

Legislating for Violence against Children

With a focus on the juvenile justice
system

Juvenile Justice is multi sectoral

- One of the challenges to juvenile justice is that it is multi-sectoral
- This means that children pass through the hands of different officials in different departments such as police, probation services, social welfare, corrections, secure care
- Litigating across different sectors can be complex, could be different legislation, regulations

Risks to children during arrest/police detention

- Assault during arrest (either by communities or by police)
- Assault or torture by police during investigation
- Assault (including sexual assault, being robbed of belongings or food) etc by other detainees whilst in police detention
- Deaths of children in police cells (at the hands of other inmates or suicide)

Legislative responses

Arrest/police detention

- Alternative to arrest to be encouraged (lots of paper work if you arrest, less if you don't)
- Clear guidance on use of force in arrest – should be different for children but police will quibble over 'fleeing suspect'
- Systems for preventing assault/torture during investigation – presence of an adult to protect child during all interrogation, some countries can afford high-tech solutions such as video monitoring etc

Legislative responses

Arrest/police (cont)

- Holding police accountable for any injury to children during interrogation or whilst in detention
- Having more oversight of police cells
- Absolute prohibition on adults and children being held together – but children often suffer at the hands of other child detainees. Risk assessment measures?
- Police duty to report injuries and signs of psychological trauma of children in detention, and to get medical assistance urgently– SA Child Justice Act has good section on this
- Central reporting of injuries and deaths

Further risks

- Transporting of children – in SA we have documented cases of children being assaulted and ‘tattooed’ during the journey from the court holding cells to the prison (may be other child prisoners or if conveyed with adult prisoners, adults)
- Court holding cells – little oversight in these cells, assault and intimidation also possible. In 1996 a South African child was murdered during lunch time in a court holding cell by an adult man who was charged with murder.

Legislative responses

Transporting and court holding cells

- Child Justice Act has a provision for transporting children separately, government struggling as departments shifting responsibility
- Court holding cells – need more oversight, this is rarely legislated for, but should be – video monitoring could be a good option

Risks for children awaiting trial in detention

- Other forms of detention awaiting trial
 - Secure care (tends to be better oversight and care, but violence still happens – also have to be careful about the ‘carers’) In SA secure care falls under the Children’s Act (care and protection) and not the Child Justice Act
 - Prison - Most countries have prison legislation, need to check if it covers children specifically and is sufficiently protective

Legislative solutions

- The detention facilities may fall under different departments, and have different legislation covering their operation.
- Have to consider whether the child justice/JJ legislation can cover this – or ensure that other legislation is overhauled to provide specifically for children?
- In secure care – there should be minimum standards, inspections etc (links with CAT?)
- Bring back to court regularly and magistrate/judge must ask child if safe

Legislative solutions continued

- Inspections (eg inspecting judge of prisons, independent prison visitors)
- Complaints procedures, systems for dealing with injury, psychological trauma , deaths and central reporting
- Quality assurance processes in secure care
- Risk assessment so that children are grouped appropriately
- Strict rules required to prevent 'punishment' that contains violence or solitary confinement
- If private, must be in contract that the protections for children are in place
- Child and youth care workers and prison officials working with children – check against a register before employed?

Risks to children in sentencing

- Many countries still have corporal punishment as a sentence (only abolished by Constitutional Court in SA in 1995)
- Children sentenced to institutions: again the problem is they may fall under different departments eg social welfare, education, corrections
- Prison gangs

Legislative responses

- Many of the required legislative responses to pre-trial detention are equally applicable to children sentenced to some form of custody
- Obviously system should be geared to avoid custody – community based options etc
- Children who are serving sentences generally have less contact with the outside world and therefore independent visitors, oversight, complaints etc are very important
- Need to have systems to hold officials accountable (labour, criminal, civil)

Special issues

- Girls are especially at risk of sexual assault by arresting officers, males in detention facilities and often end up being in solitary confinement
- Children used by adults to commit crimes, sometimes through threats, coercion, gangs – can have a provision in the law as the SA Child Justice Act does, which criminalises the adult and mitigates for the child

Children as perpetrators of violence

- Children commit violent crimes themselves – programmes for diversion and alternative sentences should focus on violence prevention, as this is an opportunity to break cycles
- Important to note that legal measures to combat violence against children– particularly sexual offences are increasingly drawing child offenders into the net of minimum sentences, sex offender registers etc New Sexual Offences Act in SA criminalises consenting sex between children below 16, and new definitions of child pornography, grooming etc, fail to differentiate between adult and child offenders.