



child**justice**
alliance



Child Justice Act
Monitoring Implementation
Tool (CJAMIT)



PURPOSE OF THE CHILD JUSTICE ACT MONITORING IMPLEMENTATION TOOL

Monitoring compliance with legislation is a long and detailed endeavour involving both qualitative and quantitative research. The methodology can be quite complex and must be able to withstand academic scrutiny. In addition, monitoring the implementation of the Child Justice Act 75 of 2008 (the Act) is a task that will be undertaken by both government and civil society in the coming years.

The Child Justice Act Monitoring Implementation Tool (CJAMIT) will not attempt to undertake this complicated task but will nonetheless enable the collection of information on the implementation of the Act from a practitioner's perspective. It is in this sense that the collected information will be used in the following three important ways.

- It seeks to identify problems with the implementation of the Act that can immediately be communicated to the relevant government departments and the Inter-Sectoral Committee on Child Justice (ISCCJ) so that the problem can be addressed. The information collected can therefore be used as an early-warning system and enable an emergency response if needed. In this way, challenges to the implementation of the Act that are encountered by role-players at local level can be communicated to the correct functionaries to ensure a rapid response.
- Knowing what the problems are, are as important as knowing the successes. The tool enables the identification of successes and positive outcomes that will be reported to the relevant government departments and the ISCCJ by the Child Justice Alliance.
- The information gathered through this tool will be recorded by the Child Justice Alliance and will be used in any further monitoring research on the Act embarked on in future by the Alliance.

NOTE

This tool will only become valid and applicable once the Child Justice Act and Regulations to the Act come into operation on 1 April 2010.

This tool takes a child rights-based approach to assessing the implementation of the Act.

HOW TO USE THIS TOOL

This monitoring tool is based on the nine key and internationally accepted child justice indicators developed by UNICEF (United Nations Children's Fund). They are:

- children in detention;
- duration of detention;
- children coming into contact with the juvenile justice system;
- existence of a juvenile justice system;
- separation from adults;
- conditions for control of quality of services for children in detention;
- protection from torture, violence, abuse and exploitation;
- prevention; and
- after-care.

The monitoring tool collects information on eight of the nine indicators, as the indicator "conditions for control of quality of services for children in detention" needs to be dealt with at a different level. The monitoring tool does, however, ask questions about services to children in conflict with the law and therefore does collect basic information on the quality of services.

The eight indicators used in the CJAMIT identify key issues of the child justice system and the Act that should be monitored to:

- assess compliance;
- verify that progress is being made; and
- that the provisions of the Act are being implemented correctly.

The nine indicators above are used as themes for the purposes of this tool and each theme identified will be explained, noting particular issues in respect of that theme. This is followed by specific questions to guide you in recording your observations, impressions and experience with regard to the implementation of the Act. It must be emphasized that this tool is aimed at recording information from child justice practitioners.

If you encounter any problems in your work with children in conflict with the law that relate to the themes contained in this document, explain the problem, providing as much detail as possible. There is also space for you to provide details of innovations and good practice.

Please be aware that this document is general in nature. It is not designed only for child care workers or for diversion service providers. It is designed for all members and friends of the Child Justice Alliance and these include people from a range of disciplines performing different job functions relating to children in conflict with the law. In using this tool to record your observations, experiences and impressions please note the following:

- Not all the questions may apply to you.
- Select the issue(s) that you want to provide information on.
- You may remain anonymous, but please provide information on the town or magisterial district that you are reporting on.
- You can use this tool to provide a general overview of child justice practice in your area or you can select one or more issues that you would like to report on.

The tool provides space for you to record your feedback. Please post or e-mail it to the Child Justice Alliance at the address provided below. If you need more space than that provided, please attach extra pages if necessary. If you have submitted additional pages or documents, please note these on the tool at the space provided. If you want to retain the tool, we suggest you make a copy and send the information on the copy. However, also note that the tool appears on www.childjustice.org.za should you wish to download more copies.

It is also advised that you keep a copy of the tool for your own records.

For more information on the provisions of the Child Justice Act, please refer to the booklet published by the Child Justice Alliance entitled "Getting to know the Child Justice Act".

Details of where the completed tool can be posted or emailed:

The Child Justice Alliance Co-ordinator
c/o The Children's Rights Project
Community Law Centre
University of the Western Cape
Private Bag X17
Bellville
7535
jdemas@uwc.ac.za

This tool was produced by the Child Justice Alliance, c/o the Children's Rights Project, Community Law Centre, with the generous funding received from the Open Society Foundation for South Africa.

The Child Justice Alliance expresses its gratitude to Jacqui Gallinetti and Lukas Muntingh for developing this monitoring tool.

Copyright © Child Justice Alliance.

PERSONAL DETAILS

Name (Optional)

Title	<input type="text"/>	Surname	<input type="text"/>
First name	<input type="text"/>	Tel No.	<input type="text"/>
Fax No.	<input type="text"/>	E-mail	<input type="text"/>

Position: Please tick applicable box

<input type="checkbox"/>	Probation officer	<input type="checkbox"/>	Assistant probation officer
<input type="checkbox"/>	Diversion service provider	<input type="checkbox"/>	Child and youth care worker
<input type="checkbox"/>	Prosecutor	<input type="checkbox"/>	Magistrate
<input type="checkbox"/>	Social worker (NGO)	<input type="checkbox"/>	Volunteer
<input type="checkbox"/>	SAPS member	<input type="checkbox"/>	Other: <input type="text"/>

What do you do in relation to children in conflict with the law?

What town or magisterial district are you from?

Magisterial District	<input type="text"/>		
Town	<input type="text"/>	Province	<input type="text"/>

Do you want feedback on your input? If 'yes' please make sure that your contact details are provided above.

 Yes No

Do you give permission for any information provided to be used by the Child Justice Alliance for purposes of research? Your details will remain confidential, only the information submitted will be used.

 Yes No

Date CJAMIT tool submitted to the Child Justice Alliance

Are you submitting any additional information not recorded on this tool?

If "Yes", please indicate the title and number of pages.

 Yes

 No

Title		No. of pages	
Title		No. of pages	
Title		No. of pages	
Title		No. of pages	
Title		No. of pages	

Are you providing information on all the indicators or only on some? Please tick the appropriate box(es) below.

All indicators

Children in detention

Duration of detention

Children coming into contact with the child justice system

Existence of a child justice system

Separation from adults and according to gender

Protection from torture, violence, abuse and exploitation

Prevention

After-care

A. CHILDREN IN DETENTION

The Constitution, in section 28(1)(g) states that *children should be detained only as a measure of last resort* and for the shortest appropriate period of time. Therefore it is important that detention is used only for children where there is no other option available. Children may under specified conditions be detained in police cells, prisons and child and youth care centres. The Act prohibits the detention of a child, sentenced or awaiting trial, under the age of 14 years in a prison. Children may only be detained in a police cell prior to their first appearance in court at the preliminary inquiry, for a maximum period of 48 hours unless over a weekend or public holiday.

Child and Youth Care Centres refer to what was previously known as places of safety, secure care facilities, reformatories and schools of industry.

1. Are you concerned about the number of children detained in your area? If yes, please explain.

2. Has there been an increase in the number of children detained in your area? Please specify the type of detention as well as the detention facility, e.g. prison and name of prison.

Type of detention, eg. police, prisons, child and youth care centre	Name of facility	Description of increase. Please provide numbers if possible.

3. In your opinion is it necessary that all these children must be detained? If not, please motivate why not?

4. Based on your observations, are the conditions of detention acceptable in respect of available space (overcrowding), accommodation, nutrition, health care, access to education, access to recreation and access to services? If not, please explain.

5. Do you have any further information on the issue of detention? If yes, please explain.

6. Do you have any examples of good practice with regard to children in detention? If yes, please explain.

B. DURATION OF DETENTION

The Constitution, in section 28(1)(g) states that children should be detained only as a measure of last resort and *for the shortest appropriate period of time*. Therefore it is important that detention is used for the shortest period of time and children do not spend unnecessary time in detention. An arrested child may not be detained in police custody or a child and youth care centre for longer than 48 hours before appearing at a preliminary enquiry. The detention of an unsentenced child in a prison must be reviewed every 14 days.

1. Are there any children in your area being detained awaiting trial in a prison for longer than 3 months? If yes, please provide details.

2. Are you aware of children detained in prison who have not appeared before a magistrate to have their continued detention reviewed? If yes, please provide details.

3. Are there any children in your area being detained awaiting trial in a child and youth care centre for longer than 3 months? If yes, please provide details.

4. Are children in your area being detained in police custody for longer than 48 hours prior to their first appearance at the preliminary inquiry? If possible, please consult the register which records the detention of children, established in terms of section 28(3) of the Act, to verify this.

5. Are there any problems in your area regarding the tracing of parents or guardians of arrested children? If yes, please explain.

6. Do you have any further details in general on the issue relating to the duration of detention? If yes, please explain.

7. Do you have any examples of good practice? If yes, please explain.

C. CHILDREN COMING INTO CONTACT WITH THE CHILD JUSTICE SYSTEM

The new child justice system has a number of procedures that appear in criminal justice legislation for the first time. In terms of the Act:

- children can be arrested, but police are encouraged to rather use alternative means to secure a child's attendance in court such as a written notice or summons;
- all children who are arrested or who need to appear in court must be assessed by a probation officer (unless the assessment is dispensed with by a prosecutor or magistrate);
- all children need to appear at a preliminary inquiry (unless a prosecutor has decided to divert a child for a Schedule 1, minor offence before the preliminary inquiry is scheduled to be held);
- all children are entitled to be considered for diversion (this doesn't mean that they will be diverted) and diversion is generally encouraged if appropriate and all the criteria in the Act are met; and
- the Act encourages the use of alternative sentences rather than custodial sentences to child and youth care centres and to prison.

For more details on the Act see the booklet published by the Child Justice Alliance entitled "Getting to know the Child Justice Act".

1. Is there any reason to believe that children are unnecessarily being arrested in your area? If yes, please explain.

2. Are you concerned about the number of children being arrested in your area? If yes, please explain.

3. Do you have any concerns about the offences for which children are being arrested? If yes, please explain.

4. Do you have any concerns about the number of arrested children being assessed by a probation officer in your area? For example, concerns that some arrested children are not being assessed. If yes, please explain.

5. Do you have any concerns about children's access to diversion services/programmes? For example, programmes are not accessible in your area, not appropriate, certain children or offences are excluded, programmes do not exist, etc. If yes, please explain.

6. Do you have any concerns about the range of sentencing options available and/or being used in your area? For example prison, restorative justice options, child and youth care centres, community service orders, and correctional supervision. If yes, please explain.

7. Do you have any further information or concerns on children coming into contact with the child justice system? If yes, please explain.

8. Do you have any examples of good practice? If yes, please explain.

D. EXISTENCE OF A CHILD JUSTICE SYSTEM

The Act ensures that there are specific processes for children in conflict with the law such as the preliminary inquiry, the child justice court and diversion. The preliminary inquiry is essentially the child's first appearance in court and the Act requires certain decisions to be made about the child such as diversion and release or detention of the child. The child justice court is where the child is tried. It deals with the plea and trial of the child, but can also divert a child who has not yet been diverted. It does not have to be a 'new' court. Any court that hears a child's matter and applies the Act sits as a child justice court. Diversion is the referral of matters away from the formal justice system, provided certain criteria are met, to an intervention (formal or informal) and the child does not receive a criminal record.

For more information on the Act see the booklet published by the Child Justice Alliance entitled "Getting to know the Child Justice Act".

1. Are all the children that appear at the preliminary inquiry assessed by a probation officer? If not, please provide details.

2. Do all children in your area, who have not yet been diverted by a prosecutor, go to a preliminary inquiry? If not, please provide details.

3. Do you have any concerns about the number and/or nature of cases being referred to the preliminary inquiry? For example, a case that could have been diverted by the prosecutor is referred to the preliminary inquiry; cases where children are in need of care are not referred to the preliminary inquiry, etc. If yes, please explain.

4. Are there unnecessary delays and backlogs in the finalisation of cases by the child justice court? If yes, please provide details. If not, how often does it sit in a week?

5. Are the diversion programmes in your area adequate and appropriate for the number and nature of cases? If not, please provide details.

6. Do all the diversion service providers/programmes receive referrals from the local child justice court, or is one programme getting all the referrals to the exclusion of other programmes? If so, please explain.

7. Do you have any further comments on the administration and processes of child justice? If yes, please explain.

8. Do you have any examples of good practice? If yes, please explain.

E. SEPARATION FROM ADULTS AND SEPARATION BY GENDER

Section 28(1)(g) of the Constitution requires that children are kept separately from adults and girls separately from boys. This is to ensure that children are not exposed to risks to their safety when in detention. The separation requirement applies to police cells, prisons and child and youth care centres. Please note that the separation requirement also applies to the transportation of children, for example from their place of detention to court.

1. Are all the children in your area, who are held in custody in prison, kept separately from adults, and girls separately from boys? (Check with the local prison or children themselves.) If not, please provide details.

2. Are all the children in your area, who are held in custody in police cells, kept separately from adults, and girls separately from boys? (Check with the local police station or children themselves.) If not, please provide details.

3. Are all the children in your area, who are held in custody in a child and youth care centre, kept separately from adults, and girls separately from boys? If not, please provide details.

4. Are all the children in your area when transported kept separately from adults and girls separately from boys? If not, please provide details.

5. Do you have any further information on the separation of children from adults and males from females? If yes, please explain.

6. Do you have any examples of good practice? If yes, please explain.

F. PROTECTION FROM TORTURE, VIOLENCE, ABUSE AND EXPLOITATION

The Act and the Correctional Services Act (No. 111 of 1998) both set out requirements for children to be kept safe when in custody in police cells and prisons respectively. They each provide for a complaints mechanism to be put in place – a register in police cells and prison. The Office of the Inspecting Judge for Correctional Services also monitors the conditions in prisons by means of Independent Correctional Centre Visitors (ICCVs).

1. Have any children been abused or assaulted or been in ill-health in police cells while in custody in your area? (In police cells all complaints and incidents must be recorded in the Occurrence Book or in the register established in terms section 28(3) of the Act.) If so, please provide details.

2. Who reported the abuse or assault or ill-health?

3. Are you aware of any follow-up action taken? If so, what action and by whom?

4. Have any children been abused or assaulted or been in ill-health in a prison in your area? (Check with the local Head of the Correctional Centre or the local Independent Correctional Centre Visitor, or Visitors' Committee). If so, please provide details.

5. Are you aware of any follow-up action taken? If so, what action and by whom?

6. Do you have any further information on the protection of children against abuse and ill treatment? If yes, please explain.

7. Do you have any examples of good practice? If yes, please explain.

G. PREVENTION SERVICES

The objects, in the Act in section 2, specifically mention crime prevention and reintegration as important components of the child justice system.

1. Are there any crime prevention programmes available in your area? If yes, please insert the details below.

Name of organisation/ government department	Name of programme/ activity	Description of programme/ activity	Programme duration (e.g. 5 sessions of 1 hour each)	Comment or concern about programme/activity.

2. Are these programmes adequate for the number of children requiring its services? If not, please explain.

3. Do you have any further information on prevention programmes? If yes, please explain.

4. Do you have any examples of good practice? If yes, please explain.

H. AFTER-CARE PROGRAMMES

The Act also requires that reintegration services be available to children who have come into conflict with the law involving parents, families, victims and, where appropriate, other members of the community affected by the crime in procedures to encourage the reintegration of children.

1. Are there any after-care/re-entry programmes in your area? If yes, please insert the details below.

Name of organisation/ government department	Name of programme/ activity	Description of programme/ activity	Programme duration (e.g. 5 sessions of 1 hour each)	Comment or concern about programme/activity.

2. Are these programmes adequate for the number of children requiring its services? If not, please explain.

3. Do you have any further information on after-care and re-entry programmes. If yes, please explain.

4. Do you have any examples of good practice? If yes, please explain.

Thank you for your co-operation in completing this tool.

**childjustice
alliance**



**OPEN SOCIETY FOUNDATION
FOR SOUTH AFRICA**



**COMMUNITY
LAW CENTRE**