



## **Sentencing of Children to Child and Youth Care Centres**

### **Workshop Report**

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## 1. Introduction

During the deliberations on the then Child Justice Bill in Parliament, debate arose as to the sentencing options for children who commit serious offences. On the one hand, it was incorrectly thought that all children who commit serious offences have to be sentenced to prison. On the other hand, it was also debated that a more reasonable approach should be adopted, other than prison, for children who commit offences. This should be in line with section 69 of the Act, which lays out the following objectives of sentencing:

- (1) In addition to any other considerations relating to sentencing, the objectives of sentencing in terms of this Act are to –
- (a) encourage the child to understand the implications of and be accountable for the harm caused;
  - (b) promote an individualised response which strikes a balance between the circumstances of the child, the nature of the offence and the interests of society;
  - (c) promote the reintegration of the child into the family and community;
  - (d) ensure that any necessary supervision, guidance, treatment or services which form part of the sentence assist the child in the process of reintegration; and
  - (e) use imprisonment only as a measure of last resort and only for the shortest appropriate period of time.

Of importance in this regard, would be section 69(1)(e) which calls for imprisonment of children to be used as a measure of last resort and for the shortest appropriate period of time. If all children who committed schedule 2 and 3<sup>1</sup> offences (in terms of the Child Justice Act) are all sentenced to prison, then this measurement of last resort would not be complied with.

To comply with the objectives of sentencing, in relation to schedules 2 and 3 offences being committed, the legislature drafted a creative sentence for children to child and youth care centres (previously known as reform schools).

## 2. Sentencing to Child and Youth Care Centres

Section 76 of the Child Justice Act regulates the sentencing options to child and youth care centres in some detail. In terms of section 76(2) of the Act, a child justice court may sentence a child to a child and youth care centre for a period not exceeding 5 years or

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<sup>1</sup> The Child Justice Act list three schedules of offences of which Schedule 1 contains less serious offences, Schedule 2, fairly serious offences and Schedule 3, serious offences. The type of offence would also have an impact on the manner in which the child is treated.

the date on which the child turns 21 years old (whichever comes first). This section does not mean that a child justice court must sentence a child for 5 years to a CYCC. The section stipulates that it can be for a period earlier than that, but should not exceed 5 years or the date on which the child turns 21 years old.

Of more importance is the section 76(3) sentence. In terms of this sentence, a child justice court can sentence a child who committed a schedule 3 offence, which would justify a prison sentence not exceeding 10 years if the child was an adult, to a CYCC, after which the child can serve a prison sentence upon turning 21 years of age. How this sentence would operate would be that a child would be sentenced to a CYCC for a period until the child is 21 years old. After which the head of the CYCC has to submit a report to the court on whether the child reached the objectives of sentencing. If the CYCC head found that the child did indeed meet the objectives of sentencing, then this should be stipulated in the report and the head can make a recommendation to either:

- (a) substitute the sentence with another sentence option in the Act; or
- (b) release the child, with or without conditions.

If the CYCC head found that the child did not meet the objectives of sentencing and that a custodial sentence is still justified, then she/he can recommend that the child be imprisoned. In terms of section 76(3)(d) of the Act, the period that the child remained in the CYCC should be taken into account when a child is considered for parole by the parole board.

### **3. Purpose of the Workshop**

With the provisions of section 76(3) in mind, the Child Justice Alliance took the initiative to inform and sensitise CYCC heads of a number of consequences in relation to this type of sentence.

#### **(i) The consequences of the sentence on the child**

Schedule 3 offences are grave in nature and therefore the sentence does have a huge impact on a child's life. CYCC heads should take cognisance of the effect of sentencing on children. The decision which they make in their report to court would affect the life of the child who was accused of committing an offence.

#### **(ii) The inherent authority in their recommendations**

In terms of section 76(3)(b), the CYCC head MUST submit a prescribed report to the child justice court, containing views on the "extent to which the relevant objectives of sentencing... have been achieved and the possibility of the child's reintegration into society without serving the additional term of imprisonment. Even though a presiding officer has the discretion to not take the CYCC head's recommendation into account, this should rarely happen, as the CYCC head would be in a better position to report on a child's behaviour than a presiding officer, who has not been monitoring the child on an *ad hoc* basis.

Therefore, in order to ensure that children are not sentenced to prison after carrying out a CYCC sentence, a proper warning or caution system should be in place for CYCC heads to brief children upon being interned in a CYCC. That way children are aware of the objectives of their particular sentence and how to go about to achieve them without being given another custodial sentence in the form of imprisonment.

The Child Justice Alliance thus hosted a one-day workshop for CYCC heads and reform schools provincial coordinators on the implementation of these provisions. Reform school coordinators and heads of schools from Mpumalanga, Kwazulu-Natal, the Eastern Cape and Western Cape were invited for this workshop on 08 June 2011 at the School of Public Health, University of the Western Cape.

#### **4. Presentations at Workshop**

The first presentation of the workshop was on the sentencing framework within the Child Justice. Lorenzo Wakefield gave an overview of these provisions in the form of a powerpoint presentation. Please see Annex A attached.

The second presentation was on the consequences of sentencing and creative measures to track children's behaviour within a CYCC. This presentation was delivered by Clare Ballard.

She highlighted the importance of case review system and spoke about the case management committees as established in the Correctional Services Act 111 of 1998, which can be used as a method to establish the best outcome for a child once the CYCC part of the sentence has been served. In terms of section 42 of the Correctional Services Act, a case management committee of correctional services staff have to be composed that must investigate a sentenced offender's behaviour and submit a report to the Parole Board on such sentenced offender. Ballard suggested that such a committee could also be established within a CYCC by the staff and then submits a report to the manager of the CYCC, who would then report to court on recommendations for further sentencing.

She also emphasised the importance of briefing children on how their behaviour in the CYCC would impact on the rest of their sentence post the CYCC part. With that, she also mentioned the importance of explaining and reminding children about the objectives of sentencing in terms of the Act.

#### **5. Group Work on Successes, Challenges and Solutions**

The 2<sup>nd</sup> part of the workshop was spent on measuring the successes, challenges and solutions in relation to the implementation of the Child Justice Act within CYCCs. The participants were divided into their provincial groups and Bonnytown CYCC. The brief

was for each group to formulate their own sets of successes, challenges and come up with solutions to those challenges. The purpose of this exercise was twofold:

- Firstly, for information sharing purposes. This way provinces and Bonnytoun could learn from each other's success stories and discuss the challenges.
- Secondly, for CYCC managers to formulate their own solutions to the challenges they might face, without an outside body's influence.

### **(i) Success stories**

In relation to success stories, most of the participants reported on children's performances within CYCCs. In the Western Cape, for example, children excelled in sports and recreation activities, while in Bonnytoun, arts and culture was quite popular among children. Similar initiatives were reported on in the other provinces, including ideas around art exhibitions by children to fundraise for the CYCC and training provided to children on managing their personal finances. Kwazulu-Natal and Mpumalanga provinces reported on the high levels of motivation that students have and found that this was a consequence for encouraging family contact.

The CYCCs also had a good working relationship with FET colleges for vocational training and used these colleges together with the public school system to assist with the reintegration of children. Community development programmes are also used in relation to the reintegration of children. The new centre in Bisho reported on their excellent track record of no absconding at the centre. As one participant said:

*"We treat children as children and not as criminals."*

As far as procedure is concerned, the Eastern Cape Province reported on a good communication strategy between the CYCC and probation officers. They reported that probation officers provide them with background information of each child interned at the Centres and that they developed procedures for the minimum standards on how a CYCC (reform school) should operate within the province. Before the CJA became operational they also developed an interim protocol on the placement of children.

### **(ii) Challenges**

The participants raised multiple challenges, which have a great impact on how the CJA is being implemented.

Firstly, it was reported that there seem to be a lack of inter-departmental integration at provincial levels, together with a lack of transparency on what happens at the provincial department the specific CYCC. CYCCs also reported that there is lack of support for "real challenges" such as assistance with substance abuse.

In relation to challenges with programmes, the participants reported that there is no flexibility in programmes to suit the needs of children of different age group and

intellectual abilities. They highlighted that programmes are not accredited, especially the group counselling sessions.

The participants raised the difficulty of separating children who show “gangster” tendencies from those who do not. They stipulated that at times the normal staff is not equipped to deal with gang activities.

The participants also raised the following challenges with the judiciary and court procedures:

- Magistrates want to see registration numbers of the CYCCs;
- There exist no uniform system in relation to the interpretation of the different provisions by the magistrates;
- Magistrates still use the sentence structure, as provided for in the Criminal Procedure Act (5 year sentence) and do not sentence children based on section 76(3) of the CJA yet; and
- Children in need of care and protection at times slip through the gap and are sentenced to reform schools.

Even though the participants were told that the transfer of reform schools to the Department of Social Development will not be discussed at this forum, they felt that the following issues in relation to the transfer should be addressed as it will have an impact on the implementation of the CJA:

- They raised a concern about the education focus of lack thereof by DSD;
- The issue of transparency in relation to outsourcing by DSD;
- Would the education in the CYCC remain under the Department of Basic Education?
- How many facilities for reform schools will be available and how will the existing facilities be utilised?

### **(iii) Solutions**

The participants raised the following solutions to some of the challenges mentioned above.

Debates taking place at national level should filter down to provincial and district levels, where necessary. A forum for the voice of practitioners should be investigated in a provincial or national forum. For managers a national forum on challenges and best practices should be created to ensure a level of good communication. This does not have to constitute meeting in person (which is rather expensive), but could also be an online forum, using existing electronic media.

In relation to managing children within the system the participants thought of the following solutions:

- Before sentencing children to CYCCs, probation officers should consult with the CYCC to determine if the placement would be suitable. This should then be mentioned in the pre-sentence report;
- Case review teams should be reinstated to track children in the justice system; and
- The pros and cons of a “pre-release dorm” should be given attention. That would assist with the information needed for the Form 12 report to court.

In relation to programme challenges, the participants had the following solutions:

- The current programmes need to be revisited; and
- Programmes need to be developed for interventions for children who show gangster tendencies.

## 6. **Overall Recommendations**

The Child Justice Alliance would like to make the following overall recommendations based on our interactions with the workshop participants:

- Principals of the different CYCC’s (previous reform schools) should serve on the provincial child justice fora.
- The Departments of Basic Education and/ or Social Development must provide resources and strategies to develop programmes for the needs of children in different age groups in the CYCCs.
- Training should be conducted in order to deal with children with specific problems, like sex offenders and children who are gang members.
- Strategies and protocols should be developed for children sentenced to CYCC’s who are also children in need of care and protection.
- Clear communication should be given to CYCCs in relation to the transfer process from the Department of Basic Education to the Department of Social Development, especially regarding the education needs and designation of facilities as sentencing CYCCs.
- Protocols for consultation between probation officers and CYCCs regarding pre-sentence reports.
- Strategies and protocols regarding the release and reintegration of children.

Of the above recommendations, the Child Justice Alliance would appreciate it if the following recommendations are operationalised immediately:

- Having CYCC principals serve on the provincial child justice fora.
- A general communication on the progress in relation to the transfer of CYCCs from the Department of Education to the Department of Social Development.
- The Development of programmes for the needs of children in different age groups and dealing with specific problem cases involving children in CYCCs. Donor funding can be sourced for this from organisations like the Open Society Foundation and UNICEF.

## 7. **Conclusion**

At the end of the day, the participants were thanked for making their way down to Cape Town to take part in this workshop. Jacqui Gallinetti told the participants that a workshop report would be worked on and forwarded to the Inter-Sectoral Committee on Child Justice to explore ways in which certain challenges can be prioritised, solutions taken into account and success stories exchanged with others in similar circumstances.

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**Attendance register for Workshop on Sentencing of Children to Child and Youth Care Centres ito CJA  
Held on 8 June 2011**

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# Annex A: Presentation on Sentencing Framework

6/30/2011

**Sentencing**

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**Sentencing**

- Upon conviction of a child in a child justice court, he or she must be sentenced
- Types of sentences in Act is divided into 2 categories:
  - Custodial and
  - Non-custodial sentences



**Sentencing**

- The objectives of sentencing are to:
  - Encourage the child to understand the implications of his/ her actions and be accountable for the harm caused
  - Promote an individualised response striking a balance between the circumstances of the child, nature of offence and interest of society
  - Promote reintegration of child into family and community
  - Use imprisonment only as a measure of last resort



**Sentencing**

- The prosecutor may produce evidence (during sentencing) of the impact of the offence on the victim
- This is done by way of a 'victim impact statement'
- The victim impact statement should reflect the psychological, social, financial or any other consequence of the offence on the victim
- Can be drawn up by the victim or by someone authorised by the victim
- If contents is not disputed, a victim impact statement is admissible as evidence on its production



**Sentencing**

- The CJA requires that the presiding officer must request a pre-sentence report from a probation officer before imposing a sentence
- The pre-sentence report would also contain the recommendation by the probation officer as to type of offence that the child should receive
- If the presiding officer decides to hand down a different sentence than the recommended one, he or she has to provide reasons for doing so
- Pre-sentence report is also needed for a sentence to a child and youth care centre



**Sentencing**

- Court can dispose with pre-sentence report if:
  - Child committed a minor offence referred to in schedule 1 of the Act; or
  - The delay in obtaining a pre-sentence report would cause undue hardship or prejudice to the child



### Sentencing Options

- The following types of sentencing is allowed for by the CJA:
  - Community-based sentences
  - Restorative justice sentences
  - Fine or alternatives to fine
  - Correctional supervision
  - Child and youth care centres
  - Imprisonment
- All of the non-custodial sentences must be monitored by a probation officer and the court must be provided with progress reports



### Section 76 Sentence

- Sentence to a child and youth care centre
  - Sentencing officer MUST consider the following factors (among others) before sending a child to a CYCC:
    - Whether the offence indicates that child has tendency towards harmful activities
    - Whether harm caused indicates residential sentence
    - Whether child in need of particular service provided by CYCC
    - Protection of the community
    - The desirability of keeping the child out of prison
    - Severity of impact of offence on the victim



### Section 76 Sentence

- Sentence to a child and youth care centre cont.
  - 2 types of sentences to CYCC:
    - 1. Compulsory residence to CYCC which provides a service: its sec.191(2)(j) of the Children's Act -> sentence not exceeding 5 years or the date when child turns 21 (whichever earliest)
      - Sec 191(2) stipulates that a CYCC MUST offer a therapeutic programme designed for residential care of children outside the family environment
      - Caution against NOT confusing such programme with a diversion programme



### Section 76 Sentence

- 2. Where a child committed a schedule 3 offence that would justify a 10 year or longer prison sentence for an adult -> Child sentenced to both CYCC and imprisonment. Only be imposed if substantial and compelling reasons exist
  - After time spent in CYCC, child would be transferred to prison.
  - However, manager of CYCC to present to court a report
  - The Court may decide to:
    - » Confirm the sentence and period of imprisonment originally imposed; or
    - » Substitute the sentence to another sentence imposed; or
    - » Order the release of the child



### Regulation No 45

- Duty is on police official to transport child to the CYCC as ordered by the court



### Regulation No 46

- A copy of court order must accompany child to CYCC
- Clerk of the Court to inform manager:
  - The date on which child is to complete sentence
  - The type of order
  - Advise on reporting to court based on sentence (6 weeks before date of completion)
- Duty placed on clerk of court to ensure that report is received



### Regulation No 44

- Form 12 to be completed
- Report MUST indicate the following:
  - Which objectives have been achieved
  - Which objectives have not been achieved
  - Possibility of child's reintegration back into society
    - Pattern of behaviour of child
    - Positive or negative incidents child was involved in
    - Interventions of centre where child behaved in unaccepted manner
    - Extent of adjustments to new environment
    - Child's relationships with peers
    - Child's relationship with staff
    - Extent to which child carried out duties
    - Extent to which child acknowledged responsibility for wrongdoing
    - His or her scholastic progress; and
    - Any other relevant information



### Regulation No 44

- Form 12 to be submitted to clerk of court within 6 weeks before child completes CYCC part of sentence

