, reporting and evaluation procedures need to be agreed upon in advance and programmes need to be fully funded to ensure quality service.

## Session Three - Nuts & Bolts

Mr. Vernie Petersen chaired the session.

Economist **Conrad Barberton** presented an overview of SLAs, and provided a framework for thinking about this transaction process. The transaction begins with a "demand for services", which in this case could be a child in conflict with the law. The purchaser (government) looks to receive good value for the money spent, and is faced with two basic choices: in-house production or outsource production. The former does not preclude outsourcing, as the accounting officer, for example, could choose to outsource component tasks like book keeping.

In either case, methods of measuring performance will need to be developed and in both cases the rights of the child should be at the forefront. Admittedly this can be difficult since we are dealing with qualitative measures. So, we need to develop a set of measurable objectives and minimum standards that underpin the contracts or agreements.

In the case of in-house production, the process ends with the drawing



up of a service level agreement; while with outsourcing the end result is a type of contract (agency contract, service contract, concession, or license).

Contracts assist in managing expectations and risks, and have a set of basic criteria to accomplish this task:

- × Define parties
- × Define performance required: what, when, where, and quality
- × Define mechanism for monitoring and accepting delivery
- × Define basis for payment and delivery
- × Define each party's duties and obligations
- × Define what happens when contract is breached
- × Define what happens in the event of termination
- × Provide mechanisms for dispute resolution/arbitration

In terms of performance measures, there are seven types: cost, quantity, quality, timeliness, distribution, access and evaluations of value for money. These have been defined further into specific criteria for performance measures:

**C**omparable: information in a format that can be compared across time, region, or institution;

**A**ccessible: clear, easily understood;

**R**elevant: measures something meaningful from a management and oversight perspective;

**R**eliable: free from error, unbiased, complete and can be replicated;

**O**perational: relatively easy to collect data;

**T**imely: must be readily available so it can be used for management and oversight.

In summary, government really needs to act like the purchaser of services; they should specify what they want, define the price to be paid, and be clear in setting up a framework that will produce a successful transaction, which translates into a valuable service for children in conflict with the law, and value for money spent.

**M**s. **Fiona McGlone**, formerly of the Youth Justice Board (United Kingdom), spoke of the experiences in the UK with private secure care facilities. Within the last 20 years in Europe, England and Wales were the pioneers of public private partnerships working to deliver services for young people in the juvenile justice system. In 1998 the first of three custodial centres run by the private sector to care for 12-15 year olds in custody was developed. The Youth Justice Board was established in 1999 for England and Wales, and in 2000 became responsible for the purchasing and commissioning of all places of safety for juveniles in custody in England and Wales and for funding the delivery of intervention programmes at local levels. Currently there are 44 custodial centres looking after an average of 3 200 youth daily.

The contracts involved in this process exist between state to state departments, state to public sector, and from state to private company. Each, however, is accountable to the Youth Justice Board for the services provided and payment received. The legislation in England and Wales



dealing with the care of children is compatible with and complimentary to the UN Convention on the Rights of the child. Its basic principles affirm that the welfare of the child is paramount, that the child’s views are taken into account, that partnerships with the child’s parents or guardians are important, that the different backgrounds of children must be taken into account, and that the child is to be protected from harm and abuse.

In contracting out services, the State seeks to manage a balance between risk and control using a process of approvals, authorizations, performance management and quality assurance. In principle, however, the State remains the responsible corporate body and is accountable for the treatment of any individual within its care. On occasions where the non-State providers fall short in delivering on the contracts, action would be taken against the State and not the provider. The State may then consider separate redress from the provider.

Outcomes are controlled and measured through a monitoring system. In private custodial settings a state monitor is in daily attendance, while for public bodies the compliance monitor makes frequent visits and audits records and standard of service. This is in excess of statutory inspections that are also undertaken.

Deductions from payments due may be made for instances where performance is less than desired. Further deductions may be made where records are found to be inaccurate or where the provider has failed to bring any shortfall in performance to the attention of the authority.

Ms. McGlone concluded by stressing the need for national standards for youth justice, for monitoring the quality of the services delivered and sharing best practices across sectors, organisations and government departments.

**M**r. Uven Bunsee of the Treasury made a presentation on Public Private Partnerships (PPPs). Building on the previous speakers, he drew attention to the factors that make PPPs effective. They must be accessible, affordable and they must meet expectations. PPPs must promote goals of social equity and grant rewards in relation to the risks taken by the private sector, though the public sector retains the risk.

Mr. Bunsee addressed the problems of contracts that fail or perform poorly. One of the reasons for this, he states, is that some contracts are input driven rather than output driven. As a result, there is little to actually measure and performance isn’t monitored.

Another issue that was raised was that of costing. Mr. Bunsee raised the issue of lifecycle costing, where contracting is done for the long term rather than the short term. Bringing more of a focus onto outputs, he also spoke of contracting not just for provision of services but also for measurable outputs.

In this situation, outputs must be clearly defined and risks identified in the process of entering into the contracts.





# DAY TWO

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## Session One - Experiences & Raising Issues

**Buyi Mbambo** of the Child Justice Project chaired the session

**M**s. **Ann Skelton** began by raising a number of issues that provided context for the panel, and that have implementation as their focus. She began by pointing out that the Child Justice Bill is not being introduced into a vacuum. There is, in fact, already a system in existence, but it is largely *ad hoc* and lacks planning and a clear framework. What the CJB will do is to help to create a clear and comprehensive legal framework upon which to “hang” service delivery. The Bill also provides new opportunities for providing services.

Ms. Skelton also pointed out that one of the principles underlying the CJB is that imprisonment should be a measure of last resort for children, a principle also articulated in the Constitution. Even residential care is a form of custody, and should also not be used unless there are good reasons for doing so. There is, therefore, a need for more energy to be put into the development of non-custodial measures. Up until this point much of the service level agreements have been in relation to diversion, but community based sentencing options are also important, and both the Department of Correctional Services and the Department of Social Development need to look seriously at the possibility of purchasing services in this regard.

The CJB does not include crime prevention measures, though it does contain provisions for early intervention. So there is still a need for the former. With slight adjustment, however, early intervention measures can become prevention measures. In other words, programmes developed for diversion can also be used as crime prevention measures with youth at risk who have not yet come into conflict with the law. Being able to apply creative thinking to the CJB and to programmes already in existence can thus expand their reach. Ms. Skelton closed by highlighting a number of key challenges and opportunities:

- ✘ Getting parents and guardians involved when children come into contact with the justice system is clearly crucial. Successful implementation of child justice will demand progress in this area.
- ✘ The CJB gives more responsibility to probation services than ever before. This requires that a fresh look be taken at outsourcing to free up resources and staff in this area. A clear assessment of which kinds of services can be outsourced and which cannot, will need to be done.
- ✘ There is currently not enough thinking happening around alternatives to residential care. Meaningful implementation of child justice will require a range of options and alternatives be developed.
- ✘ Programmes delivering services to children need to complement each other. Overlap and redundancy squander resources, so integration of existing programmes, and the development of new programmes that



complement existing programmes are important areas on which to focus.

- ✗ The CJB provides for the setting up of One Stop Justice Centres. This means that internal agreements between departments will need to be drawn up so that there is a clear chain of accountability.

The CJB provides the opportunities for these developments to occur and empowers government and the NGO sector to make them happen. While the CJB places responsibility on government for ensuring the development of new programmes and the delivery of services, it does not exclude non-governmental sectors from developing their own programmes.

**M**r. Harald Malgas of Matete Matches Secure Centre gave an overview of the centre's experiences. Matete Matches has been operating for three years now, and was the first private secure care centre in the country. The centre has approximately 40 children in its care and a staff to child ratio of 1:8.

The cornerstone of its success and longevity is its commitment to protecting the rights of the child. In terms of practice, Mr. Malgas stressed that Matete Matches has been successful in large part because of the way the centre admits youth into its care. Admission is an important part of the centre's long-term success because it gives the child his or her first impression of the facility and begins to establish a sense of belonging. This, in turn, greatly reduces the likelihood of a child attempting to escape from the facility.

In theory the police are responsible for informing a child's parents that the child has been admitted. In reality, however, this does not always happen and in some cases parents and guardian may not even know that their child is in custody. Matete Matches allows the child to make a call to their parents or guardians, which means that the important step of involving the child's family is initiated.

Matete Matches also provides the child with new clothes, warm meals, a four-day orientation run by childcare workers and young people already at the centre, and a welcoming ritual. Furthermore, there are no uniforms and young people are allowed to wear casual clothes. Children can write to their families and are allowed bi-monthly family contacts by phone. They are also allowed one call to their families before a court appearance.

Children in custody at the centre are also involved in the running of the facility. They participate in the planning of development programmes, and lead devotions in the evenings. The centre holds weekly multi-therapeutic meetings into which the children have input, and there are also regular meetings with a social worker. Youth participate in literacy programmes and in other programmes that teach soft and hard life skills.

A child and youth care committee monitors standards of care at the facility. This is an independent committee and members do not work for Matete Matches. The committee meets with children without staff present so that the children are free to speak their minds. There are also regular staff meetings.

The centre's approach is working. There have been no serious disciplinary incidents, the gates of the facility remain open, and children are free to move under supervision of the staff. The centre has had no escapes so far this year and had only seven in all of last year, though some of these returned on their own.



Mr. Malgas voiced some concerns that he and the Matete staff had. One was the attitude of SAPS and the Department of Justice and Constitutional Development. Many of the children are awaiting trial at Matete Matches - many of these waiting a very long time - some up to two years. Reasons given are that police forget cases, "more important" cases are heard and the child's case is postponed. But progress is being made. The Department of Justice, for example, has begun asking Matete Matches staff to testify on behalf of children that have been in their care, which can give the Court a much richer picture of the child when it comes to sentencing.

**M**s **Thandi Makoko** and **Mr. Peter Sadie** gave presentations about Dyambu Youth Centre. Dyambu is responsible for approximately 500 children at its centre. It has a staff to child ratio of 1:15 and had 5 escapes last year.

Ms Makoko pointed out that during orientation the child's family is informed and attempts are made to allay the child's fears. If there is a need, the child is also seen by a doctor. Children are also familiarised with court procedures if necessary, assessed by a social worker and referred to life skills programmes.

Ms. Makoko stressed the importance of children developing an understanding of themselves, their rights, and the rights of others. Programmes are also made available that introduce children to alternatives to violence and how to deal with anger.

Peter Sadie addressed broader questions related to the contract tendering process, and stressed that this process had to explicitly include children's rights, explaining how they would be implemented. He pointed out that it was easy to fill out forms, answer questions, and so on, but harder to ensure that children's rights were implemented in practice. This once again raised the issue of effective monitoring and measurable outputs.

Bringing these issues back to the level of operations, Mr. Sadie highlighted the fact that centre staff form the first line of monitoring, and so it is important to develop monitoring skills in staff as part of implementing children's rights. In this respect, top down approaches are less effective on their own and can serve to undermine the staff, which in turn risks a breakdown of the centre's functioning.

One strategy that deserves more support is developing leadership among the youth themselves to participate in the monitoring process, by making them part of the assessment teams. Managers also need to be supported more and the relevant departments need people specifically responsible for monitoring on a regular basis.

The challenge is to turn the tide. Mr. Sadie drew attention to the large numbers of youth awaiting trial, for example, and declining budgets and the lack of sufficient alternative facilities for children. Ms. Makoko raised the related issues of youth who were 18 years or older ending up in juvenile facilities for a variety of reasons and of the long wait for many awaiting trial children. Some come in at age 16 or 17 but because of the wait, only leave when they are 18, 19 or 20. Because of the conditions many of these youth face in custody, their ability to reintegrate into society, even if they are ultimately found innocent, is severely impacted.

**M**agistrate **Niels Goosen** spoke on behalf of the Stepping Stones One Stop Child Justice Centre in Port Elizabeth. The centre currently services between 200-250 children a month, drawn from PE's 13 police stations.



Mr. Goosen explained that Stepping Stones uses a team-based approach and carries out training throughout the Eastern Cape and other provinces as requested. They are implementing the minimum standards with regard to child protection, but find this difficult at times because of a lack of infrastructure.

Upon admission, youth are provided with clothes, food and showers. Before a court appearance a probation officer also assesses them. The centre makes use of volunteers provided by a volunteer centre in PE. Family finders are also used and have proven to be very effective, although there is some concern around getting finders to testify in court, as they are sometimes reluctant. The relationship between Stepping Stones and the community extends further, as the latter has access to the hall and pays in kind with volunteer work at the centre.

There have been some problems with places of safety related to constantly changing admission criteria. The centre often is able to find additional beds at the Salvation Army and other organisations, for children awaiting trial. They are also able to make use of local shelters if space is available, as they have developed good relationships with them. If no alternatives can be found then the child has to go to prison.

**M**s. Cheryl Holmes, of NICRO Gauteng began with a question: What happens to a child when he or she comes into the programme? Using this question as a guide, NICRO has developed its own minimum standards, which include the programme being explained to both the child and family. Ms. Holmes outlined some of the positive aspects of NICRO Gauteng's relationship with the Dept. of Social Development as well as some areas where there is work to be done.

On the positive side, she stressed that Social Development is very accessible and does a good job of listening to organisations. Furthermore, there seems to be a move towards the financing of programmes. These are important for the development of a strong long-term relationship.

Some misunderstanding is created by the two levels of assessment that children go through, one prior to admission to the NICRO programme and then one again at NICRO. This once again points to the need for a discussion around standardisation and more efficient cooperation between sectors.

Another problem associated with efficiency is the writing of business plans. NICRO has one provincial office and 6 satellite offices in Gauteng. The former is primarily an administrative office, while the latter are service providers. Social Development has 10 satellite offices and each of these requires a business plan from the NICRO satellite. Thus, 6 NICRO satellite offices are producing 10 business plans. In the East Rand, for example, there is one NICRO satellite and 3 Social Development satellites, meaning that the NICRO satellite has to produce 3 plans. This takes up lots of staff time, interferes with costing and is ultimately inefficient. Ms. Holmes presented a more efficient plan that would involve drawing up one provincial business plan and cutting out the rest of the paperwork and use of staff time and resources.

Social Development could also provide more feedback on the plans themselves, especially in terms of whether the plans are meeting the criteria or not. This, too, would increase efficiency and lead to a better working relationship between sectors which means, in turn, better delivery of services to children and better value for money spent.





**M**s. Merle Allsop, of the National Association of Child Care Workers, began by pointing out that there are currently over 300 programmes in existence, so there is no need to reinvent the wheel. Instead, the challenge is to look to the past and learn from collective mistakes and success, and then use this analysis to construct a better framework for future service provision.

Taking up this challenge, Ms Allsop made the following observations:

- ∅ Children's facilities, as institutions, can easily lose focus on who they are to serve, in some cases evolving to serve staff and not children. Because the work itself is very difficult, it can happen that staff needs are prioritised over children's needs.
- ∅ Children's rights culture is very fragile. We are just starting to develop pockets where there is a real concern for the rights of children beyond rhetoric and into implementation.
- ∅ There is a need to take a hard look into the real difficulties that exist in working with children who, in many cases, don't respect the rights of others. Keeping a children's rights approach alive in this environment takes work and dedication.
- ∅ Minimum standards are useful in so far as they tell us what not to do, but we also need to spell out what we want to be doing.
- ∅ The time required for training staff to work with children has to be realistic. Three weeks, for example, is not enough time.
- ∅ There is a need for experienced leadership by people who have lived in the "life space" of children. This is vital to the success of residential facilities.
- ∅ One neglected context within which to see the protection of children is that of labour rights. There need to be clear workplace standards for dealing with labour/workplace issues when they arise.
- ∅ The fact that tenders and contracts are done by one group of people and the actual provision of the services by others creates problems. This plays a role in the difficulty of having children's rights be in the forefront of the process.
- ∅ For-profit centres raise ethical issues that must be addressed.
- ∅ Evaluations: Service providers do not necessarily know what the experiences of children are, and have limited capacity in some cases to do quality assessments. This is complicated by the fact that service providers have a vested interest in the outcomes of evaluations, and so an outside perspective is vital for accurate assessments.
- ∅ Training and funding do not automatically translate into guaranteeing children's rights. More complex factors come into place and need to be explicitly recognised.



# REPORTS FROM THE WORKGROUPS

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Conference participants split into three groups and used this opportunity to focus more closely on specific areas. These areas were:

- (1) Diversion and alternative sentencing,
- (2) Residential care, and
- (3) Special services (e.g. Family Finders & One Stop Child Justice centres)

Each working group was, in turn, asked to take a look at their services across four categories: risks, responsibility/accountability, resources, and basis for guidelines. This exercise helped to bring to the surface the knowledge, issues, problems and questions that surround the implementation of child protection and justice.

## Group One: Diversion & Alternative Sentencing Programmes

Key Questions:

1. How do we build instruments for child protection into contracts?
2. Who is responsible for what?
3. What are the risks?

✘ Clarification of core functions is vital: what can be outsourced and what cannot? This area raises questions about cost efficiency, as well as practical and ethical questions regarding the outsourcing of government functions. Cooperation with Treasury in this area is vital.

✘ There are problems regarding assessment of children for diversion and other programmes. Assessments done by probation officers or prosecutors sometimes send children into inappropriate programmes. Joint assessments are one way to deal with this problem. The CJB provides broad outlines for assessment and diversion but the decisions need to be made locally, and on a case by case basis.

☞ Initial assessments can possibly be outsourced, or done by probation officers, with the second assessment outsourced to NGOs to identify specialised programmes. A document outlining all possibilities would be useful;

☞ Costing needs to be taken more seriously, as it impacts on the success of diversion programmes;

☞ NGOs have higher standards than government, yet government



evaluates NGOs. Who evaluates government?;

- ☞ The details regarding monitoring of Child Justice contained in the Law Commission were not included in the cabinet approved version. Why was this, and how can we be assured that such structures and procedures will be set up. All levels of government and NGOs need to be included.
- ※ What are the issues and risks involved in contracting out?:
  - ☞ There are flaws in the subsidy system. The use of purchasing contracts rather than arms-length relationships is needed;
  - ☞ Standardisation & quality control are necessary. Writing up different proposals to different departments is a waste of time;
  - ☞ Tendering should involve more than the financial and legal divisions. The process needs to include experts in child justice matters so that child protection is spelled out clearly at the outset. Performance measures also need to be spelled out;
  - ☞ Partnership between sectors in monitoring is vital, as NGOs can help with quality assurance especially where state officials are inexperienced in the area of child protection. This could take the form of a board. An institute that sets standards and sends out monitoring teams might be even more effective;
  - ☞ Monitoring should be proactive and should include both financial and non-financial audits. The cost may be higher but the results will be more accurate, transparent and effective.
- ※ There is a need for standard procedures in the transferring of funds. In principle all departments could be doing this, but in practice it is mainly Social Development that is responsible. Costing models upon which to base financial decisions would also be useful.

## Group Two: Residential Care

- ※ Risks identified:
  - ☞ How to report violations of children's rights. How to deal with abuse by staff;
  - ☞ Identifying the right procedures for agreements;
  - ☞ Extent to which minimum standards are complied with;
  - ☞ Ensuring appropriate worker responses;
  - ☞ Poor performance going unchallenged;
  - ☞ Implementation of sanctions;
  - ☞ Rights of staff versus children's rights;
  - ☞ Wrong people working in child and youth care facilities;
  - ☞ Standardisation of contracts and time taken to get contracts;
  - ☞ Objectiveness of observers/monitors (vested interests);
  - ☞ Organisations that are not contracted to government;
  - ☞ Impact of HIV/Aids on numbers.



- × Areas of Responsibility & Accountability:
  - ∅ State responsibility for injuries to children or to their rights. In the end, it is the State that is responsible;
  - ∅ Admission to facilities and programmes – who sets the criteria?;
  - ∅ Children who are ill – who is responsible? They should receive hospital care;
  - ∅ Monitoring: there should be uniform standards, and not one set for government providers and another for outsourced services;
  - ∅ Funding: the State should be responsible to ensure that they provide sufficient funding to run the system properly, but this does not preclude government or service providers from seeking other sources of funding;
  - ∅ Ensuring sustainability: service providers need some assurance of continuity in the need for their services so that they can safely develop capacity;
  - ∅ Accreditation of programmes and facilities;
  - ∅ Legislation: each department is responsible for overseeing areas identified in relevant legislation.
  
- × Resources:
  - ∅ Paying for children placed in facilities;
  - ∅ Working out ratios for facilities;
  - ∅ Cost of services provided by state.
  
- × Basis for Guidelines:
  - ∅ Monitoring and sanctions;
  - ∅ Costing tools;
  - ∅ Minimum standards for child justice;
  - ∅ Tender guidelines/contracting procedures;
  - ∅ Departmental guidelines;
  - ∅ Training for government legal personnel.

## Group Three: Special Services

**A**s this working group was addressing a variety of programmes it took a more general approach with regard to a range of services required by children in conflict with the law. The group began by compiling a list of services on which to focus. These were: one step youth justice centres, family finders, assessment centres for arrested children, monitoring of children awaiting trial, general outsourcing, and prevention services.

- × Risks:
  - ∅ Non-equitable provision of services outside of bigger centres;



- ∅ Capacity of individual service providers;
- ∅ Not upholding or properly monitoring children's rights.
- ∅ Resources for managing risk include monitoring compliance and closing loopholes as they appear. It is also important to remember that risks differ between the contractor and the contractee. Concrete steps include accreditation, and contracts that contain addendums with a comprehensive list of specific risks.

× Responsibility:

- ∅ Responsibilities can be clarified through interdepartmental agreements;
- ∅ Responsibility entails outsourcing when capacity doesn't exist within existing department;
- ∅ Being proactive & focused on the protection of the rights of the child;
- ∅ Being clear about accountability to the public.
- ∅ Sanctions have an important role to play in ensuring responsibility.

× Accountability:

- ∅ Accountability is different from responsibility and should be thought of more broadly. Thus, there are different levels of accountability, to families, communities and the larger national community. This accountability applies to both the contractor and the contractee. As with responsibility, accountability can be monitored, measured and reviewed on a regular basis. Mechanisms should also be developed so that accountability can be included in contracts.

× Resources:

- ∅ It is incumbent on government to meet additional needs for resources. This includes efficient and innovative use of existing resources, as well as outsourcing where resources and capacity are low, as in rural areas.





# COOPERATION

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After the working groups had finished, participants reconvened as a large group for a brief discussion on the issue of cooperation. The focus here was on the difficulties faced in trying to coordinate efforts across sectors so that the best possible services could be rendered to children.

The first issue that was raised had to do with the difference between the number of children that should be held in a particular facility and the actual number held. Often contracts specified one amount, but magistrates keep sending more children to the facility even though the limit has been reached. One question this raises is who is responsible in a situation of overcrowding should a child be injured? Clearly there is a need for explicit agreements between the facility and the Department of Justice and Constitutional Development to manage these situations. Service Level Agreements need to reflect these kinds of issues regarding implementation.

Some related issues include the criteria for admission to a facility. These are not always clear to the magistrate. And should this issue be taken up on a local, provincial or national level? Also mentioned was the need for clear agreements with SAPS concerning transport from child and youth care facilities to court, which is sometimes a source of misunderstanding.

Another line of discussion had to do with intersectoral committees and forums working on implementation and monitoring in the various provinces. In some provinces such bodies exist, in others there are partial formations, and in some no such bodies have yet been developed. The Western Cape, Free State, KwaZulu Natal and Limpopo all have some form of intersectoral body in existence, while Gauteng and the Eastern Cape has them in some areas, but not provincially. The North West and Mpumalanga do not currently have these groupings.

In the Western Cape these groupings are working quite well despite some problems, and have contributed to a decrease in the number of children awaiting trial. There is some outsourcing of services, in bookkeeping for instance. What is needed now is an increase in capacity so that the effectiveness of the services can be institutionalised at the magistrate level and in areas outside of Cape Town, like the Karoo.

One practical challenge for the Department of Justice and Constitutional Development is that it is sometimes difficult to have all the role players present at meetings because of obligations to be in court. The discussion also touched on the need to bring in local government more effectively. This is especially important with regard to prevention programmes.

In closing the discussion, there was a recognition of the need to link up with other sectors working with children outside the criminal justice system. It was pointed out that it is important to be focused, but that efforts around child justice should ideally feed into other efforts. One such example is from Gauteng, where the "Plan of Action for Children" coordinates the efforts of various groups working on issues affecting children.



# FINAL SESSION - A BASIS FOR GUIDELINES

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The programme concluded with brief closing remarks by **Mr. Ashley Theron** from the Dept. of Social Development and **Ms. Ann Skelton** from the Child Justice Project, and a presentation of eleven guidelines drawn from the three working groups.

Mr. Theron encouraged submissions to the relevant people in government involved when policy papers and draft legislation are released. This was, he said, an opportunity to lobby, and lobbying effectively is an important tool in getting child justice implemented.

In terms of monitoring and evaluation, there is a need for clear output indicators and measures that are clear, and for uniform administration tools (service plans, business plans, monitoring tools, etc.) that are accepted not only within departments, but also between them.

Another possibility is to implement midterm reviews and progress reports on what has been achieved to date. This will address the important issue of accountability. Also important is to assess the extent to which developmental quality assurance can be used to undertake both monitoring evaluations and capacity building. Can it do both?

In terms of increasing capacity and effectiveness, it is important to look at the possibility of bringing a number of departments into single contracts (e.g. Education, Health, Justice). This also presents multiple sources of funding. The funding process could also be sped up so that resources are available for projects when the projects are ready to go.

Ms. Skelton pointed out that the Child Justice Project very much wants to see something tangible come out of the entire process. The CJP can offer to take the draft coming out of the programme to the relevant departments and to see exactly what it is that needs to be done. She suggested that the Inter-sectoral Committee for Child Justice is a suitable forum for getting government to discuss these issues, and mentioned that the report of this conference will be tabled there.

The Conference delegates agreed to the following basis for guidelines:

- ☒ Both monitoring and sanctions are necessary for service delivery to be guaranteed;
- ☒ Standardised costing and general harmonisation across departments and sectors;
- ☒ Review minimum standards based on experience and focus on making them measurable;
- ☒ Come up with clear tender guidelines: what is negotiable, who needs to be involved, what are the negotiating guidelines?;
- ☒ Departmental guidelines: how will they be brought into compliance with minimum standards for child justice?
- ☒ Training for the Departments' legal and finance personnel about the work of child justice so that an understanding of the work is



better reflected in the contracts;

- ∅ Standardisation of accreditation of organisations and facilities: standards requirements that should be linked to service contracts;
- ∅ The negotiation of contracts should include risk assessments. Parties should sit down and create comprehensive documents;
- ∅ There needs to be a determination of which services are core and which can be outsourced;
- ∅ There may be a need for outsourcing of more general activities in rural areas where resources and capacity are low;
- ∅ Resources should be linked to Integrated Development Programmes (IDP). This would include a more proactive and preventative oriented approach to child justice.

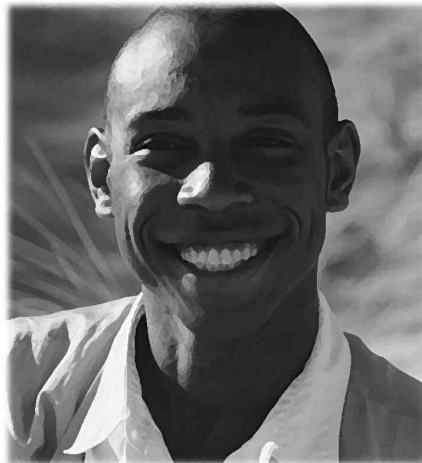
## CONCLUSION

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The feeling among participants at the end of the programme was that progress had been made, especially in the areas of identifying opportunities and challenges for the next stage of development for child justice in South Africa. The *Basis for Guidelines* provides an explicit set of criteria for this stage and a guide for future action. Now the guidelines need to be prioritised and a committee appointed to draw up a plan of action based on the guidelines.

The central issues that came out of the conference were standardisation, the need for improved communication between role players and clarity around the nature of partnerships. Attention must also be given to the content of SLAs, including creating explicit agreements covering practical issues such as monitoring, management, performance evaluations, risk assessment, and the inclusion of experts in child care in the tendering and drafting process.

In all of this the goal is the same: bringing children's rights and protection to the centre of service level agreements. The workshop bodes well for the continued development of child justice and the protection of children's rights.







# **ANNEXURE A**

Speech by the Deputy Minister of Justice, Ms. Cheryl Gillwald, at an evening function of the Conference held on 30 May 2002.



**Bringing Children's Rights and Protection to the Centre of Service Level Agreements**

**Deputy Minister for Justice & Constitutional Development,**

**Ms Cheryl E Gillwald (MP)**

**Child Protection Week, Pretoria, Friday, 30 May 2002**

Child protection is everyone's business. It therefore gives me great pleasure to be here with all of you during Child Protection Week. It is good to see people from so many different sectors come together to find ways to protect children within our child justice system. We all know that unless we offer an integrated and seamless service delivery model, children will continue to be at risk within the very system that has been tasked with protecting them. Welcome to you - one and all. I know that your efforts here today will make a difference to children who come into contact with our criminal justice system.

I have recently returned from the UN General Assembly Special Session on Children, where child protection issues were high on the agenda. The leader of the South African delegation, Minister Essop Pahad, specifically mentioned the Child Justice Bill in his address to the General Assembly. In this address, he indicated that our Government has given the Bill priority status.

I am telling you this because Government's policy direction inside and out of the justice system is quite clear. The challenge then is to ensure effective delivery on that policy.

The process of planning for the implementation of the Child Justice Bill has been very innovative and should serve as a model for every piece of legislation that comes before Cabinet and Parliament. Firstly, the planning and budgeting process started early in the process of law making. Each decision made during the drafting and development phase was costed and weighed in terms of cost implication and cost benefit. The Bill was the first one ever to be costed whilst still in development at the South African Law Commission.

It is my view that each piece of legislation should be appropriately costed from inception to final adoption by Parliament. It often happens that the Bills coming before Cabinet for approval undergo a significant metamorphosis as Members of Parliament put the legislation through the parliamentary committee process. I am not saying that MPs should not be allowed to change legislation that comes before them for review. On the contrary, I believe that costing experts should be made available to Committees to apprise them of the relative cost of the decisions made by Committees when they alter legislation that comes before them. Neither should it be a straight-line costing exercise – MPs should be given cost benefit analyses of their proposals against the original legislation or against other legislative options.

*Having dealt with the legislature process the Department, too, had its work to do. The Directorate of Children and Youth Affairs in my department has co-ordinated an inter-sectoral forum dealing with child justice issues, called the Inter-Sectoral Committee for Child Justice. This committee has done a great deal of integrated planning towards the effective implementation of the Child Justice Bill.*

When the Bill was placed before Cabinet an implementation strategy framework accompanied it. This document provided a gap analysis, and an indication of what each of the relevant government departments will need to do between now and when the Bill is put into operation in order to allow for smooth implementation.

The next step of the planning process looked at what the expected expenditure would be for the first three years of the Bill's operation. Assisted by an economist, whose services have been contracted by the Child Justice Project, the Departments have embarked on a detailed implementation strategy and budget, linked to the Medium Term Expenditure Framework.

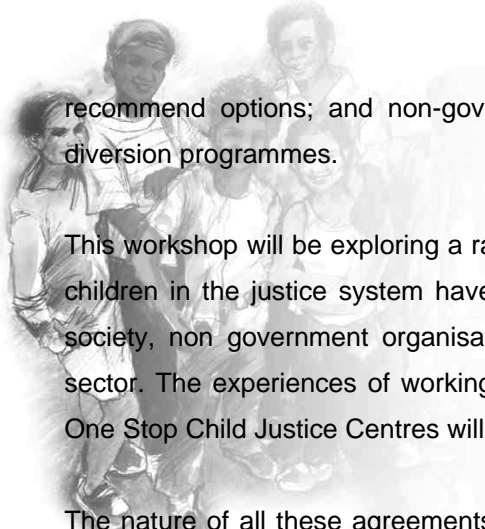
A spreadsheet has been prepared that includes the current budgetary allocations relating to children who are moving through the criminal justice process. It then runs a comparative analysis of the new activities required by the Child Justice Bill. Budgets to cover these new activities are then set out under the headings of "reprioritised funds" and "new funds" with columns showing the first three-year cycle of the life of the new system. This allows for a phased and incremental approach to allocations for new requirements, although there are obviously certain fundamentals that will be required for effective implementation. For the system to work, these requirements must be made available from the initial date of implementation.

In addition, donor funds are also specified in a separate column, to clearly indicate where donor funding has already been earmarked for use in relation to certain activities such as training and monitoring. This column is also useful because it shows the participating departments when the functions covered by donors have to be integrated into the relevant institutional budgets of each Department.

All of the participating Departments are in the process of completing their own spreadsheets - each using an identical template. The Department of Social Development, being a provincial competency, has engaged all nine provinces in this process. The end result will be a planning instrument that will provide a complete financial and planning picture at any point of the implementation process. This overall picture of the entire child justice system can, at any point of the implementation process, be broken down into cross-sectoral phases or into individual department components that fold out over a time continuum.

Child Justice is an area of our work in which partnerships between government and civil society are fundamental to the overall success of our implementation strategy. These partnerships will be especially important when we use diversionary practices to steer child offenders away from the criminal justice system into specialised and specific support programmes.

It would be a good idea to remind ourselves that the rationale for diversion originated in the non-government sector. About 10 years ago NICRO pioneered diversion via an agreement negotiated with public prosecutors. This initiative has subsequently developed into an effective partnership between prosecutors, who make the decisions to divert; probation officers who do assessments of children and



recommend options; and non-governmental organisations that, in most instances, provide the actual diversion programmes.

This workshop will be exploring a range of current practice experiences, in which various programmes for children in the justice system have been delivered through partnerships between government and civil society, non government organisations, and in some instances between Government and the private sector. The experiences of working agreements in relation to inter-sectoral service delivery such as the One Stop Child Justice Centres will also be examined during discussions tomorrow.

The nature of all these agreements between Government, civil society and the private sector lies at the very heart of contemporary debates about effective governance. A view has developed internationally that the business of government should be undertaken outside, as well as within, the organs of State. This idea has been broadly accepted around the world and has also had a marked effect on the way that international development agencies such as the World Bank and the United Nations Development Programme are going about their business. Leo Foneska, in his “*Toolkit on good urban governance*” (1999) argues that:-

*All three (the state, civil society and the private sector) are critical for sustaining human development. Since each has got its weaknesses and strengths, a major objective of good governance is to promote the highest possible constructive integration among them in order to minimise individual weaknesses and utilise strengths optimally. The intricate intercourse between and among these three domains will indicate the direction of the society’s economic and social flight path. The more integral, balanced and inter-dependent the three are, the better it is for that society.*

So how should roles be defined within this partnership style of governance?

During the past decade texts such as Osborne and Gaebler’s “*Reinventing Government*” (1993) and O’Leary’s “*Revolution at the Roots*” (1995) have advanced the argument that the correct balance between state and non-state partnerships is reached when the state government provides the overall direction and control of governance and creates a regulatory environment that will encourage effective and efficient service delivery. The actual service delivery can then be undertaken through partnerships with civil society and the private sector. That regulatory environment must be based on agreed service delivery levels and effective monitoring.

These, then, are some of the issues with which you will be engaging tomorrow. I would like to thank the Child Justice Project for bringing role players together from government, civil society and the private sector to engage in this important debate. It is a useful continuation of the technical assistance that the Project has already provided to Government in respect of financial and strategic planning for the Child Justice Bill. Let me also extend a word of thanks to the project donors: namely the UNDP and the Swiss Development

Co-operation. Your participation in our processes and your collaboration with our specialists has been invaluable. We are all very grateful for your interest and support.

This is not just an academic discussion process – it is about making rights real. Your decisions here must make a material difference to the way in which Children are progressed through our Justice System. Remember that these partnership models are essentially about making development a sustainable and feasible option for progressive social and economic advancement.

Our President, Mr Thabo Mbeki, too, has seen and appreciated the value of civil participation in Government processes. He has passionately exhorted the citizens of this country to become actively engaged in government delivery through programmes of volunteerism. In his State of the Nation Address in Parliament earlier this year, the President noted that volunteers would be integral to Government's meeting its delivery challenges in the future.

He observed, in his address, that civil society participation in government delivery initiatives enhances the capacity of government to deliver and to meet the development needs of the national community. He also stressed that civil society interaction adds transparency to the delivery process.

Of African children, our President had the following to say:

*No African child should ever again walk in fear of guns, tyrants and abuse; no African child should ever again experience hunger, avoidable disease and ignorance ... no African child should ever again feel ashamed to be an African*

His vision for our children is clear. As service delivery agents, we cannot afford to devalue – in any way – the children whose rights and protection, the workshop title reminds us, must be brought to the centre of service level agreements in the child justice field.

Effectiveness and efficiency – the buzzwords of service delivery – are certainly good outcomes to aim for, but when dealing with children in vulnerable situations, service delivery must go further. It must be innovative and empowering, and at all times it must ensure protection of the children the system seeks to serve.

Thank you