

## Report on the first CUBAC Provincial Seminars in the Western Cape and Gauteng August 2006

The seminars were held in order for provincial and local stakeholders to reflect on what had happened since the beginning of the implementation of the pilot projects in Mamelodi, Sunnyside /Hatfield and Mitchell's Plain.

All of the participants to the situation analysis and baseline research from the two provinces were invited to the seminars. The seminars were scheduled to take place once all the relevant training on the provincial instructions and guidelines booklet had occurred.

Presentations were made by the provincial Departments of Social Development, SAPS and the Gauteng and Western Cape Directorate of Public Prosecutions (DPP) offices as well as the local role players such as service providers, prosecutors, police and probation officers stationed in the pilot sites. The presentations were focused on developments in the pilot implementation, challenges and good practice.

### 1. The Western Cape - 8 August

- 1.1 The welcome and introduction was presented by Jacqui Gallinetti. This was focused on an update of the pilot's implementation thus far. The presentation covered issues such as the issuing of the instructions, training of service providers, prosecutors, police, probation officers and educators. In response SAPS raised some concerns that were recurring themes in both seminars, namely, the involvement of parents in using children to commit crime and the need for statistics being problematic.

The powerpoint presentation is attached to this report.

- 1.2 Dr Stan de Smidt from the Western Cape Department of Social Services then presented the provincial perspective on CUBAC. In discussion he raised the issue of budgeting for services for CUBAC after the end of the pilot period and noted that the Department would have to work this into their budget.

The powerpoint presentation is attached to this report.

- 1.3 Advocate Bronwyn Pithey from the Western Cape DPP the presented on their offices' work. She noted that in principle CUBAC is an intersectoral issue that can't be dealt with by one Department in isolation. The positive aspect of the CUBAC pilot project is that the intersectoral co-operation is working. Therefore the CUBAC pilot will have general benefit as the Departments are now working together.

In addition, CUBAC fits into the NPA's national and provincial policy. The NPA recognizes the need for specialized intervention mechanisms as well as the need to acknowledge that

the reasons that children commit crime are different to the reasons that adults commit crime.

On the flipside, she stressed the fact that everyone, including children, need to take responsibility for their actions and be held accountable. Furthermore there is a need to be realistic about preventing re-offending and the NPA realizes it has to be part of that process. At the national level there is a transformation process underway and CUBAC will be incorporated into that process.

She acknowledged that at a provincial level in the Western Cape there was little communication between the provincial office and the local site and therefore the DPP's office need to discuss the issue with the local roleplayers and decide how the province can assist.

She noted that it was a bit pre-mature to talk of a roll-out and that rather there was a need to examine the results coming out of the pilots in order to discuss how the project can be incorporated into prosecutors' everyday work.

Regarding the NPAs concerns about CUBAC, she mentioned the Prevention of Organisation Crime Act (POCA) catching children who are used in gangs and treating them in a very punitive manner. She stressed the need for local information on how to deal with children in gangs through CUBAC, but acknowledged this was a very complicated and complex issue.

The challenges were highlighted as follows:

- Monthly meeting attendance
- The pilot requirement of monthly statistics on CUBAC should take cogniscance of the prosecution's workload
- Any roll-out will require work to change the police and prosecution's mindset towards child offenders
- There needs to be a concerted effort to us the specialized assessment form developed by the Western Cape Department of Social Services
- Resources are always problematic, but the National Treasury has instructed us to request funds where needed so this should not be an insurmountable hurdle.

- 1.4 Superintendent Ntamo from Western Cape SAPS legal services division then presented the SAPS perspective on the CUBAC pilot in Mitchell's Plain. He noted that SAPS recognized the need to create trust between SAPS, the community and children. He also stated that this goal will not prove too difficult to achieve if awareness can be raised on the fact that the use of children to commit crimes destroys their future. He noted that one challenge for the Mitchell's Plain SAPS cluster is the fact that children are unwilling to disclose the identities of the adults who use children to commit crime and confirmed that SAPS cannot force the children to disclose if they do not wish to do so. He

also added that SAPS would like to make use of crime intelligence units to determine information regarding particular areas and how this relates to CUBAC.

He advised that within SAPS there is a focus on Chapter 4 of POCA, namely implementing means to identify gang members and this may benefit CUBAC on one hand in relation to identification of adult gang members, but be of concern if POCA is used to identify child gang members and prosecute them under the legislation.

He also argued that it was SAPS' responsibility, if they identify a particular trend in a child's life that needs an intervention, to consider diversion in conjunction with the NPA.

As far as challenges were concerned, he listed the following:

- Children not disclosing the identity of the adult perpetrator
- The involvement of parents in the commission of crimes by children
- The collection of statistics on CUBAC

## Discussion

Various questions were then posed to the provincial departmental representatives:

- Can a child be placed on the witness protection programme and if so, is it just the child or also the family? Adv. Pithey noted that SAPS used to be responsible for witness protection but that it now falls under the NPA. The principle guiding witness protection is that if the person goes into protection, then provision is made for the family if deemed appropriate or necessary. However, she noted that it should be a last resort because it is very disruptive to the person's life. In addition, witness protection is a highly covert and secretive process and so Probation Officers should make the recommendation to prosecutors.
- What kind of protections are available to children when they do disclose? Sup. Ntamo replied, noting that there is first a need to assess the risk to the child, but that the co-operation of the community and NGOs is also crucial in protecting children. Ultimately, the Branch Commander or Station Commissioner must be informed and requested to assist with the process. NICRO noted that in Mitchell's Plain the situation is very complicated as children disclose their CUBAC status but not the identity of the adult perpetrator or gang that used them – not even which particular gang used them – for fear of reprisals.

1.5 The progress on diversion and prevention was discussed in a presentation by CRED and NICRO service providers. A copy of the presentation is attached. They raised some challenges, namely:

- Children don't want to admit to being used by an adult to commit crime because they want to be seen as an "ou" or "man". They are proud that they decided to commit a crime even though an adult was involved.

- Education – there is a lack of resources for children who have dropped out of school or who are illiterate as most ABET courses offered in the community are for adults
- Families – there is a lack of parenting skills and a high rate of unemployment within the family.

The service providers were asked what happens in their programmes if children can't read or write? NICRO responded by saying that if they are aware of literacy problems they adjust their programme so that there is no writing and mainly role-play, but there is a problem if the assessment doesn't reveal that the child is unable to read and write. The service providers also noted there was a problem with postponing the matter longer so that the children could do the mentoring component after the diversion. This is not something that usually happens in the Western Cape – i.e. follow-up services and so the courts are reluctant to postpone the matter longer than it takes to complete the NICRO diversion programme. The NPA undertook to try address these issues.

- 1.6 Letitia Philander, the probation officer responsible for Mitchell's Plain court then discussed what had been happening regarding assessment. She advised that they have the new, standardized assessment form that is also placed in the police docket. However, SAPS has still been using the old form in the docket so she handed over copies of the new form at the seminar. She advised that the form allows for recommendations relating to CUBAC and therefore makes the assessment of children easier to identify CUBAC. She noted that a vital concern was that of the safety of the children because in Mitchells' Plain the use of the child is usually effected by either the parent or a druglord. Then often the druglord comes to court acting as the child's guardian and signs the child out before SAPS can contact the parents to appear at court. She also noted that the ages of children used by adults to commit crime are usually between 14-17 years but younger children are starting to become involved. She mentioned one matter where the child's parents were already in custody for committing offences and in that matter the child was referred to the children's court. She highlighted the need to examine the child's background and risks, and called for more experts to get involved with CUBAC, for example psychologists.

She emphasized that the safety of children is a priority and stressed the need to obtain the child's correct address and for SAPS to bring them to court as soon as possible, and also pointed out the fact that children rather contact druglords when arrested than their parents. She went on to note that parents have a lack of insight into parenting skills.

She also singled out the systemic problem of a lack of privacy when conducting the initial assessment and how this can affect whether a child discloses CUBAC or not. She stated that there is no place to conduct a private assessment in the cells and there is no possibility of conducting the assessment in their office as when this happened previously two children escaped.

She related two success stories involving the successful prosecution of parents using children to commit crime.

- 1.7 Merle Benwell, the Mitchell's Plain juvenile court prosecutor noted that the statistics she collected varied each month and ranged from one disclosure to as many as ten in one month. She also said that most CUBAC were aged between 10 and 17 years and were charged with shoplifting, theft and housebreaking. In addition she was of the opinion that children were more comfortable to disclose their CUBAC status to probation officers than SAPS or prosecutors.

Her main concerns were the issues of the safety of the child and who acted as guardian for the child in court. She noted that there is no real structure in place to guarantee the child's safety. She said that in circumstances where the child's safety is at risk, it is very important to explain their rights to the child and also inform the child about witness protection. She noted that it was possible to remove the child from the community but questioned the sustainability of this move.

She also stressed that it was not the responsibility of the NPA to ensure that every child was diverted, but only if it was suitable to divert the child.

She also noted the socio-economic backgrounds of the children as a challenge, especially where the support structure at home is lacking and children seek out role-models that can provide for them. She raised the point that druglords are aware of diversion and know the courts are prone to divert first offenders so there is a need to determine how to target the druglords in crime operations.

- 1.8 Superintendent Jonker from SAPS Mitchell's Plain noted that they were in the early stages of implementing CUBAC. He noted that while they had been briefed on what was required of SAPS, they needed to improve their reporting on the phenomenon. He was pleased to receive the new standardized assessment form that specifically refers to CUBAC as it would help the police focus on the issue.

He also suggested increased use of the Community Policing Forums. As far as stats were concerned he noted that the main offences committed by children included shoplifting, theft, drug offences and robberies. He also reported that there had been no disclosures of CUBAC to the police. He did mention a case where two children advised the station commander about a witness in a murder matter, but this was because the interview took place in his office as SAPS are generally not used to interviewing children.

He listed the challenges for SAPS as follows:

- Improving interviewing techniques
- Need for awareness programmes

- The need to have probation officers available for 24 hours
- Parents and guardians who are involved in crime

1.9 Discussion at the end of the seminar centered around safety issues. There were suggestions regarding the development of a safety protocol for children as well as how to ensure the correct persons appeared with the child at court – so as to avoid the situation of the druglord or parent who used the children appearing as the child's guardian.

## 2. Gauteng – 16 August 2006

2.1 The welcome and introduction was again presented by Jacqui Gallinetti. This was focused on an update of the pilot's implementation thus far. The presentation covered issues such as the issuing of the instructions, training of service providers, prosecutors, police, probation officers and educators. In response SAPS raised some concerns that were recurring themes in both seminars, namely, the involvement of parents in using children to commit crime and the need for statistics being problematic.

2.2 Adv Retha Meintjies from the NPA was present but was unable to stay for the whole seminar. She raised 3 major issues:

- Awareness raising – one of the ways they have taken this forward is by producing a CUBAC poster for the Hatfield Community Court
- The collection of statistics
- Prosecutors themselves must take the issue forward – this may take the form of issuing a policy directive for the prosecutors under the jurisdiction of the Transvaal Provincial Division

2.3 Captain Leballo from the SAPS Gauteng Provincial Department then addressed the seminar and explained that they had a problem with the issuing of the instruction. At the time of the seminar, the instruction still had to go to the Area Commissioner who would instruct the relevant police stations i.e. Mamelodi and Sunnyside. In addition, the sub forum for child protection issues in Tswane was briefed on CUBAC and the Provincial Commissioner for SAPS plans to brief the MEC for Safety and Security on CUBAC.

2.4 The provincial representative from the Department of Social Development raised a concern regarding the safety of children, especially where drug-dealers are involved. This again highlighted the fact that protective mechanisms for children who have intimate knowledge of criminal activities are in dire need.

In addition funding is needed for roll-out of programmes to other areas. The unwillingness of children to disclose their CUBAC status was again emphasized as an issue that a strategy need to be developed to address.

2.5 The YDO and RJC service providers highlighted a CUBAC case that had come to their attention:

The child referred for shoplifting at Mamelodi – it was revealed during the diversion programme that the child had been used by an adult to commit the crime. This was referred to the probation officer who consulted with the prosecutor and the adult was charged, convicted and received a R1000 fine. There were no safety issues concerned in this matter.

They noted that the probation officer at Mamelodi had included CUBAC risk factors in her assessment form (linked to the developmental assessment questions) and suggested there should be a discussion about a provincial standardized form.

The Mamelodi steering committee is set to meet on a regular basis and will include the prosecutors, police RJC, YDO and other organizations in Mamelodi e.g. SANCA and Child Welfare.

YDO mentioned that the CUBAC training had created awareness and a new way of thinking about child justice. They noted that the children had responded very well and that the manual has helped but ultimately it depends on whether the children relate well to the facilitators and mentors. They noted that they are identifying other child labour cases such as commercial sexual exploitation matters and therefore as service providers they are becoming more aware of the issues.

YDO has identified 5 CUBAC cases that they have discussed with the prosecution, for example where a child was selling drugs for a family relative and where a boy was selling guns for his uncle. They noted one of the cases were straightforward and therefore they are going to have a case conference on each case to discuss the merits of prosecution. YDO is also doing CUBAC prevention at a community level for example at SOS Children's Villages. They have found that children disclose CUBAC readily during the prevention programme.

The challenges identified by the service providers are:

- How to get enough evidence to successfully prosecute the adult
- How to ensure the safety of the child
- Need to get SAPS to gain insight in the CUBAC phenomenon – as children do not trust the police and don't want to involve the police

There successes include:

- Use of assessment forms including CUBAC
- Creating a safety net for children and knowing what to do with them
- Monthly case conferences
- Sitting with the child and involving him or her in the decisions

- 2.6 Buyi Mbambo, the pilot programme officer also highlighted the need for safety and sufficient evidence to prosecute adults. She also noted that one of the risks related to the pilot implementation is false disclosure of CUBAC by the child.

## Discussion

The following issues were raised:

- How is the issue of CUBAC integrated into the training curriculum for probation officers?
- The need for a Reception Arrest and Referral Centre was raised on account of the fact that SAPS was not referring cases to probation officers properly
- The need for SAPS to realize that they can divert children to programmes without initiating court process
- Training of SAPS personnel was highlighted as a primary concern
- The Department of Education stated that they would like to link with YDO to give them the names of officials to contact for assistance in specific schools. They also noted that in each school there is a team dealing with the emotional and scholastic problems of children
- Bosasa raised the issue of what happens to children with special needs that present as CUBAC? The service providers noted that they do not have capacity for them on the diversion programme, but if it is picked up at the assessment they investigate other options
- The perpetrator acting as the child's guardian in court was again raised as a critical issue
- If the diversion and prevention programmes are already developed, how can we standardize delivery?