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Children's Rights Research & Advocacy Project

COMMUNITY LAW CENTRE
University of the Western Cape

presents



Children in Trouble with the Law: Seminar towards Legislation & National Action

15-17 October 1993
Arthur's Seat Hotel
Cape Town, South Africa

*The Community Law Centre dedicates this seminar
to victims of violence across
South Africa in memory of Amy Biehl,
American Fulbright Scholar.*

Children in Trouble with the Law

A Seminar towards Legislation & National Action

Mission of the Seminar:

To develop a framework for constitutional proposals, legislation and policy that ensures the protection of the legal and human rights of children in trouble with the law through the conceptualisation of a new model of juvenile justice that has a multi-agency, community-based approach.

Studies over the last year in the area of juvenile justice in South Africa have revealed that the system is in a state of crisis at all stages of the process, from arrest to sentencing. The majority of children who are arrested are confronted with a non-functioning system that fails to acknowledge or respect, and often violates, the human rights of young people. Children as young as seven years of age can be and have been confined in over-crowded, under-trained and under-staffed secure facilities. Although fewer children remain incarcerated in prison prior to trial due the advocacy efforts of the Community Law Centre and many other concerned child advocates, we are uncertain as to the number of children who are still held in police cells, especially in rural areas. Despite the acceptance of the government that incarceration is not a time or cost effective means of dealing with accused children and in spite of rising recidivism rates amongst youth, there is still some talk of plans to increase secure detention capacities at an enormous monetary cost. However, the psychological and emotional costs of detaining children outside their own homes dwarfs any costs of building or maintaining such facilities.

Disproportionate representation of black youth who are arrested and detained dramatically underscores persistent inequality and greatly exacerbates the exposure to gangsterism, rape and sodomy of these children. It also destroys any hopes for positive development of these children into socially responsible, productive community members and increases the risk of converting these children into hardened criminals, the "violent youth". Juvenile justice reliance upon pre-sentence detention in prisons and places of safety also contributes to family disintegration, reduced educational ability and

employment ability as well as employment potential and general dysfunctionality amongst such youth.

The current crisis in the juvenile justice system is largely the result of its use for purposes other than that for which it was designed to serve. Before 1990, black children were often arrested and detained under the security legislation, as well as for homelessness, truancy or public violence. These practices of unwarranted arrest by the police have carried over into present times. Children are accused, detained, tried and sentenced for crimes ranging from petty theft to homelessness to impersonating a police officer to shoplifting. The role of the juvenile court was never clearly defined and it has become increasingly clouded by debates about the need to meet the rising incidence of socio-economic crime and violence with strong law and order policies. These policies rarely address the needs of the courts, the community or the children in any positive manner. Even though the courts are trying to confront this crisis, many simply do not have effective policies or programme options, not to mention adequate trained personnel, to ensure that the human rights of children are protected. Others have simply responded to the children's situation by making decisions about a child's future without access to proper assessments of the child, contact with family or parents or any comprehensive evidentiary basis for the determination of guilt. Most courts rely heavily on one-off punishment mechanisms such as corporal punishment, even if a child has been awaiting-trial in prison. Sadly, although a majority of children who are arrested and who enter the juvenile justice system are youth at risk and in need of care, it is rare during the adjudication process for them to encounter any linkages with community-based services or other assistance to families in need of care. Rather, these children are usually further stigmatised and suffer additional traumatization or disruption to their already tenuous lives.

The challenge that the Community Law Centre and other advocates of children's rights now face is to cast off the indifference, the fear, the lack of accountability created by apartheid and to engage the public and communities in the development of a means of prevention, education and an overall culture of respect for children's rights. For this reason, innovative legislation and a national plan of action for

the interim are necessary to achieve justice for children in trouble with the law and their families. Through this seminar, the Community Law Centre seeks to provide a forum for debate and consultations that will allow all those concerned to begin to work together to rise and meet this challenge.

PROGRAMME

FRIDAY, 15 OCTOBER 1993

- 3:00 - 5:00 PM REGISTRATION
- 5:00 - 5:30 PM OPENING & DEDICATION OF SEMINAR
Chair **Dullah Omar**
Director, Community Law Centre
Jakes Gerwel
Rector, UWC
Clive Keegan
Mayor of Cape Town
- 5:30 - 7:00 PM GUEST SPEAKER
Jacob Zuma
Deputy General Secretary, African National Congress
- KEYNOTE ADDRESS
Kader Asmal
Professor of Human Rights, UWC
- 7:00 - 8:30 PM DINNER
- 8:30 - 9:30 PM COCKTAILS

SATURDAY, 16 OCTOBER 1993

"A Practical Look at The Situation of Children in Trouble with the Law"

- 9:00 - 9:30 AM WELCOME & GOAL SETTING FOR SEMINAR
Michelle Morris
Community Law Centre
- 9:30 - 9:45 AM SLIDE PRESENTATION
"Rural Children: How are they Coping?"

SESSION ONE: *The Law and Practices Today*

Chair: **Shirley Mabusela,**
National Children's Rights Committee

- 09:45 - 10:00 AM POLICE TREATMENT OF CHILDREN & ARREST
Paseka Ncholo
- 10:00 - 10:15 AM JUVENILE DETENTION AND AWAITING-TRIAL YOUTH
Rozette Jeptha
- 10:15 - 10:30 AM *Small Group Brainstorming*
- 10:30 - 11:00 AM TEA
- 11:00 - 11:15 AM DIVERSION AND PREVENTION
Surayah Solomon
- 11:15 - 11:30 AM LEGAL REPRESENTATION OF CHILDREN
Frans Viljoen
- 11:30 - 12:00 PM SENTENCING: TRADITIONAL METHODS & ALTERNATIVES
Pat Singh
- 12:00 - 12:15 PM *Small Group Brainstorming*
- 12:15 - 01:00 PM *Questions from the Floor*
- 01:00 - 02:00 PM LUNCH

**SESSION TWO: *Where are the Children?
A First-hand Look***

- 02:00 - 06:00 PM FIELD TRIPS
- Pollsmoor Prison *Zoelpha Carr*
Cape Town &
Guguleta Police Stations *Alethea Percival*
Mitchell's Plain Community *Violet Abrahams*
NICRO Diversion Unit *Memory Qomoyi*
Cape Town Juvenile Court *Prince Maluleke*
- 06:00 - 07:45 PM DINNER
Ritz Protea Hotel
- 08:00 - 09:30 PM COMMUNITY DEBATE
*"Children in Trouble with the Law:
Criminals or Victims?"*
- Moderator: **Essa Moosa**

SUNDAY, 17 OCTOBER 1993

"Seeking Real Solutions for Children
in Trouble with the Law"

SESSION THREE: Sharing Ideas

09:00 - 10:00

INTERNATIONAL WORKSHOPS

Police Treatment and Arrest

Susan Bazilli, Canada

Judge Julian Houston, US

Juvenile Detention and Awaiting-Trial Youth

James Bell, US

Torbjorn Sundh, Sweden

Diversion and Prevention

Bernadine Dohrn, US

Agewta Lindelof, Sweden

Emmanuel Magade, Zimb

Legal Representation and the Courts

Sandra Mason, Barbados

Robert Schwartz, US

Sentencing and Alternatives
for the Future

Larry Murray, US

Farida Lang, Zimb

10:00 - 10:20 PM

TEA

SESSION FOUR: Legislative Drafting

10:20 - 11:00 PM

"Raising Ideas for the Creation of a
Juvenile Justice System for SA"

Ann Skelton

Lawyers for Human Rights

11:00 - 01:00 PM

DRAFTING WORKSHOPS

01:00 - 02:00 PM

LUNCH

02:00 - 03:00 PM

WAY FORWARD

03:00 - 03:15 PM

CLOSURE

Charlotte McClain

Community Law Centre