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Editor: Jacqueline Gallinetti

From the Editor

The issue of detention as a matter of last resort and for the shortest period of time has recently been the subject of several High Court cases pertaining to the imposition of sentences. *S v Z 1999 (1) SACR 427 (ECD)* (discussed in vol 2 August 1999 Article 40) reviewed the "lower" end of sentencing, starting with the principles which apply when a suspended prison sentence is being contemplated. Central to the Court's reasoning was that unless a sentence of direct imprisonment was warranted, a suspended sentence of imprisonment should also not be considered.

In this issue we turn to the other end of sentencing as far as children aged under 18 years are concerned. The cases reviewed in our lead article question the applicability of prescribed minimum sentences upon children. In all the judgments - without exception - the conclusion was that the constitutional and international law principle that detention must be considered as a last resort and imposed only for the shortest appropriate period of time implied a generous reading of the legislation which therefore excludes juveniles from its ambit.

The views expressed in these cases are supported, and mark an important advance in showing that sentencing for children should be based on different principles. Furthermore, the judgments illustrate that the principles contained in s 28(1)(g) of our Constitution can usefully be put to work to determine the outer limits of sentences applicable to those children aged under 18 years at the time of commission of the offence. We hope that judges in other divisions will build further on these valuable guidelines.

Case reviews on minimum sentences for children

When the introduction of minimum prescribed sentences surfaced in proposed legislation in 1997, South Africa contemplated following a worldwide penological trend that characterised global sentencing policy in the 1990s. Mandatory minimum sentencing legislation was first introduced in Washington State in December 1993. Legislation followed shortly thereafter in California, which adopted an even tougher law. The most familiar variant of mandat-ory sentencing is indeed the Californian model of minimum sentences, known as "three strikes and you're in". South Africa has developed an indigenous form of mandatory sentences, allegedly to address the prevalence of serious violent offences (and especially serious sexual offences).

Minimum sentences contravene a range of internationally accepted principles, such as the principle of proportionality, the principle of incarceration as a matter of last resort, and the principle (in article 40 (2)(b)(v) of the UN Convention on

the Rights of the Child) that juvenile sentences should be able to be reviewed by a higher competent independent and impartial authority or judicial body according to law. A prescribed minimum sentence (in the true sense) is by definition not susceptible to being altered on appeal. The United Nations Committee on the Rights of the Child (CROC) has criticised countries where children are liable to be sentenced under minimum sentencing laws.

South African Criminal Law Amendment Act 105 of 1997 was introduced in Parliament in order to provide for minimum sentences ranging from five years' imprisonment to life imprisonment to be imposed upon conviction for specified offences. Although prescribed sentences were provided for, they were combined with a discretion allowing the Court to depart from the prescribed minimum in certain circumstances. Other than the nature of the offence, further factors which can affect the imposition of these sentences include the age of a victim in so far as the commission of sexual offences is concerned, the matter of whether a convicted person is a first, second or third offender, and whether the offence was committed in furtherance of a conspiracy or with a gang motive.

In 1998, Ann Skelton wrote that "the initial draft of the legislation included offenders under the age of 18 years within its ambit. Non-governmental organisations rallied and made both written and oral submissions on the draft bill to the Portfolio Committee on Justice, arguing that the idea of minimum sentencing for children would go against the UN Convention and the South African Constitution, which both state that the detention of a child should be a measure of last resort, and that minimum sentences for children would in fact make imprisonment a first resort, notwithstanding the 'escape clause', which would allow the court, in its discretion, to deviate from the minimum sentence. Perhaps as a result of these submissions, the Bill was changed so that children under the age of 16 years are now completely excluded from the ambit of the Criminal Law Amendment Act, and 16- and 17-year-olds, while included in its ambit, are treated differently in that the onus is on the State to show that there are substantial and compelling reasons why the minimum sentences should be imposed." [1]

Section 51(3)(b) of the Criminal Law Amendment Act, No 195 of 1997, now provides that "if any Court referred to in subsections (1) or (2) decides to impose a sentence prescribed in these subsections upon a child who was 16 years of age or older, but under 18 years, at the time of the commission of the act which constituted the offence in question, it shall enter the reasons for its decision on the record of the proceedings".

Although the Act was put into operation in May 1998, there has been only one reported case on the meaning of this provision for children aged between 16 and 18 years. In the case of *S v Mofokeng & another 1999 (1) SACR 502 (W)* at 520, Stegmann J interpreted s 51(3)(b) of Act 105 of 1997 as implying that, in respect of children aged 16 and 17 years at the time of the commission of the offence, "the court is not obliged to pronounce the minimum sentence imposed by Parliament, but is left free to sentence them in accordance with its own discretion, according to the ordinary criteria usually applicable to the determination of a fair sentence".

This was, however, not central to the Court's judgment, as the accused in point were aged above 18 years at the time of commission of the offence. However, an equivalent reading of this section was given in *S v Daniels and others (case No RC 75/01, unreported)*, *S v K and another (case No SS 50/99, unreported)*, and

in *S v S and another (case No SS 181/00, unreported)*, all of which involved one or more convicted juveniles under 18 years. In *S v Daniels and others (case No RC 75/01, unreported)* it was common cause between the State and the defence that the provisions of s 51 of Act 105 of 1997 were also not applicable to those of the accused who were aged between 16 and 18 years.

S v Blaauw (case No SS 159/2000, unreported) concerned an offender who was six weeks over the age of 18 years at the time of commission of the offence of rape. The victim was a child aged five years, which immediately raised the spectre of the sentencing provisions of s 51(1) of Act 105 of 1977. The judgment confirmed that the prescribed minimum sentences should not apply to children aged between 16 but under 18 years at the time of commission of the offence, and stated that this interpretation was supported by s 28(1)(g) of the Constitution as well as by international law. Both contain the principle that where accused children are under the age of 18 years, detention (which includes detention pursuant to the imposition of a sentence) must be considered only as a last resort. In this regard, it must be borne in mind that s 233 of the Constitution requires a court to prefer any reasonable interpretation of legislation that is consistent with international law over any interpretation that is inconsistent with international law.

Further, Judge van Heerden alluded to the obligations incurred under international law by virtue of the ratification by South Africa of the UN Convention on the Rights of the Child in 1995. In the Court's opinion, the obligation incurred upon ratification includes giving effect in municipal law to the principle of detention as a measure of last resort. The imposition of prescribed minimum sentences upon children aged below 18 years old would, on the face of it, offend this principle, as minimum sentences imply the use of imprisonment as a first resort, notwithstanding that a judicial officer may be permitted to deviate from the prescribed sentence if he or she is satisfied that there are substantial and compelling circumstances for doing so.

Prior academic analysis [2] of the effect of the changes effected at Parliamentary Portfolio Committee stage to the legislation on minimum sentences suggested that the meaning of s 51(3)(b) was to exempt persons who were aged below 18 from the operation of the legislation, unless there is evidence before the Court to show why the prescribed sentences should be imposed. Referring to this analysis, the Judge expressed the view that this analysis was indeed the correct interpretation of the provision, especially given the well-known principles of proportionality and individualisation of sentences where juvenile offenders are concerned (*S v Z and four other cases 1999 (1) SACR 427 (E)*). The fact that the accused fell a mere six weeks short of being exempt altogether from the minimum sentences was regarded in itself as being a substantial and compelling circumstance for departing from the prescribed sentence. In lieu of a life sentence for the offence, a lesser sentence of 25 years' imprisonment was imposed.

In *S v S* (above), Judge Louw was also of the view that the correct interpretation had to be the one adopted in the preceding cases which viewed s 51(3)(b) as giving the Court a discretion not to impose prescribed sentences in juvenile cases. He further alluded to the fact that this reading would be in line with international law, which, by virtue of the provisions of s233 of the Constitution, a Court was obliged to prefer.

These cases illustrate that statutory developments, legislation and regulation are not the only means by which the principles and norms of international law can be

used to shape legal developments in municipal law. Judgments of the Courts can also play a vital role in interpreting legislation, setting stand-ards, and laying down guidelines for those involved in the administration of justice. Where judges are willing to look beyond the confines of domestic law, international law can provide a valuable source of authority in furtherance of children's rights in South Africa.

A complete text of this article is obtainable from jsloth-nielsen@uwc.ac.za or Prof J Sloth-Nielsen, Faculty of Law, University of the Western Cape, P/Bag X17 Bellville.

1. A Skelton "Juvenile Justice Reform: Children's Rights versus Crime Control" 101-102 in CJ Davel (ed) Children's rights in a transitional society Protea House 1999.

2. J Sloth-Nielsen "The Role of International Law in Juvenile Justice Reform in South Africa", unpublished doctoral thesis, University of the Western Cape 2001.

National Interim Protocol for the Management of Children Awaiting Trial

International Children's Rights Day - Protocol is launched

1 June was International Children's Rights Day. This year Parliament held a special session, in which children participated, in the Old Assembly Room. As part of the day's activities the Minister of Justice and Constitutional Development launched the National Interim Protocol for the Management of Children Awaiting Trial. This is an inter-sectoral document, and the foreword contains a commitment by the Departments of Justice and Constitutional Development, Social Development, Correctional Services and the South African Police Service. The commitment reads as follows:

"By ratifying the Convention on the Rights of the Child on 16 June 1995, South Africa embraced its responsibilities towards children. According to Article 40 of this Convention children accused of crimes are entitled to be treated in a way that promotes their sense of dignity and worth, and encourages in them a respect for the rights of others.

The Convention also requires countries to develop special procedures and laws to deal with children in the criminal justice system. The Ministry of Justice has received a report on juvenile justice from the South African Law Commission, and a draft Bill has been placed on the parliamentary agenda. Until such time as comprehensive legislation has been enacted and implemented, however, the government is acting to ensure appropriate management of children accused of crimes.

Of particular concern are children who are awaiting their trials in custody. The government is committed to honouring section 28(1)(g) of the South African Constitution, which states that a child has the right:

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

- kept separately from detained persons over the age of 18 years; and

- treated in a manner, and kept in conditions, that take account of the child's age'."

How did the idea of a National Interim Protocol for the Management of Children Awaiting Trial come about?

The protocol arose from an inter-sectoral investigation which looked at the issue of children awaiting trial in prison. One of the recommendations of the inter-sectoral team was that a protocol should be developed to guide the management of children in the early stages of the criminal justice process.

What the Protocol aims to achieve

The objectives of the interim protocol are to ensure:

- effective inter-sectoral management of children who are charged with offences and who may need to be placed in a residential facility to await trial
- appropriate placement of each child based on an individual assessment
- correct use of the different residential options available
- the flow of information between the residential facilities and the courts
- that managers of facilities are assisted to keep the numbers in facilities manageable
- that communities are made safer through appropriate placement of children, effective management of facilities and minimisation of abscondment
- that the situation of children in custody is effectively monitored
- that appropriate procedures are established to facilitate the implementation of the proposed new legislation, once it has been passed by Parliament.

It is hoped that the Protocol will be used to guide good practice in child justice, as an interim measure until such time as the Child Justice Bill is in place. It will serve as a tool that departmental role-players can use to promote accountability.

In the foreword to the Protocol the Departments express the view that "the implementation by all rel-evant sectors of government of this interim protocol will go a long way to promote South Africa's international and constitutional obligations towards children accused of crimes."

The description of the Protocol as an "interim" measure also bodes well in that it indicates a clear commitment that government is laying the groundwork for the enactment and implementation of the draft Child Justice Bill.

Copies of the Protocol can be obtained from:

UN Child Justice Project
Directorate: Children and Youth Affairs
Department of Justice
Private Bag X81
Pretoria
2001
Tel: (012) 315-1205
Fax: (012) 315-1808

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e-mail: ttshuma@un.org.za

The house arrest pilot project - an alternative to children being held in custody awaiting trial

Despite ongoing attempts by various role-players within the Departments of Justice and Social Development as well as those within civil society, there has been a steady increase in the number of children being held in custody while awaiting trial. The record of 2 828 children in prison awaiting trial was arrived at in March 2000, certainly a tragic milestone to have reached in light of the constitutional obligation to detain children only as a measure of last resort. It has therefore become evident that, until the new Child Justice Bill and its provisions aimed at decreasing the number of detained awaiting-trial children is enacted, innovative steps need to be taken to alleviate the current situation of children in our prisons.

One such attempt was initiated in the Western Cape in 1997. It originated in a single, typical case in which, following a bail application, a recommendation was made that the child in question be referred to institutional care because of family disintegration. As there were no vacancies in welfare facilities, this resulted in the child being detained in prison awaiting trial. Following this matter, the magistrate, Mr Lee, and the probation officer, Ms Nicholas, discussed the possibility of the Department of Social Development investigating alternative resource structures within the community to deal with children awaiting trial. The resultant House Arrest Monitoring Service was started with seven cases and one volunteer/family finder in 1997, and in 1998 it obtained funding as a pilot project and an assistant probation officer, Sam Doubell, was appointed to deal with the cases.

The project essentially entails children being placed in the custody of their parents or guardians under house arrest pending the finalisation of their trial. The child is then monitored by the assistant probation officer, who must be present with the child and his or her parent or guardian at court appearances, and who must submit a sworn affidavit to court on the progress of the child's development.

The Bellville experience

The pilot project began with the initial referral of thirteen cases of awaiting-trial children in October 1998. As at January 2001, a total of 215 children have been managed in terms of the House Arrest Monitoring Service. The offences that these children have been charged with range from murder and rape to shoplifting and trespassing. The highest number of children referred for a single offence was 33 for housebreaking and theft. The matters of 157 of these 215 children had been finalised as at January 2001 and of these, 112 were withdrawn and none were sentenced to prison. At the end of January this year the project was managing 47 children under house arrest. Of these children, eight had absconded but still formed part of the case load and five had been referred back to court for a warning to adhere to house arrest conditions.

The assistant probation officer in charge, Sam Doubell, is of the opinion that the project goes further than merely providing an alternative to placing children in custody awaiting trial. He feels that the assistant probation officer can play a valuable societal role by being a person who the child can see as a friend and someone they can trust and, in addition, can provide support to parents or

guardians who need someone to talk to. However, he also warns that, at the same time, the assistant probation officer needs to be strict and set boundaries with a child in order for the relationship to be effective.

The Project and the Child Justice Bill

Although this pilot project has been implemented to deal with problems experienced with children awaiting trial in the present criminal justice system, its continued implementation is possible under the provisions of the Child Justice Bill. In terms of section 32 of the Bill, a child who is released into the care of his or her parent or an appropriate adult in terms of section 30, can be required to be placed under the supervision of a specified person or report periodically to a specified person or place.

- Furthermore, the project is befitting of both the objectives and principles of the Child Justice Bill in that it:
- Involves parents and families in child justice processes in order to encourage the reintegration of children who are subject to the provisions of the legislation;
- Promotes co-operation between government departments in implementing an effective child justice system, and
- Allows the child to maintain contact with his or her family and to have access to social services.

Queries relating to the project can be directed to Ruwayda Carloo, the Provincial Co-ordinator, on (021) 483-3984.

Framework of the project

Contact with the child:

- First contact must be within 24 hours of referral
- Each child must be visited at least once, but preferably twice, a week
- There must be a home visit every second weekend
- The child must sign a monitoring form at each visit
- For visits to be effective there must be an element of surprise involved
- Assistant probation officers must be contactable during and after office hours

Evaluation of the child's development by observing and recording:

- The child's co-operation
- Behaviour at home
- Relationship with his or her parents and family
- The child's school performance
- The child's lifestyle and interests
- Any substance abuse problems
- The child's attitude towards crime

Non-compliance with conditions of house arrest by the child:

- Children must sign a contract indicating they understand that they have been placed under house arrest by a court order and if they disobey the terms they can be referred back to court

- The first time a child disobeys the terms he or she must be issued with a written warning
- If a child disobeys the terms of the contract for the third time, the assistant probation officer must complete a sworn affidavit with a recommendation on referral back to court and an accompanying recommendation must also be made by his or her supervisor
- If such recommendation is made, a placement in a welfare facility for the child must be available by the next court date

Prevention may lead to cure

Anne-Marie Moolman, Project Manager, NICRO, Free State, reports on an intervention to eliminate gangsterism in Bohlokong, near Bethlehem.

The background to this project was the census results of 1996, which revealed that the central problem facing the Bohlokong community was the prevalence of gangsterism among school-going youth in the town. Meetings followed, and task teams were established to investigate the problem, without any degree of success. Finally, in desperation, the community of Bohlokong appealed to the then provincial MEC of Safety and Security for help. A task team consisting of member of the Department of Education, the Department of Safety and Security and NICRO were appointed in March 2000, with the mandate to investigate the problem, which included meeting with the community and working on an initial plan of action.

Role-playing workshop

The next step was holding a workshop, which was convened by NICRO and the CSIR and attended by approximately 50 represent-atives from schools, churches, the Bethlehem Taxi Association, a representative from the office of the Senior Public Prosecutor, welfare officials, the South African Police Service, and last but not least, members of the community.

An innovative feature of the workshop was the use of role-playing to break down stereotypical thinking. All participants were divided into groups and had to act as either the young person who is involved in gang activities, that young person's mother or father, a police officer, a victim, a prosecutor or a teacher. What emerged was that despite the commitment to do something about the gang problem, the focus had remained on the young people as "gangsters" rather then as young people with their own needs.

During feedback sessions, participants were asked to explain how they felt acting out the different roles. Overall, perceptions had changed: the "young person" group felt labelled and misunderstood. All the groups realised that they felt as though they were victims, in that the others did not listen to them, they were not understood, and everyone blamed everyone else for the behaviour of the young persons. Participants then acknowledged the fact that there was a tendency to pass the buck instead of taking responsibility. Another important issue that emerged was the realisation that collective action was necessary, rather than working in isolation.

Identifying projects

Once the group was focused on shared responsibility, it was easier for them to identify some solutions. The outcome of the workshop was the creation of three community projects. The first was the training of teachers to work with "at risk" young people. Teachers expressed the need for input on the life cycle of children, on children's rights and responsibilities, on assessment of youth and restorative justice, on alternative methods of working with young people, on counselling and life skills, on how to plan programmes, and a host of related issues. In other words, young

people need to be taught how to avoid becoming victims of gangsterism, how to protect their communities from crime, and what alternatives there are to criminal behaviour. As part of the training of teachers in prevention activities in schools, Nicro will conduct training with 33 teachers from schools in Bohlokong during June 2001.

The second project that was identified was a youth empowerment sports programme. The aims of this project are to utilise sport as a means of restoring the imbalances caused by involvement in crime, and this project is in an initial stage, the youth having communicated their needs to a selected task team.

The third project aims to revive social and community life in Bohlakong, as participants were of the view that a lack of healthy social life in the town contributed to young people's involvement in gangs. The Bethlehem Town Council will kick-start the project with a "People's Weekend" on 15 and 16 June, during which youth will be reintroduced to the broader community through song, drama, prayer and sport.

NICRO is convinced that valuable partnerships were formed during the Bohlakong intervention, especially in the links between the Department of Education, the Department of Safety and Security, and last but not least, the Bohlakong community itself. This seems to have been the most important outcome of our project so far.

Anne-Marie Moolman and NICRO Free State can be contacted at tel (051) 447-6678; fax (051) 447-6694; e-mail fsnicro@wn.apc.org

An update on the activities of the Child Justice Alliance

The Child Justice Alliance has been quite active over the last few months and has accomplished a number of the tasks that it set out to achieve. However the work of the Alliance is ongoing and is expected to increase with the upcoming parliamentary process. It appears that the Department of Justice is still hoping to introduce the Bill to Parliament by 17 August 2001. However the Justice and Constitutional Affairs Portfolio Committee has scheduled the Bill to be introduced only in November this year.

Child Justice Workshops

Workshops on the Child Justice Bill have, to date, been held in Port Elizabeth, Pietersburg, Bloemfontein, Kimberley, Durban, Pretoria and Cape Town. The response of the participants has been positive and there is very encouraging support for the principles behind and contents of the Bill.

The Vision of the Child Justice Alliance

The Child Justice Alliance supports a system that:

- Is fair to children under the age of 18 years in conflict with the law and that balances their rights and responsibilities
- Provides the prompt assessment of arrested children and treats them according to their best interests and individual circumstances
- Is aimed at reducing crime through a crime prevention model that focuses on diversion and restorative justice principles
- Recognises that children make mistakes but can nevertheless be guided to become law-abiding adults
- Respects the rights and interests of victims and provides the opportunity for their participation
- Encourages collective responsibilities between the state, families, communities and civil society
- Is achieved through inter-departmental co-operation in implementation and monitoring
- Ensures the protection of society through a proportional response to crime whilst maintaining humane treatment of children
- Recognises that the detention of children should be a measure of last resort and for the shortest possible period of time

Membership of the Child Justice Alliance

The Alliance is showing strong growth with 64 members and 75 friends. These members and friends consist of NGOs, service providers, academics, attorneys, para-statal organisations and individuals.

The Child Justice Website

The website is now available on-line at www.childjustice.org.za and contains the Child Justice Bill, a home page, information on the Alliance and registration forms. In the next month, inter alia, summaries of the Bill, links and resources and a virtual library will be added. Should you not have access to the internet, contact us on the details provided below and we will forward the hard copy information to you.

Networking with other forums

The Alliance is also linking with other forums in order to spread awareness of the Child Justice Bill and promote informed debate. So far, contact has been made with the Child and Violence Forum, the Perpetrator Management Forum, the Western Cape Anti-Crime Forum, the Western Cape Child Justice Forum, the Kwa-Zulu Natal Street Children's Campaign and the Gun-Free South Africa Campaign. Please pass on information about other networks you feel we should contact.

Should you wish to receive any more information on the Alliance, become involved in its work or join as a member or friend, visit our website or contact Jacqui at jgallinetti@uwc.ac.za or on telephone number 021 9593709 and fax number 021 9592411.

Indaba: programme to support the Child Justice System

Jacqui Gallinetti

On 20 and 21 June 2001 an Indaba was held in Gauteng on programmes to support the child justice system, which was hosted by the UN Child Justice Project with the assistance of the Swiss Development and Co-operation Agency and the UNDP. The participants included service providers, government departments, non-governmental organisations and funders. This was a valuable opportunity for both government and civil society to prepare themselves in anticipation of the enactment of the Child Justice Bill.

Originally the Indaba was going to focus only on diversion programmes. However, the Child Justice Project recognised that these programmes, traditionally designed for diversion, will play a dual role as they can be used for both diversion and alternative sentencing. Diversion is aimed at directing the child away from the criminal justice system and encouraging the re-integration of the child into the community while still providing for the child being held accountable for his or her actions as well as the possible involvement of the victim in the process. Alternative sentencing will supplement the sentences that are currently available for children and will also involve the use of programmes also aimed at holding the child accountable for his or her actions while re-integrating the child into the community. Both types of programmes uphold the principles of restorative justice, which are generally regarded as being essential in the management of children in conflict with the law.

The Child Justice Project's audit of existing programmes

It is also recognised that while the present programmes are a crucial foundation for the process of implementing the Bill, there will nevertheless be a need for more programmes to be developed to provide new and innovative diversion and alternative sentencing options. These programmes must ultimately be able to serve the individual needs of children in conflict with the law. Accordingly, Buyi Mbambo of the Child Justice Project informed the participants at the Indaba that the Project is conducting an audit of programmes that are presently available and is including in a database those that have the potential to be used in the new child justice system in future.

Innovative approaches to the development and use of programmes

The Indaba highlighted the range of programmes available presently, which use creative means to serve children who come into conflict with the law. There were presentations by numerous service providers that discussed programmes that create community-based diversion options with limited resources such as those available in Noupoort and those developed by the Restorative Justice Centre and Business Against Crime. Youth Development Outreach and Conquest for Life also placed a focus on programmes that make use of peer and youth mentorship in Gauteng and they were joined by Inanda Family Preservation in Kwa-Zulu Natal. An important aspect for diversion and alternative sentences is the provision of programmes for children requiring specialised services. In this regard presentations were made by Childline from Kwa-Zulu Natal and SAYStOP from the Western Cape on programmes for young sex offenders as well as a presentation by the Professional Foster Care Project from the Eastern Cape.

The legal framework

The Indaba provided an opportunity for service providers and NGOs to be informed about both the current legal framework as well as the new position under the Child Justice Bill. Julia Sloth-Nielsen of UWC's Faculty of Law discussed

the mechanisms available at present through which diversion programmes can be accessed, pointing out that these range from formal legal means - such as unconditional or conditional withdrawal of cases - to informal mechanisms, such as referrals from schools and the police. Lukas Muntingh of Nicro discussed a study on the attitudes of prosecutors to diversion, noting that often decisions to divert seem to be based on 'extra-judicial factors'. Henry Mukwevho of the NDPP's office informed the participants that his office had conducted its own audit of diversion practices across the country and had determined that, astonishingly, 80% of our courts are not using diversion in the management of child offenders. He stressed that his office was therefore developing policies in line with the new Bill to change the prosecution's overall approach to the system. Ann Skelton of the Child Justice Project discussed the implications of the Child Justice Bill for the implementation of diversion and alternative sentencing options as well as the provisions in the Bill aimed at monitoring, quality assurance, minimum standards and registration of programmes. The latter provisions are included in the Bill to ensure children are protected against programmes that are exploitative and harmful.

Relationship between government and civil society

A very interesting panel discussion occurred involving Soraya Solomon from Nicro and Eunice Maluleke from Transnet on contractual arrangements between funders and service providers. The conclusion, endorsed by the participants, was that there should be contractual agreements based on powerful partnerships influenced by equality, accountability, mutual trust and respect.

Ashley Theron of the Department of Social Development delivered a very informative presentation on the Department's response to challenges presented by the Child Justice Bill. He indicated that the Department has made a concerted effort to prepare itself for the enactment of the Bill and has seriously applied its mind to its responsibilities and what is needed for implementation. It was extremely encouraging to hear such a positive approach by government to the contents of the Child Justice Bill and its implementation.

In addition to the very useful information imparted at the Indaba, it proved to be a constructive forum to raise awareness of the range of programmes available as well as the various issues pertaining to diversion and alternative sentencing, which included training and funding.

A full report on the Indaba will be available shortly and can be obtained from:

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Directorate: Children and Youth Affairs,
Department of Justice and Constitutional Development,
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